PUBLIC OFFICERS AND EMPLOYEES

When a purported state employment contract erroneously and consistently recites that it is between the employee and the Trust Territory of the Pacific Islands and contains other statements demonstrating that the contract words were not to be taken seriously and did not comport with reality, the document is unpersuasive evidence of the relationships among the employee, the state, and the national government. Manahane v. FSM, 1 FSM R. 161, 165-67 (Pon. 1982).

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

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

Government employment that is "property" within the meaning of the Due Process Clause cannot be taken without due process. To be property protected under the Constitution, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Suldan v. FSM (II), 1 FSM R. 339, 351-52 (Pon. 1983).

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

The government's right to discipline an employee for unexcused absence is not erased by the fact that annual leave and sick leave were awarded for the days of absence. Suldan v. FSM (II), 1 FSM R. 339, 357 (Pon. 1983).

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

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

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

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

The high public office of state prosecutor may be the most powerful office in our system of justice. The prosecutor invokes and implements the sovereign powers of the state in the justice system and is given a wide degree of discretion in so doing. Rauzi v. FSM, 2 FSM R. 8, 13 (Pon. 1985).

No common law rule has been applied universally in all contexts to determine the status of government officials. Rauzi v. FSM, 2 FSM R. 8, 15 (Pon. 1985).

Some government workers have been held partially or completely immune from tort liability on grounds that they are public officers. This immunity, intended to serve the purpose of encouraging fearless and independent public service, has been bestowed upon prosecutors as well as other public officials. Rauzi v. FSM, 2 FSM R. 8, 16 (Pon. 1985).

The emphasis in governmental tort liability cases has been on the special status of government, its functions and its officials rather than on the degree of control tests commonly employed in nongovernmental cases. Even those commentators who specifically note that the *respondeat superior* doctrine applies to the government analyze governmental liability issues in terms of public policy considerations rather than through a degree of control analysis which distinguishes between closely supervised and high-ranking officials. Rauzi v. FSM, 2 FSM R. 8, 16 (Pon. 1985).

There is a common law of taxation which addresses the status of public officials as employees. Rauzi v. FSM, 2 FSM R. 8, 17 (Pon. 1985).

A taxpayer who held the high public office of Chief of Finance, whose contract gave him a wide degree of discretion in carrying out governmental powers; and who was not an outside consultant who could merely suggest or advise but was an integral part of the governmental operation is a governmental official, therefore an employee for purposes of the FSM Income Tax Law. Heston v. FSM, 2 FSM R. 61, 65 (Pon. 1985).

All government officials are employees of the government within the meaning of the Federated States of Micronesia Income Tax Law. Heston v. FSM, 2 FSM R. 61, 65 (Pon. 1985).

Defendants were not acting as police officers or under the direction of police officers so as to make their conduct lawful where the record reveals generally that the defendants' actions were not those of police officers acting in good faith to enforce the law, but were taken on their own behalf to punish and intimidate their victims. Teruo v. FSM, 2 FSM R. 167, 171 (App. 1986).

The National Public Service System Act and the FSM Public Service System Regulations establish an expectation of continued employment for nonprobationary national government employees by limiting the permissible grounds and specifying procedures necessary for their dismissal; this is sufficient protection of the right to continued national government employment to establish a property interest for nonprobationary employees which may not be taken without

fair proceedings, or "due process." Semes v. FSM, 4 FSM R. 66, 73 (App. 1989).

In the absence of statutory language to the contrary, the National Public Service System Act's mandate may be interpreted as assuming compliance with the constitutional requirements, because if it purported to preclude constitutionally required procedures, it must be set aside as unconstitutional. Semes v. FSM, 4 FSM R. 66, 74 (App. 1989).

Where there are no directly controlling statutes, cases or other authorities within the Federated States of Micronesia, it may be helpful to look to the law of other jurisdictions, especially the United States, in formulating general principles for use in resolving legal issues bearing upon the rights of public employees and officers, in part because the structures of public employment within the Federated States of Micronesia are based upon the comparable governmental models existing in the United States. Sohl v. FSM, 4 FSM R. 186, 191 (Pon. 1990).

A basic premise of public employment law is that the rights of a holder of public office are determined primarily by reference to constitutional, statutory and regulatory provisions, not by the principles of contract which govern private employment relationships. Sohl v. FSM, 4 FSM R. 186, 191 (Pon. 1990).

Subject to constitutional limitations, the public has the power, through its laws, to fix the rights, duties and emoluments of public service, and the public officer neither bargains for, nor has contractual entitlements to them. Sohl v. FSM, 4 FSM R. 186, 191 (Pon. 1990).

The power of the President to appoint executive branch officers is not absolute, but is subject to check by the advice and consent of Congress. Sohl v. FSM, 4 FSM R. 186, 197 (Pon. 1990).

If someone constitutionally ineligible for appointment, is appointed a judge then his status is that of a de facto judge. A de facto judge is one who exercises the duties of the judicial office under the color of an appointment thereto. Where there is an office to be filled, and one, acting under color of authority, fills the office and discharges its duties, his actions are those of an officer de facto, and binding on the public. Hartman v. FSM, 6 FSM R. 293, 298-99 (App. 1993).

The Title 51 provision barring nonresident workers from gainful employment for other than the employer who has contracted for him does not apply to national government employees because the national government is not an employer for the purposes of Title 51 of the FSM Code and does not contract with the Chief of the Division of Labor for employment of nonresident workers. FSM v. Moroni, 6 FSM R. 575, 578 (App. 1994).

Title 51 does not preclude nonresident national government employees from engaging in off-hours, secondary, private sector employment, but simply means that in order to engage in secondary employment nonresident national government employees must comply with its statutory provisions covering the private sector employment of nonresidents. FSM v. Moroni, 6 FSM R. 575, 579 (App. 1994).

A permanent employee has a one year probationary period after a promotion or transfer. A probationary employee has all of the rights of a permanent employee except the right to appeal from removal from the new position. Once the probationary period expires, an employee becomes a permanent employee in the new position. No adverse action (including a demotion)

may be taken against a permanent employee except as prescribed by regulations which entitle the employee to notice of the action taken and a hearing regarding the merits of the action before an ad hoc committee if the employee appeals. Isaac v. Weilbacher, 8 FSM R. 326, 332 (Pon. 1998).

Title 52 F.S.M.C. 151-57 and PSS Regulation 18.4 establish an expectation of continuous employment for nonprobationary national government employees by limiting the permissible grounds, and specifying necessary procedures, for their dismissal. This is sufficient to establish a "property interest" for the nonprobationary employee which cannot be taken without fair proceedings, or "due process." Isaac v. Weilbacher, 8 FSM R. 326, 333 (Pon. 1998).

When there is no applicable FSM precedent on the point, it is helpful to look to U.S. law in order to formulate general principles for use in resolving legal issues bearing upon the rights of public employees and officers because the public employment structures within the FSM are based upon comparable government models existing in the United States. Isaac v. Weilbacher, 8 FSM R. 326, 333 (Pon. 1998).

A provisionally or temporarily appointed individual is not ordinarily entitled to a permanent civil service position merely by reason of his or her retention beyond the probation period prescribed for regular appointees. At least two conditions must be present before a temporary appointment may become permanent, so as to entitle an affected employee to the procedures in the PSS Act and Regulations, regarding adverse action against permanent employees: 1) the employee must have been among the first three on the eligible list at the time of the appointment, so as to be qualified and capable of receiving the appointment, and 2) there must have been a vacancy. Isaac v. Weilbacher, 8 FSM R. 326, 334 (Pon. 1998).

A court finding that an employee, who held an acting position for four years and was certified as qualified or eligible for the vacant position, had been permanently promoted, does not take away management discretion in hiring and establish for employees a legal right to promotion. Rather, it recognizes the reality of the employee's employment situation, and prevents the government from circumventing the procedural requirements of the PSS Act and Regulations. Isaac v. Weilbacher, 8 FSM R. 326, 334 (Pon. 1998).

The PSS Act's purpose is to provide employees with just opportunities for promotion, reasonable job security (including the right to appeal), and tenure in positions. 52 F.S.M.C. 113, 115. If the national government is allowed to "temporarily" promote employees for indefinite periods of time and subsequently return them to their previous positions, the government can effectively circumvent all of the Act's merit and tenure principles. Isaac v. Weilbacher, 8 FSM R. 326, 334-35 (Pon. 1998).

Under the PSS Act and Regulations, a permanent employee after a promotion or transfer is a probationary employee who becomes permanent and non-probationary at the end of a maximum one year probationary period. Thereafter, an action returning the employee to his previous pay level is a demotion, an adverse action. Isaac v. Weilbacher, 8 FSM R. 326, 335 (Pon. 1998).

The protections afforded a permanent employee include: 1) notification of the adverse action, containing a full and detailed statement of the reasons for the action; 2) notification of his right to appeal the adverse action; 3) the right to appeal the adverse action and have his appeal heard publicly by an ad hoc committee; and 4) the right to receive a written report from the ad

hoc committee containing findings of fact and written recommendations concerning the adverse action. Isaac v. Weilbacher, 8 FSM R. 326, 335, 337 (Pon. 1998).

An employee receiving a temporary promotion must be informed in advance and must agree in writing that at the expiration of the temporary promotion, he will be returned to the former salary (grade and step) that he would be receiving had he remained in his former position. But such a written agreement has no effect if the promotion has become permanent. Isaac v. Weilbacher, 8 FSM R. 326, 335 (Pon. 1998).

A permanent employee cannot be demoted to his former position based on a regulation which, by its terms, only applies to a temporary promotion. A permanent employee's constitutional right to due process is violated by the national government when it has thus demoted him. Isaac v. Weilbacher, 8 FSM R. 326, 335 (Pon. 1998).

Every permanent and probationary employee is to receive an annual written rating of performance. Employees who receive "Satisfactory" or "Exceptional" ratings are eligible for step increases within their pay level. Employees who receive "Less than Satisfactory" ratings are not eligible. The absence of a performance evaluation gives rise to the presumption that the individual was performing at a "Less than Satisfactory" level. Pay and step increases are discretionary. Isaac v. Weilbacher, 8 FSM R. 326, 336-37 (Pon. 1998).

Because Congress has not explicitly made employment contracts which violate 11 F.S.M.C. 1305 unenforceable, the FSM Supreme Court may properly decide whether a contravention of public policy is grave enough to warrant unenforceabillty. FSM v. Falcam, 9 FSM R. 1, 4 (App. 1999).

When there is no national precedent on the issue of the enforcement of an employment contract term which was violative of public policy, and there is no custom or tradition governing the matter, the FSM Supreme Court may look to the common law of the United States. FSM v. Falcam, 9 FSM R. 1, 5 (App. 1999).

Although there was a public interest in denying enforcement because the hiring violated public policy, this is outweighed by the special public interest of the government's failure to provide any hearing or opportunity to be heard concerning its failure to pay the employee or take any steps to terminate the contract, thus constituting a violation of due process rights; the employee's justified expectations of being paid; and the substantial forfeiture would result if enforcement were to be denied. Therefore the trial court did not abuse its discretion in its weighing of the factors on the issue of enforceability. FSM v. Falcam, 9 FSM R. 1, 5 (App. 1999).

An illegally-hired public employee has a constitutionally protected interest in employment because the Secretary of Finance must give notice and an opportunity to be heard after taking the action to withhold his pay, and the government must terminate his employment after it determines his hiring had violated public policy, giving him notice and an opportunity to be heard. Failure to take such steps violated the employee's due process rights. FSM v. Falcam, 9 FSM R. 1, 5 (App. 1999).

Trust Territory Code Title 61 governed the Public Employment System during 1978, and provided that the grievance procedures would hear and adjudicate grievances for all employees where the employees would be free from coercion, discrimination or reprisals and that they

might have a representative of their own choosing. Skilling v. Kosrae, 10 FSM R. 448, 451 (Kos. S. Ct. Tr. 2001).

In 1978, the Trust Territory Public Service Grievance System covered all Public Service employees and covered any matter of concern or dissatisfaction to an eligible employee, unless exempted. Skilling v. Kosrae, 10 FSM R. 448, 451 (Kos. S. Ct. Tr. 2001).

An employee had to complete the informal grievance procedure before presenting the grievance to the Trust Territory Personnel Board. The employee was required to present a grievance concerning a particular act or occurrence within fifteen calendar days of the date of the act or occurrence. The informal grievance procedure permitted presentation of the grievance orally. The Regulations also provided a formal grievance procedure, which the employee may have utilized and which had to be done in writing, if his grievance was not settled to his satisfaction under the informal grievance procedure. The formal grievance procedure was not mandatory upon employees. Skilling v. Kosrae, 10 FSM R. 448, 451-52 (Kos. S. Ct. Tr. 2001).

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

After a Trust Territory employee's cause of action accrued in 1980 when he completed the informal grievance procedure with his supervisor, he had two options: follow the formal grievance procedure for review by the Personnel Board; or file suit in court for judicial review of his grievance. Since his right to sue was complete then, a suit, filed in 2000, will be barred by the six-year statute of limitations and dismissed. Skilling v. Kosrae, 10 FSM R. 448, 452-53 (Kos. S. Ct. Tr. 2001).

The over-obligation of funds statute, 55 F.S.M.C. 220(3), was not intended to create a basis for private parties to sue government officials, but for the government to be able to punish employees and officials who are found to be misusing public funds. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 634 (Pon. 2002).

Under the FSM criminal code a "public servant" is any officer or employee of, or any person acting on behalf of, the FSM, including legislators and judges, and any person acting as an advisor, consultant, or otherwise, in performing a governmental function; but the term does not include witnesses. FSM v. Wainit, 12 FSM R. 105, 110 (Chk. 2003).

The common and approved usage in the English language of the term "public officer" is a person holding a post to which he has been legally elected or appointed and exercising governmental functions. "Public officer" is not a legal term of art but carries only its common, ordinary, and unambiguous English language meaning as found in the dictionary. FSM v. Wainit, 12 FSM R. 105, 110-11 (Chk. 2003).

Strictly construing the term "public officer" by using only its plain, ordinary, and unambiguous meaning (or in the code's terms "its common and approved usage"), a mayor falls within the public officer exception to the criminal statute of limitations. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

The plain, unambiguous, and ordinary meaning of "public officer," an ordinary term for which no construction is required, is that the term includes any person holding a post to which he has been legally elected or appointed and exercising governmental functions. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

The ad hoc committee is required to prepare a full written statement of its findings of fact and its recommendations for action within seven calendar days after the close of its hearing. Maradol v. Department of Foreign Affairs, 13 FSM R. 51, 54 (Pon. 2004).

The English language's common and approved usage of the term "public officer" is a person holding a post to which he has been legally elected or appointed and exercising governmental functions or one holding office under the government of a municipality, state, or nation. FSM v. Wainit, 13 FSM R. 532, 538 (Chk. 2005).

The plain, unambiguous, and ordinary meaning of "public officer," an ordinary term for which no construction is required, is that the term includes any person holding a post to which he has been legally elected or appointed and exercising governmental functions. FSM v. Wainit, 13 FSM R. 532, 539 (Chk. 2005).

Section 105(3)(b) "public officer" exception to the statute of limitations applied to persons based upon their status as public officers – persons holding posts and exercising governmental functions. It did not matter whether that status was defined and bestowed upon a person by the national government or by another level of government. It only mattered that the person held that status. That the term "public officer" cannot possibly refer to state and municipal public officials since the national government lacks the constitutional power to define those offices and to determine or install those officials is a frivolous and misplaced contention because national laws are often applied to persons based on their status, even when that status is defined solely by another government. FSM v. Wainit, 13 FSM R. 532, 539 (Chk. 2005).

When an FSM statute defines a public servant as an officer or employee of the FSM, that section did not include within its definition of public servant all public officers. It only included those that were officers of the FSM national government. FSM v. Wainit, 13 FSM R. 532, 540 (Chk. 2005).

Qualified immunity is not a defense to a criminal prosecution. "Qualified immunity" partially shields public officials performing discretionary functions from civil liability and damages. Public officials are not immune or exempt from criminal liability and prosecution. FSM v. Wainit, 14 FSM R. 51, 55 (Chk. 2006).

A law enforcement officer is one whose duty is to preserve the peace. A mayor has the duty to faithfully implement the municipality's laws and ordinances, but he does not have the power of arrest, and even if he were a law enforcement officer, he would not be immune from prosecution because a law enforcement officer may be prosecuted for an offense committed while he was arresting someone. FSM v. Wainit, 14 FSM R. 51, 55 (Chk. 2006).

National police officers are public officials. FSM v. Wainit, 14 FSM R. 51, 60 (Chk. 2006).

A public officer is not denied due process of law by the abolition of his office before his term

expires or by his removal or suspension according to law. Esa v. Elimo, 14 FSM R. 216, 218 (Chk. 2006).

While the defendant's position as Weno mayor would not satisfy the FSM officer or employee element in sections 55 F.S.M.C. 221(3) and 223, the defendant's service as the project manager on a project for which the national government supplied all the funding, for the purpose of that project, would because he was subject to the national government's control and supervision concerning the project he was manager of, and in that capacity, he performed a national government function – expending national government funds. Spending national government funds is an exercise of the national government's sovereign power. FSM v. Nifon, 14 FSM R. 309, 314-15 (Chk. 2006).

For the purpose of that project, a project manager of a national government project funded by national government funds, is an officer of the national government since he was exercising powers on the national government's behalf. FSM v. Nifon, 14 FSM R. 309, 315 (Chk. 2006).

As a project manager for the Compact funds, a defendant was a national government officer (for that purpose only) because he was exercising powers on the national government's behalf over national government money in a national government project. FSM v. Nifon, 14 FSM R. 309, 315 (Chk. 2006).

The term "officer or employee of any government of the FSM" in 55 F.S.M.C. 313(2) includes municipal mayors. FSM v. Nifon, 14 FSM R. 309, 315 (Chk. 2006).

The term "officer or employee of any State" in 55 F.S.M.C. 338 includes municipal officers and employees. FSM v. Nifon, 14 FSM R. 309, 316 (Chk. 2006).

Currently each of the states and the FSM national government have hiring preference laws. Berman v. Lambert, 17 FSM R. 442, 449 n.4 (App. 2011).

Sovereign immunity should not be confused with official immunity for public officers. Government officials who are performing their official duties are generally shielded from civil damages, and the court has previously recognized that some government workers have been held partially or completely immune from tort liability on grounds that they are public officers. This immunity, intended to serve the purpose of encouraging fearless and independent public service, has been bestowed upon prosecutors as well as other public officials. Marsolo v. Esa, 18 FSM R. 59, 64 (Chk. 2011).

A qualified official immunity applies to public officials. An official who simply enforces a presumptively valid statute will rarely thereby lose his or her immunity from suit. Absent extraordinary circumstances, liability will not attach for executing the statutory duties one was appointed to perform. Marsolo v. Esa, 18 FSM R. 59, 65 (Chk. 2011).

When no extraordinary circumstances are present in a suit over the enforcement of a statute, public officers, in their individual capacities, will be dismissed from the suit, but since injunctive relief can be had against them in their official capacities, they will not be dismissed in their official capacities. Marsolo v. Esa, 18 FSM R. 59, 65 (Chk. 2011).

Since a suit against an official in his or her official capacity is a suit against that official's

office and since a national government office with nationwide scope and authority must be "found" or be "present" in some form in each state in the nation regardless of whether it has an actual year-round physical presence there, for the purpose of the venue statute, none of the defendant national government officials "reside" on Pohnpei. Marsolo v. Esa, 18 FSM R. 59, 66 (Chk. 2011).

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

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

While rights are often freely assignable, duties are not freely delegated. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232 (Yap 2013).

If chiefs were considered state officers and thus a state authority and were permitted to espouse the Receiver of Wreck's claims, then they would have claims that they do not share with the other class members and since a person whose claims are not common to the class would have to be removed as class representatives of, and membership in, the certified class and some other person(s), who could adequately protect the class interests, would have to be named as class representative(s), the chiefs would then not be permitted to participate in, or receive, or share any of the damages awarded to the certified class. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232 (Yap 2013).

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

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

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

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

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

The National Public Service System Act and the Public Service System Regulations establish continued employment for non-probationary national government employees by limiting the permissible grounds, and specifying the necessary procedures for their dismissal. This is sufficient protection of the right to continued employment to establish a property interest for non-probationary employees which may not be taken without due process, including notice and an opportunity to be heard. Manuel v. FSM, 19 FSM R. 382, 390 (Pon. 2014).

The Public Service System Act is designed to further the public interest in hiring the most qualified employees, and the public and the government are the losers and public policy is violated when the public service system procedures, which are designed to obtain the best qualified public employees, are not followed. FSM v. Halbert, 20 FSM R. 42, 47 (Pon. 2015).

As the managing official under 52 F.S.M.C. 135(1), the Secretary has the discretion to ask the Personnel Officer to certify a new eligible list if the current list has no one that is "available or acceptable," and a letter, in which the Secretary stated that, as a result of the interviews, no one was found to be suitable for the position, fulfills the requirement that the list be rejected in writing, but if the Personnel Officer finds the reasons for rejection inadequate, the same list will be returned and an appointment made from the list. Panuelo v. FSM, 20 FSM R. 62, 67 (Pon. 2015).

Because no one shall report to work nor receive a salary unless that person has been previously certified on an appropriate eligible list by the Personnel Officer or his authorized representative, and selected by a Department or agency head, an applicant is not entitled to declaratory relief that he should be hired when, although he was placed on the eligible list, the Secretary, as the result of interviews, found, in writing, no one was available or acceptable and the Personnel Officer did not find the Secretary's reasons inadequate and return the list. Panuelo v. FSM, 20 FSM R. 62, 67-68 (Pon. 2015).

Since the full rights of continued employment only vest upon appointment, when an applicant was not selected from the certified list, was never appointed to the position he applied for, and no agreement for employment was entered into between the parties, he was never a public employee, and therefore his due process rights never vested. Panuelo v. FSM, 20 FSM R. 62, 68 (Pon. 2015).

Because specific performance is a remedy in equity under contract law, an applicant's claim for specific performance is unenforceable when no valid agreement exists between the applicant and the government since, for the court to order the Secretary to hire the applicant based on an invalid contract, through specific performance, would be unlawful and a violation of public policy. Panuelo v. FSM, 20 FSM R. 62, 69 (Pon. 2015).

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

The National Public Service System Act created a system of personnel administration based on merit principles and accepted personnel methods governing the classification of positions and the employment, conduct, movement, and separation of public officers and employees. Eperiam v. FSM, 20 FSM R. 351, 354 (Pon. 2016).

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

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

A permanent employee is an employee who has been appointed to a position in the public service who has successfully completed a probation period. Eperiam v. FSM, 20 FSM R. 351, 355 n.2 (Pon. 2016).

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

Every new employee must successfully serve a probation period before becoming a regular employee, and the Public Service System Regulations require that the probationary period last at least six months and that it can be extended to up to one year. Alexander v. Hainrick, 20 FSM R. 377, 379 (App. 2016).

A Presidential administrative order about vehicle use cannot be applied to the Public Auditor because, under the Constitution, the Public Auditor is independent of administrative control. Alexander v. Hainrick, 20 FSM R. 377, 382 (App. 2016).

When a person's employment is established pursuant to shipping articles, which is a contract between the FSM national government and seamen, it is unlike employment positions protected under the Public Service System, since there is no continued expectation of employment because the shipping articles have a one-year duration, and may be renewed upon

expiration. Gilmete v. Peckalibe, 20 FSM R. 444, 450 (Pon. 2016).

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

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

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

Government employment that is property within the meaning of the due process clause cannot be taken without due process. To be property protected under the FSM Constitution, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. These assurances may come from various sources, such as statute, formal contract, or actions of a supervisory person with authority to establish terms of employment. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016).

Although a governmental entity's breach of contract, without more, does not constitute a civil rights or due process violation, a person who has been employed for twelve years under a series of one year contracts could prove that by that length of employment, there was an unwritten claim to continued employment. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016).

When the executive branch was substantially responsible for conducting administrative tasks in relation to the plaintiffs' employment as well as assigning work to them; when the person with the power to renew and approve their contracts was the allottee, the FSM President, who designated a sub-allottee; when the past contracts were also signed by the FSM Attorney General and for each of the plaintiffs' past periods of employment were prepared by procuring a form from the Attorney General's office and working with the suballottee's employees to complete, after which the FSM Attorney General and the suballottee would sign them; when no one in Congress ever signed any of the plaintiffs' contracts; and when the completed time sheets were submitted, reviewed and approved and signed by the suballottee and forwarded to the Department of Finance for disbursement of wages, the preponderance of the evidence supports the conclusion that the plaintiffs were executive branch employees. There was substantial evidence to confirm that the plaintiffs were performing work to execute the laws passed by Congress by implementation of public projects. That is to say that the plaintiffs' work was executive in nature. Linter v. FSM, 20 FSM R. 553, 560 (Pon. 2016).

The "office" of First Lady is not a constitutional office. Nor is it an office created by statute. It is not an office for which a writ of quo warranto will lie to determine the right to hold the office. It is a title that is, or has been, customarily bestowed on or used to honor the President's wife, who is then expected to perform varied social and diplomatic functions on the President's or the

nation's behalf. But the person acting as the First Lady would not necessarily be the President's wife. Panuelo v. FSM, 22 FSM R. 498, 512-13 (Pon. 2020).

Public officials are generally entitled to qualified official immunity so that government officials who are performing their official duties are generally shielded from civil damages. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 630-31 (Pon. 2020).

The objective test to determine whether public officials are shielded from liability for damages is that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 631 (Pon. 2020).

More than bare allegations of malice are required to deny public officials' qualified immunity for acts conducted in the course of official duties. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 631 n.4 (Pon. 2020).

A government official is not personally liable when the official was not in a situation where the official could be expected to know that certain conduct would violate statutory or constitutional rights or when the tone or content of the official's letters to the plaintiff was not threatening and there was no evidence that the motive for these letters was personal vengeance. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 632 (Pon. 2020).

– Chuuk

Courts may not speculate as to the powers and duties of the office of the Attorney General, but must look to the wording of the relevant law, and further, may not speculate as to the probable intent of the legislature apart from the words. Truk v. Robi, 3 FSM R. 556, 562 (Truk S. Ct. App. 1988).

The Truk Attorney General represents the government in legal actions and is given the statutory authority pursuant to TSL 5-32 to conduct and control the proceedings on behalf of the government and, in absence of explicit legislative or constitutional expression to the contrary, possesses complete dominion over litigation including power to settle the case in which he properly appears in the interest of the state. Truk v. Robi, 3 FSM R. 556, 561-63 (Truk S. Ct. App. 1988).

Under Rule 1.11 of the Truk State Code of Professional Responsibility, a lawyer may not represent a private client in connection with a matter in which the lawyer participated "personally and substantially" as a public officer or employee, unless the appropriate government agency consents after consultation. Nakayama v. Truk, 3 FSM R. 565, 570 (Truk S. Ct. Tr. 1987).

For purposes of Rule 1.11, an attorney who, as a government attorney, signs his name to a lease agreement, approving the lease "as to form," is personally and substantially involved. Nakayama v. Truk, 3 FSM R. 565, 571 (Truk S. Ct. Tr. 1987).

An attorney holding public office should avoid all conduct which might lead the layman to conclude that the attorney is utilizing his former public position to further his subsequent professional success in private practice. Nakayama v. Truk, 3 FSM R. 565, 572 (Truk S. Ct. Tr.

1987).

The Governor, as all public officials, occupies a fiduciary relationship to the state he serves, may not use his official power to further his own interest, and shall cooperate with any legislative investigating committee. In re Legislative Subpoena, 7 FSM R. 261, 266 (Chk. S. Ct. Tr. 1995).

It is unreasonable for a public official, required by law to cooperate with legislative investigating committees, to have an expectation of privacy in matters that are linked to his performance in office, and it is unreasonable for a public official, such as the Governor, who is a trustee of the state's finances and who owes a fiduciary duty to the state to expect that his personal finances will be kept private if there is some reason to believe he has violated his trust. In re Legislative Subpoena, 7 FSM R. 261, 267 (Chk. S. Ct. Tr. 1995).

All citizens generally have the duty to, and state officials are obligated by statute to, cooperate with legislative investigations. These obligations of citizenship and public office are linked with the assumption that the legislature will respect individuals' constitutional rights, including the right of privacy. In re Legislative Subpoena, 7 FSM R. 328, 333-34 (Chk. S. Ct. App. 1995).

All Chuuk public officers are statutorily required to cooperate with legislative investigations, but an officer being tried in the Senate on a case of impeachment after the House of Representatives has voted a bill of impeachment is no longer required to cooperate. In re Legislative Subpoena, 7 FSM R. 328, 336 (Chk. S. Ct. App. 1995).

A commitment in a personnel action form for permanent employment without the existence of an appropriation to fund such a position violates the Truk Financial Management Act. Hauk v. Terravecchia, 8 FSM R. 394, 396 (Chk. 1998).

Granting of permanent employment without advertisement, examination (if required) and the preparation of a eligible list by the Personnel Officer violates the Truk State Public Service System Act. Hauk v. Terravecchia, 8 FSM R. 394, 396 (Chk. 1998).

Principles of contract are inapplicable to employment cases when the proper issue is whether plaintiff has shown a legal entitlement to permanent employment under the Truk State Public Service System Act. Hauk v. Terravecchia, 8 FSM R. 394, 396 (Chk. 1998).

The regulations provide in part that overtime must be requested by the immediate supervisor and approved by his superior or the department head. Osi v. Chuuk, 8 FSM R. 565, 566 (Chk. S. Ct. Tr. 1998).

Government employees who worked overtime during inaugural ceremonies are not entitled to recovery when there is no convincing evidence that they were directed to work overtime by the proper authority such as would entitle them to overtime pay. Osi v. Chuuk, 8 FSM R. 565, 566 (Chk. S. Ct. Tr. 1998).

Overtime voluntarily performed is not compensable. Osi v. Chuuk, 8 FSM R. 565, 566 (Chk. S. Ct. Tr. 1998).

The Governor of Chuuk has no constitutional or statutory power or authority to appoint an acting Executive Director of the Board of Education or head of the Education Department other

than as provided for in section 4, article X, Chuuk Constitution and that any other appointment to that position is void. Welle v. Walter, 8 FSM R. 572, 573-74 (Chk. S. Ct. Tr. 1998).

Only the lawful Director or Head of Education is entitled to all the rights, powers, privileges and emoluments thereof, including the benefits of office. Welle v. Walter, 8 FSM R. 572, 574 (Chk. S. Ct. Tr. 1998).

The Chuuk Attorney General has no duty to act on a successful plaintiff's behalf in collecting the plaintiff's judgment against the state. Judah v. Chuuk, 9 FSM R. 41, 41-42 (Chk. S. Ct. Tr. 1999).

A public employee who explained that he would be absent because he contested the demotion, was not absent without explanation as required by the Public Service regulations and statute for abandonment of his job. Marar v. Chuuk, 9 FSM R. 313, 315 (Chk. 2000).

It is beyond the power of the Legislature to enact a law to prohibit government employees from becoming candidates for legislative service. Olap v. Chuuk State Election Comm'n, 9 FSM R. 531, 534 (Chk. S. Ct. Tr. 2000).

The prevailing rule is that when the Constitution provides no direct authority to establish qualifications for office in excess of those imposed by the Constitution, such qualifications were unconstitutional by their very terms and under equal protection, due process, and freedom of speech and assembly. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 2001).

A governor has only a delegated power and a limited sphere of action, and the Chuuk Constitution does not give the Governor the power to add qualifications, that a person must not be a state employee, to be a candidate for a seat in the Chuuk Legislature. Lokopwe v. Walter, 10 FSM R. 303, 307 (Chk. S. Ct. Tr. 2001).

A person entering upon a public office is generally required to qualify by performing all the steps customarily or legally required to hold the office. This includes the taking of an oath of office and attendance upon the duties of the office. Songeni v. Fanapanges Municipality, 10 FSM R. 308, 309 (Chk. S. Ct. Tr. 2001).

When the plaintiffs have never qualified for the public office for which they seek compensation, their case will be dismissed. Songeni v. Fanapanges Municipality, 10 FSM R. 308, 309 (Chk. S. Ct. Tr. 2001).

When the state has not paid plaintiff employees as mandated by its state law and has alleged as affirmative defenses that a supervening cause prevented performance and that funds intended to pay lapsed, frustrating performance, these are defenses of payment, not liability, and the plaintiffs are entitled to judgment as a matter of law, the liability or obligation resting on the public law of the defendant state itself with the affirmative defenses being inadequate as a matter of law as to liability. Saret v. Chuuk, 10 FSM R. 320, 322-23 (Chk. 2001).

Since the Oneisomw municipal constitution provides for succession in the event of a mayor's death or disability, that document, not Article VI, § 1, nor Article XIII, § 1 of the Chuuk Constitution, governs succession to the position of Mayor of Oneisomw upon the mayor's passing. In re Oneisomw Election, 11 FSM R. 89, 92 (Chk. S. Ct. Tr. 2002).

Neither Article VI, § 1, nor Article XIII, § 1 of the Chuuk Constitution provides authority to the Governor to appoint any person to any municipal office. Absent any state law authorizing the Governor to so act, he is without power to affect municipal political offices in any manner. In re Oneisomw Election, 11 FSM R. 89, 92 (Chk. S. Ct. Tr. 2002).

Under Article XIII, § 5 of the Chuuk Constitution, if rules of succession to the office of municipal mayor in the event of the mayor's death or disability are to be found anywhere, they are to be found in the municipality's constitution and laws. In re Oneisomw Election, 11 FSM R. 89, 92 (Chk. S. Ct. Tr. 2002).

The Governor cannot interfere with the political rights of a municipality's people by appointing a mayor when the municipal constitution has provided for the orderly succession of an elected official to that office. Such an appointment is void. In re Oneisomw Election, 11 FSM R. 89, 93 (Chk. S. Ct. Tr. 2002).

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

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

Neither the Legislature, nor the Governor, may add qualifications for public office beyond those qualifications provided in the Chuuk Constitution. It matters not whether the employee in question is an "exempt" employee, or one covered by the Public Service Act. All government employees, with the express exception of the Governor's principal officers and advisors (who serve at the Governor's pleasure), are protected in their political activities from the Governor's interference with their employment. Tomy v. Walter, 12 FSM R. 266, 271 (Chk. S. Ct. Tr. 2003).

A plaintiff, who failed to prove monetary damages, is still entitled to a permanent injunction, against the Governor, the Director of Personnel, the Director of Budget, and any designee acting on their behalf or in their stead, permanently enjoining them from interfering in any way or manner with plaintiff's lawful exercise of all of the duties, obligations and responsibilities of his office. Tomy v. Walter, 12 FSM R. 266, 273 (Chk. S. Ct. Tr. 2003).

Statutes clearly prohibit Chuuk state employees from engaging in any outside employment not compatible with the discharge of the employee's duties to the state. Hartman v. Chuuk, 12 FSM R. 388, 396 (Chk. S. Ct. Tr. 2004).

Under the Reorganization Act, gubernatorial nomination and senatorial advice and consent is required for principal officers or directors, deputy directors, principal advisors, and other officials in positions requiring such advice and consent as prescribed by statute. Chiefs (division heads) are not designated as officials subject to senatorial advice and consent, although the Legislature could easily have included all (or some) of them, if it so desired. Robert v. Simina, 14 FSM R. 257, 260 (Chk. 2006).

Considering the provisions making chiefs out of former department or office heads division heads against the entire reorganization act's background to arrive at an interpretation consistent with the act's other provisions and with its general design, the court can only conclude that the Legislature's intent when it reorganized the executive branch was that none of the positions designated as chiefs were principal officers or were subject to senatorial advice and consent. Robert v. Simina, 14 FSM R. 257, 260 (Chk. 2006).

The Chuuk personnel regulations permit the hiring of person through non-competitive examinations when the positions require rare or special qualifications which did not permit competition. Robert v. Simina, 14 FSM R. 257, 261 (Chk. 2006).

When the affidavit of the former Chief of the Division of the Personnel was conclusory and potentially self-serving affidavit since his employment situation and termination is the same as the plaintiffs' and when it averred that the plaintiffs were hired in their public service system positions as chiefs without the usual competitive examination because they were the only persons qualified for their jobs and that their positions required rare or special qualifications which did not permit competition and when there is no evidence presented that a non-competitive examination of any of the plaintiffs was ever held, the affidavit is thus insufficient to show that there is no genuine issue of material fact that, after the reorganization statute had abolished their former positions that the plaintiffs were lawfully hired to fill the new public service positions. Robert v. Simina, 14 FSM R. 257, 261 (Chk. 2006).

The public and the state are the losers and public policy is violated when the public service system procedures, which are designed to obtain the best qualified public employees, are not followed. Robert v. Simina, 14 FSM R. 438, 445 (Chk. 2006).

The applicable employment taxes should be deducted from a back pay award and paid to social security and the national government as required by law. Kimeuo v. Simina, 15 FSM R. 664, 667 (Chk. 2008).

In order to be eligible to be paid sick leave, an employee must be ill. The employee will not be paid sick leave when he was not sick. When a plaintiff was not sick when he was wrongfully terminated, he is not entitled to any sick leave. Kimeuo v. Simina, 15 FSM R. 664, 667 (Chk. 2008).

The purpose of a personnel action form is to implement government policies and regulations as well as contractual arrangements. The personnel action form reflects and implements rights derived from other sources. It does not independently establish rights. Billimon v. Refit, 16 FSM R. 209, 212 (Chk. 2008).

Government employment contracts contain the terms of employment, regardless of what is contained in the corresponding personnel action form. In other words, the contract speaks for itself, and the personnel action form cannot be used to modify the terms of the contract. Billimon v. Refit, 16 FSM R. 209, 212 (Chk. 2008).

A personnel action form cannot modify the terms of a person's employment to make him a permanent employee if his position was an exempt or contract employee and he had not gone through the proper statutory procedures to become a permanent employee under the Truk State Public Service System Act. Billimon v. Refit, 16 FSM R. 209, 212 (Chk. 2008).

A state employee who has been hired to fill a "permanent" position, must first successfully serve a probationary period. Billimon v. Refit, 16 FSM R. 209, 212 (Chk. 2008).

Any "permanent" designation in a new hire's first personnel action form is suspect because it, if the person were hired for a position covered by the Truk Public Service System, should designate his status as probationary, with a later personnel action form changing his status from probationary to permanent. Billimon v. Refit, 16 FSM R. 209, 212 (Chk. 2008).

The Truk Public Service System Act requires that its covered employees be paid a differential for work performed at night, on holidays, or for overtime. Weriey v. Chuuk, 16 FSM R. 329, 331 (Chk. 2009).

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

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

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

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

The Chuuk Constitution only requires that legislation changing the transitional salaries take effect after the general election. Doone v. Simina, 16 FSM R. 487, 489 n.1 (Chk. S. Ct. Tr. 2009).

The Constitution set the transitional salaries of the Governor ($25,000) and Lieutenant Governor ($22,000). The transitional salaries were to remain in effect until after the first general election in March of 1990. Then, new salaries could be statutorily prescribed. Under the new Constitution, salaries of the presiding members of the Legislature, Governor and Lieutenant Governor could only be increased by voter referendum and only by an amount not to exceed $2,000 for each officer. Doone v. Simina, 16 FSM R. 487, 490 (Chk. S. Ct. Tr. 2009).

Constitutional, statutory, and regulatory provisions determine a public officer's right to a given salary. A public officer may only collect and retain such compensation as authorized by law. Doone v. Simina, 16 FSM R. 487, 490 (Chk. S. Ct. Tr. 2009).

Statutes setting salaries of public officials, like any other statutes, are presumed constitutional, and it is the court's duty to determine whether statutes conform to the Constitution, and if they do not, they will be treated as null and void. Doone v. Simina, 16 FSM R. 487, 490 (Chk. S. Ct. Tr. 2009).

The Chuuk Legislature was constitutionally authorized to initially set post-transitional salaries without a voter referendum. Doone v. Simina, 16 FSM R. 487, 491 (Chk. S. Ct. Tr. 2009).

The salaries of the governor and lieutenant governor were set by Chuuk Constitution article XV, section 10 during the transition period, and those salaries were only effective, according to that provision, until prescribed by statute. Doone v. Simina, 16 FSM R. 487, 491 (Chk. S. Ct. Tr. 2009).

As with the salaries of legislative member salaries, the salaries of the governor and lieutenant governor were only subject to the referendum provision once they had been initially set from the transitional salaries and since Chk. S.L. No. 6-91 was the first law under the new government to set the salaries of the governor and lieutenant governor, Chk. S.L. No. 6-91 validly set the salaries of the governor and lieutenant governor. Doone v. Simina, 16 FSM R. 487, 491 (Chk. S. Ct. Tr. 2009).

The court can find no provision in the public service system regulations that precludes a former state public service system employee from pursuing a grievance that arose during the state employee's period of employment through the public service system administrative grievance procedure even though the aggrieved party is no longer a public service system employee. Indeed, if the grievance involved termination, the regulations specifically provide for it. Aake v. Mori, 16 FSM R. 607, 609 (Chk. 2009).

It would seem incongruous, if a public service system employee could avoid the administrative grievance procedure and have an immediate right to resort to court action merely by retiring, resigning, or otherwise leaving public service system employment (especially if a grievance were pending at the time the employee left the public service system). A former state employee may still pursue a grievance through the public service system administrative procedure if the grievance arose while the former employee was a member of the public service system. Aake v. Mori, 16 FSM R. 607, 609 (Chk. 2009).

A position is either filled by a person identified on an eligibility list or a promotional list and the requirements for filling a position depend on the list. No requirement exists in the Chuuk

Public Service System Act that an individual slated for promotion need to submit to an examination or that the position to which he or she is promoted be advertised. Simina v. Kimeuo, 16 FSM R. 616, 621, 623 (App. 2009).

Once an employee of the Public Service System reaches the age of sixty years, he must retire from the Public Service within thirty days. Simina v. Kimeuo, 16 FSM R. 616, 622 (App. 2009).

The Chuuk Board of Education has eight members who are appointed by the Governor with the advice and consent of the Senate. The Education Department head, who is also appointed by the Governor with the advice and consent of the Senate, serves as the Board's executive director. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 60 (Chk. S. Ct. Tr. 2010).

A vacancy on the Board of Education occurs when a member dies; resigns; is removed from the Board; has been incapacitated or disabled; or becomes a Department of Education employee or staff, except the member who represents the public school system, and, if there is a vacancy, the Governor appoints a replacement member who serves for the duration of the departed member's term. The vacancy provision's plain meaning is that temporary appointments are only be made when a vacancy occurs for one of the enumerated reasons; otherwise, an incumbent's term must expire and a new appointee must first be confirmed by the Senate before the new incumbent can sit on the Board. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 61 (Chk. S. Ct. Tr. 2010).

The Director's responsibilities to the Board of Education include duties and functions as assigned by the Board, attendance at Board meetings, and providing logistical and administrative needs to the Board and other needs as declared by the Board, and the Board is the only authority that may remove the Director, which is by a majority vote of all Board members for misconduct, incompetency, neglect of duty, or other good cause. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 61 (Chk. S. Ct. Tr. 2010).

Since the expiration of a board member's term is not one of the enumerated occurrences giving rise to a vacancy, it follows that during any interim after the expiration of the incumbent's term and the confirmation of a new appointment, no vacancy is created. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 61 (Chk. S. Ct. Tr. 2010).

The Board of Education Act should be read so that its provisions are internally consistent and sensible and each provision should be considered against the entire Act's background so as to arrive at a reasonable interpretation consistent with other specific provisions and the Act's general design. Since the Board's statutorily-mandated purpose is to provide control and direction and to formulate policy for the Chuuk educational system, if the Act were construed so as to render the Board unable to perform its duties each time members' terms expired without replacements having been confirmed, the Board's ability to discharge its duties would be severely handicapped and its purpose to act towards the betterment of education in Chuuk would be undermined and since the Act contemplates an independent board with the power to perform its functions without interruption, construing the provisions for filling vacancies and appointments, and taking into account the Board's statutory purpose and the Act's overall intent, holdover incumbents continue to hold their seat until there are new incumbents. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 61 (Chk. S. Ct. Tr. 2010).

When no provision is made by law for an official's holdover, the official is regarded as a de

facto official. A holdover official's de facto authority ends when the office is filled by appointment or election, as provided by law. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 62 (Chk. S. Ct. Tr. 2010).

A de facto officer is one who is in possession of an office, and discharging its duties, under color of authority. In the context of incumbent de facto officials, "under color of authority" means authority derived from an election or appointment, however irregular or informal, so that the incumbent is not a mere volunteer. The principle of de facto authority is based on the public's interest in having a safeguard against unnecessary interruption of public governance. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 62 (Chk. S. Ct. Tr. 2010).

The generally applied rule is that where a term of office is fixed by law simply for a period of time and no particular date is established for the beginning or ending of the term, each incumbent takes a term running from the date of his appointment equal in duration to the period of time fixed; and a new term does not begin at the end of the preceding term but only when the new incumbent is appointed, or holdover incumbent is reappointed. Thus, in the absence of a constitution or statue providing otherwise, an officer is entitled to hold his office until his successor is appointed or elected and has qualified. In this context, the term "holding over" when applied to an officer, implies that the office has a fixed term and the incumbent is holding the office into the succeeding term. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 62 (Chk. S. Ct. Tr. 2010).

The de facto doctrine is applied even in cases of executive branch officials so long as it is not otherwise expressly, or by clear implication, prohibited by law. The reasons for the application of the de facto doctrine to independent board members appears to be even stronger than other executive branch officials, since they are statutorily mandated to exercise their duties and powers independently. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 62 (Chk. S. Ct. Tr. 2010).

In instances where there is no FSM precedent, the court may consider cases from other jurisdictions in the common law tradition. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 62 n.2 (Chk. S. Ct. Tr. 2010).

What is clear from the Board of Education Act is that a term's expiration does not create a vacancy and, other than the confirmation of new members, there is otherwise no provision that would allow the Board to proceed uninterrupted after the expiration of board member terms and since the Act does not set a fixed date for the beginning and ending of Board member terms but only for staggered five year terms and because the underlying public policy for the application of the de facto doctrine is especially applicable when the Board of Education's purpose is to provide uninterrupted educational services to the Chuuk public, a holdover incumbent Board member exercises de facto authority until there is a new incumbent. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 63 (Chk. S. Ct. Tr. 2010).

Board members were due compensation and benefits while they continued discharging their duties as holdover members. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 63 (Chk. S. Ct. Tr. 2010).

When Chuuk has acknowledged that any further pursuit by the employee of his administrative remedies would be futile, Chuuk cannot, since futility is a legal exception to the exhaustion of administrative remedies doctrine, prevail on its defense that the employee has

failed to exhaust his administrative remedies or on the ground that the court lacks subject-matter jurisdiction because that ground was based on the failure to exhaust his administrative remedies. Aunu v. Chuuk, 18 FSM R. 48, 50 (Chk. 2011).

Since, by statute, a governor must send a nomination to the Senate within 45 days of a vacancy in an office requiring the Senate's advice and consent and since a resignation is an act or an instance of surrendering or relinquishing of an office or a formal notification of relinquishing an office or position, when cabinet officers and special assistants have submitted "courtesy resignations," those offices are vacant and new nominations (or renominations) must be submitted. The court cannot discern any difference (in result) between a "courtesy resignation" and a resignation for other reasons since a resignation is a resignation. Senate v. Elimo, 18 FSM R. 137, 140 (Chk. S. Ct. Tr. 2012).

A state employee's speech that concerns genuine public issues is protected speech. Tither v. Marar, 18 FSM R. 303, 306 (Chk. 2012).

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

– Chuuk – Termination

While the principal officers and advisors serve during the current term of the appointing Governor unless sooner removed by the Governor, the dismissal of non-policy making employees from public employment solely on the ground of political affiliation is not permissible. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 2001).

The executive policy requiring resignation before running for a seat in the Chuuk Legislature adds a qualification prohibited by the Chuuk Constitution and is void, and therefore, the plaintiffs' forced resignation pursuant to the Governor's Executive Order or policy is unconstitutional and beyond his power. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 2001).

A public employer may not discharge either a tenured or a non-tenured employee for the reasonable exercise of constitutional rights such as freedom of speech. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 2001).

Termination resulting from the decision of any government employee (other than a "principal officer" or "advisor") to run for public office violates that employee's free speech and association rights as guaranteed by the Chuuk Constitution, as well as depriving the employee of a property interest (his right to continued employment) without due process of law. Tomy v. Walter, 12 FSM R. 266, 271-72 (Chk. S. Ct. Tr. 2003).

When plaintiffs sue the state for wrongful termination, the proper issue is whether the plaintiffs have shown a legal entitlement to permanent employment under the Truk State Public

Service System Act. But when none of the proper procedures were followed to hire any of the plaintiffs before (or after) the Governor appointed them to fill the permanent chief positions; when no competitive process was involved when the plaintiffs became chiefs, none of the plaintiffs have shown a legal entitlement to permanent employment under the Truk State Public Service System Act. Robert v. Simina, 14 FSM R. 438, 442 (Chk. 2006).

The Truk Public Service System Regulation that allows persons whose public service system positions have been abolished by a reduction in force to be reassigned, without the loss of permanent status, to another vacant public service position for which they are qualified applies only to persons who held permanent public service system positions before their positions were abolished. It does not apply to political appointees whose exempt advice-and-consent positions are abolished by the Legislature. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

Even when a reduction in force of the public service system is necessary, a competitive process is mandated to assure equitable competition, recognition of merit, and the public interest. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

When, even though discharged state employees held their position without legal entitlement, they are entitled to compensation for any work done for which they were not paid. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

An employee of a state or local government who is discharged in violation of the civil rights statutes has a duty to actively look for and accept any reasonable offer of employment, otherwise back pay damages cannot be awarded. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

When an employer has unlawfully discharged an employee in violation of his civil rights and the former employee obtains alternative employment, in calculating damages, the income from the alternative employment will be deducted from the back pay owed to the employee, since otherwise the plaintiff could recover a windfall, which would violate the principles of compensatory damages. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

In order to recover compensatory damages, the plaintiffs must prove actual injury from the civil rights deprivation. When, if proper procedure had been followed, the plaintiffs still would have been terminated from their positions, there is no actual injury to compensate with back pay or other benefits. Nominal damages may, however, be awarded for the deprivation of the important right to procedural due process. Robert v. Simina, 14 FSM R. 438, 444 (Chk. 2006).

There is no authority, precedent, or principle of law that would require the state to obtain judicial approval before terminating an employee. Robert v. Simina, 14 FSM R. 438, 445 (Chk. 2006).

When plaintiffs sue the state for wrongful termination, the proper issue is whether the plaintiffs have shown a legal entitlement to permanent employment under the Truk State Public Service System Act. Kimeuo v. Simina, 15 FSM R. 664, 666 (Chk. 2008).

Reinstatement to his former position and back pay to the date of his termination to the date he is reinstated are remedies generally available to an employee who has shown wrongful discharge with the amount awarded in back pay reduced to the extent the plaintiff has mitigated

his damages by securing other employment. But the court cannot reinstate a terminated employee in his former position when he is past the mandatory retirement age. It can only award him back pay for time before his retirement date, and any income through alternative employment that was received for employment after he would have had to retire from his Public Service System employment will not be used to reduce the back pay award. Kimeuo v. Simina, 15 FSM R. 664, 666 (Chk. 2008).

When no evidence was introduced at trial of how much, if any, unused annual leave the plaintiff had accrued before he was wrongfully terminated, the court cannot make an award for unused accrued annual leave. Kimeuo v. Simina, 15 FSM R. 664, 667 (Chk. 2008).

When, in a wrongful termination case, no evidence of physical pain or a physical manifestation of suffering was introduced, no damages can be awarded for pain and suffering because the rule is well settled that to award damages for pain and suffering, such must be the result of physical injury or of a physical manifestation of emotional distress. Kimeuo v. Simina, 15 FSM R. 664, 667 (Chk. 2008).

When a plaintiff sues the State of Chuuk (and its officers) for wrongful termination, the proper issue is whether the plaintiff has shown a legal entitlement to permanent employment under the Truk State Public Service System Act. But when the proper statutory procedures were not followed to hire the plaintiff as a "permanent" employee, the plaintiff has not shown a legal entitlement to permanent employment under the Truk State Public Service System Act. Billimon v. Refit, 16 FSM R. 209, 211 (Chk. 2008).

Since the State Public Service System applies to all state government employees unless the employee is exempt, when a state employee's position as a division chief was a lawful non-exempt position under the Executive Branch Organization Act, the proper issue for consideration regarding a wrongful termination matter is whether the plaintiff had a legal entitlement to permanent employment under the Public Service System Act. Simina v. Kimeuo, 16 FSM R. 616, 620-21 (App. 2009).

Removal of a Public Service System employee is a disciplinary action or termination and the employee must be given at least five work days advance written notice before removal. The action taken must be for good and justifiable cause and must be appropriate to the infraction, if there was one. The employee must also be informed of his appeal rights. Simina v. Kimeuo, 16 FSM R. 616, 622, 623-24 (App. 2009).

When the state employee was not given the required five business days' notice concerning removal/dismissal from permanent employment but was notified that effective immediately he was dismissed and replaced pursuant to an Executive Order and was not given notice of his appeal rights, this did not comply with the protections afforded a Public Service System classified employee and he was thus not afforded due process of law and was thus wrongfully terminated. Simina v. Kimeuo, 16 FSM R. 616, 622 (App. 2009).

A Public Service System classified employee has a legal entitlement to permanent employment under the Public Service System Act and should be afforded due process rights not available to an exempt political appointee. Termination of an exempt political appointee and non-exempt Public Service System employee are not handled the same way. Simina v. Kimeuo, 16 FSM R. 616, 623 (App. 2009).

Redress for a wrongfully-terminated state employee would include reinstatement and back pay, except when the former employee could not be reinstated due the Public Service System Act's mandatory retirement policy. But the former employee could be awarded back pay if he had mitigated his damages. Simina v. Kimeuo, 16 FSM R. 616, 624 (App. 2009).

Being forced to resign a Chuuk public service system job on December 2, 2002, because the employee was going to run for a seat in the Chuuk House of Representatives, was, as a matter of law, illegal because the statute and regulations requiring such resignations had already been held unconstitutional. Dungawin v. Simina, 17 FSM R. 51, 53 (Chk. 2010).

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

The applicable limitations period for a wrongful termination suit against the State of Chuuk is six years (subject to statutory tolling provisions). Dungawin v. Simina, 17 FSM R. 51, 54 (Chk. 2010).

Even if the Board of Education had the authority to terminate the Director, the Board was still required to adhere to appropriate procedures and requirements for the termination to be effective. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 63 (Chk. S. Ct. Tr. 2010).

The remedies generally available to a state public service system employee who has shown that he was wrongfully discharged are reinstatement to his former position and back pay to the date of his termination. Sandy v. Mori, 17 FSM R. 92, 94 (Chk. 2010).

A wrongfully discharged government employee has a duty to mitigate his damages by actively looking for and accepting any reasonable offer of employment; otherwise back pay damages cannot be awarded. If the former government employee obtains other employment, the amount he is awarded in back pay must be reduced by the amount he mitigated his damages – by the amount he received from the other employment – since otherwise he could recover a windfall, which would violate the principles of compensatory damages. Sandy v. Mori, 17 FSM R. 92, 94 (Chk. 2010).

When the discharged employee has not presented any evidence about whether and where he sought employment during a certain time period, he has introduced no evidence of his efforts to mitigate his damages by attempting to secure a job during his periods of unemployment, and he is thus precluded from recovery of damages for those periods since it is the plaintiff's burden to prove every element of his case, including all of his damages. Sandy v. Mori, 17 FSM R. 92, 95 (Chk. 2010).

Back pay compensatory damages are the measure of compensatory damages for wrongful discharge. Compensation for an injury is not doubled just because the plaintiff has two different causes of action on which to base that recovery because only the injury itself is compensated. Sandy v. Mori, 17 FSM R. 92, 95-96 (Chk. 2010).

From awards of back pay damages the employer must deduct the applicable wage and salary taxes and social security taxes, which must then be remitted to the appropriate tax authorities. Sandy v. Mori, 17 FSM R. 92, 96 (Chk. 2010).

Reinstatement to his former position (or its equivalent) is the usual remedy for a state public service system employee who has shown that he was wrongfully discharged. This is true even though the former position has been filled by another employee since if the existence of a replacement constituted a complete defense against reinstatement, then reinstatement could be effectively blocked in every case simply by immediately hiring an innocent third-party after the unlawful discharge has occurred, thus rendering the reinstatement remedy's deterrent effect a nullity. Sandy v. Mori, 17 FSM R. 92, 96 (Chk. 2010).

Since the appropriateness of an equitable remedy of reinstatement is determined by current conditions rather than past conditions, the court may reinstate a wrongfully-discharged state employee provided that the former employee is ready, willing, and able to work and is ready for assignment. Sandy v. Mori, 17 FSM R. 92, 96 (Chk. 2010).

In a case alleging a retaliatory discharge, the plaintiff bears the burden to demonstrate that his conduct is both constitutionally protected and a substantial or motivating factor in his government employer's decision to discharge him. If the employee has met this burden, then the burden shifts to the employer to demonstrate that it would have taken the same action in the absence of the protected conduct. Tither v. Marar, 18 FSM R. 303, 306 (Chk. 2012).

A plaintiff has not met his burden to prove that his protected speech was a substantial or motivating factor in his termination when he was not terminated because he engaged in protected speech about a patient's treatment but his termination occurred many months later and after a much more substantial ground and the more likely motivating factor – his behavior during the USNS *Mercy* visit and because his work performance while a probationary employee was not up to the level of professionalism expected of a practical nurse as shown by the series of incidents of unprofessional conduct. Tither v. Marar, 18 FSM R. 303, 306 (Chk. 2012).

A plaintiff's termination or discharge was not unlawful when, even if he had been able to prove that his constitutionally-protected conduct had been a substantial or motivating factor in his termination and the burden had have shifted to the defendants, he still would not prevail because the defendants demonstrated that they would have taken the same action in the absence of the protected conduct because of his probationary status and his unsatisfactory and unprofessional conduct prevented him from being converted from a probationary employee to a permanent employee and he would have been terminated anyway. Tither v. Marar, 18 FSM R. 303, 306 (Chk. 2012).

The Director of Education does not serve at the Board's, or the Governor's, pleasure. The Governor cannot remove the Director from office. Only the Board, by majority vote, can remove the Director, and then only for one or more of four reasons: misconduct, incompetency, neglect of duty, or other good cause. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 2015).

When at a minimum, the Education Director should have been given notice of the allegations and evidence on which the Board based its resolution to terminate her, and she should have been given an opportunity to respond or to explain her actions or omissions and to rebut any false allegations but was not, her likelihood of success on her due process claim seems almost certain because this is the essence of due process – notice and an opportunity to be heard. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 2015).

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

– Compensation

When an individual begins working for a federal government agency, he is justified in believing that he will be allowed to hold that position until terminated by a supervisor and in believing that he will be compensated for his work. Falcam v. FSM, 3 FSM R. 194, 198 (Pon. 1987).

An expectation of being paid for work already performed is a property interest qualifying for protection under the Due Process Clause of the FSM Constitution. Falcam v. FSM, 3 FSM R. 194, 200 (Pon. 1987).

Any withholding of private property, such as a government employee's paycheck, without a hearing can be justified only so long as it take the authorized payor to obtain a judicial determination as to the legality of the payment being withheld. Falcam v. FSM, 3 FSM R. 194, 200 (Pon. 1987).

The amount of compensation a public employee receives is not based on quasi-contract doctrines such as quantum meruit or unjust enrichment, but instead is set by law, even if the actual value of the services rendered by a public officer is greater than the compensation set by law. Sohl v. FSM, 4 FSM R. 186, 192 (Pon. 1990).

Public employees are only entitled to receive the benefits prescribed by law for positions to which they have been duly appointed, even if an officer or employee has performed duties or services above and beyond those of the appointed office. Sohl v. FSM, 4 FSM R. 186, 192 (Pon. 1990).

A public officer claiming certain compensation or other benefits must show a clear legal basis for his right to these emoluments; hopes and expectations, even reasonable ones, are not enough to create that legal entitlement, nor are any moral obligations which may be incurred, without clear warrant of law. Sohl v. FSM, 4 FSM R. 186, 193 (Pon. 1990).

The compensation of public officials in the FSM is not determined by a contract for specific services, express or implied, but by the judgment of the people, through their elected representatives and executive officials who properly exercise delegated power pursuant to statutory or other authorization; specifically, the FSM Constitution and statutes establish how a person may attain public office, and the National Public Service System Act and regulations thereunder set the compensation to be paid to holders of the respective offices. Sohl v. FSM, 4 FSM R. 186, 194 (Pon. 1990).

Where a public official claims additional compensation, it is inappropriate to ask whether he

received compensation equal to the value of his services to the public, but instead the court must inquire whether he received the amount that was due to him by law or whether he can demonstrate a clear legal entitlement to the office which would have provided the compensation he now seeks. Sohl v. FSM, 4 FSM R. 186, 194 (Pon. 1990).

A temporarily-promoted employee is compensated at the step in the new pay level which is next above his current pay, and the employee must be informed in advance and must agree in writing that at the end of the temporary promotion, he will be returned to the former salary (grade and step) that he would be receiving had he remained in his former position. No temporary promotion can exceed one year. Isaac v. Weilbacher, 8 FSM R. 326, 332 (Pon. 1998).

Every permanent and probationary employee is to receive an annual written rating of performance. Employees who receive "Satisfactory" or "Exceptional" ratings are eligible for step increases within their pay level. Employees who receive "Less than Satisfactory" ratings are not eligible. The absence of a performance evaluation gives rise to the presumption that the individual was performing at a "Less than Satisfactory" level. Pay and step increases are discretionary. Isaac v. Weilbacher, 8 FSM R. 326, 336-37 (Pon. 1998).

Because Congress has not explicitly made employment contracts which violate 11 F.S.M.C. 1305 unenforceable, the FSM Supreme Court may properly decide whether a contravention of public policy is grave enough to warrant unenforceabillty. FSM v. Falcam, 9 FSM R. 1, 4 (App. 1999).

When an employer has unlawfully discharged an employee in violation of his civil rights and the former employee obtains alternative employment, in calculating damages, the income from the alternative employment will be deducted from the back pay owed to the employee, since otherwise the plaintiff could recover a windfall, which would violate the principles of compensatory damages. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

Under 52 F.S.M.C. 164(3),overtime is determined by a three-prong test: 1) the employee is directed to work; 2) the employee does work; and 3) the employee has first worked forty hours straight time in the same week and more than eight hours on any single day. "Directed to work," indicates that an employee cannot work overtime on his own initiative, but must be instructed to work or have received prior approval by a supervisor or government official. "Does work," indicates that overtime compensation only accrues when an employee worked outside regular working hours, in accordance with instructions or directions given by the supervising authority. And an employee cannot begin to accrue overtime hours until and unless the employee first worked a minimum of forty hours in a regularly scheduled workweek and more than eight hours on any single day worked. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 76 (Pon. 2013).

Sea vessels and aircraft arriving in the FSM must compensate the FSM Treasury for the actual costs of overtime that immigration officials accrue clearing sea vessels and aircraft into the FSM. These costs must be 1) associated with the arrival of sea vessels and aircraft into the FSM; 2) actual; 3) originate in the official duties of immigration officers carrying out Title 50's requirements; and 4) accrue outside immigration officers' normal working hours. "Actual hours worked" will always correlate with hours that have already been worked or performed and the FSM Treasurer will not be compensated for subjective or imputed work. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

Reading 52 F.S.M.C. 164(3) and 50 F.S.M.C. 115, jointly in order to ensure that the FSM Treasurer is compensated for all actual overtime expenses, the cost of overtime compensation allotted to employees under § 164(3) must equal the compensation the treasury receives under the second part of § 115, and as the treasury is compensated only for actual hours worked, it is clear that the treasury may remunerate employees only for actual hours worked. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

A calculation of actual hours worked may not include imputed hours because the meaning of the pertinent statutes regarding overtime is plain and unambiguous that overtime compensation will be allotted for actual hours worked only. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

Because overtime is based on actual hours worked, the automatic two-hour credit provision under the regulations is inconsistent with the statute and is, therefore, null and void. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

When Congress enacted unambiguous statutes it chose what the public policy is – that the FSM national government be paid in full for its expenses in clearing the ships and planes after hours and that those ships and planes pay for actual overtime work. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 594 (App. 2014).

When no one ever notified the plaintiffs that they must stop working in their respective positions or that they would not be paid for the work done from October 2014 to April 2015; when the government continued to assign them projects and retained the benefits conferred by their work, but did not compensate them for the work; when the plaintiffs never received notification from the government that their contracts had not or would not be renewed although the plaintiffs eventually became aware that the Project Control Documents that controlled their contracts were unsigned; when the government's consistent delay in renewing the contracts and disbursing wages was a common occurrence experienced by the plaintiffs during their previous years' contracts; and when the government continued to accept, approve, sign, and maintain the plaintiffs' submitted time sheets thereby implying assurances of forthcoming wages, the evidence, viewed in its entirety, presents a situation whereby the plaintiffs had a reasonable justified expectation to continued employment and, therefore, payment for those services rendered to the government's benefit between October 2014 and April 2015. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016).

A government employee's pay is a form of property that a government cannot deprive the employee of without due process. Linter v. FSM, 20 FSM R. 553, 559 (Pon. 2016).

When the government has willingly deprived the plaintiffs of wages that they are entitled to without due process of law, it is civilly liable under 11 F.S.M.C. 701(3) for violating the plaintiffs' civil rights. Linter v. FSM, 20 FSM R. 553, 559 (Pon. 2016).

When the evidence shows that the plaintiffs did in fact perform work during the relevant time period and that the standard operating procedure for many years was to submit employee-created time sheets similar to those that the plaintiffs submitted and when the government concedes that, if there was a valid contract, the plaintiffs would have been paid based on the submission of the same time sheets, there is sufficient evidence to carry the plaintiffs' burden on

damages. Linter v. FSM, 20 FSM R. 553, 562 (Pon. 2016).

– Impeachment

Although the Chuuk Constitution does subject members of the judiciary to removal from office by impeachment, the court need not decide if this is the sole method a judge may be removed from office because the issuance of a writ of mandamus is not a removal action. All the court did by issuing the writ is to require the judge to follow the applicable law and remove himself from office by resignation when he became a political candidate. In re Failure of Justice to Resign, 7 FSM R. 105, 110 (Chk. S. Ct. App. 1995).

The Chuuk House of Representatives possesses the sole authority and power to pass a Bill of Impeachment seeking to remove those state officials responsible for misfeasance or malfeasance. In re Legislative Subpoena, 7 FSM R. 261, 266 (Chk. S. Ct. Tr. 1995).

The Chuuk House of Representatives has no criminal prosecution function. It is limited to passing laws and under the proper circumstance bringing bills of impeachment, which are not criminal in nature. In re Legislative Subpoena, 7 FSM R. 261, 266 (Chk. S. Ct. Tr. 1995).

A committee of the legislative house constitutionally charged with the function of impeachment whose authorizing resolution empowered it to investigate the state's insolvency and the executive branch officers' misfeasance, malfeasance, or failure to carry out their duties and responsibilities, presented with evidence that the governor has illegal sources of income that may involve state funds is seeking relevant material related to its function when it seeks to subpoena the governor's bank records. In re Legislative Subpoena, 7 FSM R. 328, 333 (Chk. S. Ct. App. 1995).

All Chuuk public officers are statutorily required to cooperate with legislative investigations, but an officer being tried in the Senate on a case of impeachment after the House of Representatives has voted a bill of impeachment is no longer required to cooperate. In re Legislative Subpoena, 7 FSM R. 328, 336 (Chk. S. Ct. App. 1995).

A criminal information filed against a legislator who is the chairman of an impeachment committee while there is an article of impeachment currently being investigated will not be dismissed on the basis of a statute that provides criminal penalties for attempting to interfere with the impeachment process since the statute could not provide a blanket protection against prosecution for any member of an impeachment proceeding or it would lead to the absurd result that a member of an impeachment proceeding could commit any crime with impunity. Chuuk v. Robert, 15 FSM R. 419, 425 (Chk. S. Ct. Tr. 2007).

When an official has been impeached, a trial on criminal charges is not foreclosed by the principle of double jeopardy. Helgenberger v. U Mun. Court, 18 FSM R. 274, 279 (Pon. 2012).

Under ancient English practice, impeachment was a criminal proceeding to which "jeopardy of life or limb" attached; that is, anciently criminal punishment could be imposed in the impeachment proceeding but now a conviction on impeachment affects only the right to hold office and does not include criminal punishment or other public remedy. Helgenberger v. U Mun. Court, 18 FSM R. 274, 279 (Pon. 2012).

Under the practice in the FSM that has been inherited from the U.S., the extraordinary

remedy by impeachment does not prevent an indictment and conviction thereunder, and does not extend beyond a removal from office and a disqualification to hold office. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

The remedy of impeachment has the single role of affecting only the right to hold office and is not intended to bar or delay another remedy for a public wrong. The other remedy is often a criminal prosecution. This is because the remedy of impeachment is not exclusive of any other public remedy for the same misbehavior, and if the cause for which the officer is punished is a public offense, he may also be indicted, tried, and punished. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

A single act of misconduct may offend the public interest in a number of areas and call for the appropriate remedy for each hurt. Thus it may require removal from office. It may also require criminal prosecution. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

Impeachment and removal from office is not criminal punishment under the FSM Constitution's double jeopardy clause. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

A government official's misconduct does not present a government with an irrevocable choice to either criminally prosecute the official or to impeach and try to remove that official from office. If the offending official has not resigned from office first, the government may do, and is usually expected to do, both. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

A former government official cannot claim he was subjected to double jeopardy because he was convicted of public offenses and then impeached and removed from office for those same offenses. Nor could he have claimed double jeopardy if he had first been impeached and removed from office and then prosecuted for the same public offenses. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

Since, in a criminal case, a court is not constitutionally required to allow defense counsel to withdraw or to be replaced at a strategic moment in the proceedings, the right to counsel of an official who wanted to switch trial counsel before the end of his impeachment trial has not been violated even if that official had a constitutional right to counsel during his impeachment trial. Helgenberger v. U Mun. Court, 18 FSM R. 274, 281 (Pon. 2012).

While an impeachment conviction may not be appealable, a contempt conviction certainly is. Helgenberger v. U Mun. Court, 18 FSM R. 274, 282 n.6 (Pon. 2012).

Bills or resolutions of impeachment are not criminal in nature, and impeachment and removal from office is not criminal punishment. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 279 (Pon. 2017).

While it may be true that, in two recent instances impeachment proceedings and criminal prosecutions were pursued consecutively rather than simultaneously, nothing requires that it be done that way. Simultaneous proceedings are not only probable, but sometimes expected or likely. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 279 (Pon. 2017).

The Pohnpei Constitution clearly and demonstrably textually commits the investigation of, and the impeachment of Pohnpei state government officials, including the Pohnpei Chief

Justice, to the Pohnpei Legislature. An impeachment proceeding's procedure, including its timing, is thus also a non-justiciable political question. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 280 (Pon. 2017).

The Pohnpei Legislature's procedures for, including the timing of, its investigation and possible impeachment of the Pohnpei Chief Justice, are non-justiciable. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 280 (Pon. 2017).

A preliminary injunction seeking to enjoin the possible impeachment of the Pohnpei Chief Justice, will be denied when there is no possibility of success on the merits because the case involves a non-justiciable political question, and the equities all favor the Pohnpei Legislature, and the public interest will be served by permitting the Legislature's investigation of a possible impeachment to proceed. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 281 (Pon. 2017).

Impeachment is only a preliminary step to the removal of a person from a public office, and for Kitti municipal offices, impeachment by the Kitti Legislature results in suspension from office and is preliminary to an impeachment trial before a different municipal tribunal, at which the impeached official is either convicted or acquitted of the charges in the articles of impeachment. Luhk v. Anthon, 22 FSM R. 69, 71 (Pon. 2018).

– Kosrae

Written notice in a letter giving a limited-term employee three days' notice of the reasons for his two week suspension from work is sufficient compliance with the requirement of 61 TTC 10(15)(a), which provides that a suspended employee must receive notice of the reasons for suspension, and is also sufficient compliance with the notice requirements of due process under the Kosrae Constitution. Taulung v. Kosrae, 3 FSM R. 277, 279 (Kos. S. Ct. Tr. 1988).

To be property protected under the Constitution, the employment right must be supported by more than merely the employee's own personal hope. There must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Taulung v. Kosrae, 3 FSM R. 277, 280 (Kos. S. Ct. Tr. 1988).

A public officer's right to a given salary is based primarily upon constitutional, statutory, and regulatory provisions. Edwin v. Kosrae, 4 FSM R. 292, 298 (Kos. S. Ct. Tr. 1990).

The Kosrae Code contemplates the problem of persons performing services in excess of their prescribed duties, and KC 5.427 provided a means for compensating such extra labor. Edwin v. Kosrae, 4 FSM R. 292, 299 (Kos. S. Ct. Tr. 1990).

When a Kosrae state employee makes a claim for additional compensation or benefits, on grounds that he has been temporarily assigned to a position by detail, "acting" assignment, or temporary promotion and is performing services in excess of prescribed duties, the burden is on the employee to show that a clear legal basis exists for the employee's right to those emoluments. Edwin v. Kosrae, 4 FSM R. 292, 299 (Kos. S. Ct. Tr. 1990).

There is no provision in the laws of Kosrae that provides that Kosrae State is entitled to reimbursement of salary paid over and above a state employee's pay level. Edwin v. Kosrae, 4 FSM R. 292, 300 (Kos. S. Ct. Tr. 1990).

Representations by officials with authority to set and change salaries can alter the general rule that salaries are set by law and not contract. Edwin v. Kosrae, 4 FSM R. 292, 300 (Kos. S. Ct. Tr. 1990).

In order for a Kosrae state employee's salary to be set by contract and not law, it must be shown that direct representations were made to the employee regarding the fixing of a salary not otherwise determined by law and made by an official with legal discretion to do so. Edwin v. Kosrae, 4 FSM R. 292, 300 (Kos. S. Ct. Tr. 1990).

In Kosrae, a permanent employee has the right to hold his position during good behavior, subject to suspension, demotion, reduction-in-force, or dismissal, except when an employment contract provides otherwise. Edwin v. Kosrae, 4 FSM R. 292, 302 (Kos. S. Ct. Tr. 1990).

The right of Kosrae State to demote an employee is limited to disciplinary reasons based on good cause. Edwin v. Kosrae, 4 FSM R. 292, 303 (Kos. S. Ct. Tr. 1990).

Kosrae State has the right and the power to adjust its employment scheme according to the availability of funds and work. Edwin v. Kosrae, 4 FSM R. 292, 303 (Kos. S. Ct. Tr. 1990).

When a public officer is requested to perform a duty mandated by law which he feels would violate the constitution, he has standing to apply to the court for a declaratory judgment declaring the statute unconstitutional. Siba v. Sigrah, 4 FSM R. 329, 334 (Kos. S. Ct. Tr. 1990).

The public service system applies to all state employees except for listed exemptions, which include positions of a temporary nature. Taulung v. Kosrae, 8 FSM R. 270, 273 (App. 1998).

A regular or permanent state employee is an employee who has been appointed to a position in the public service in accordance with the statute and who has successfully completed an initial probation period of not less than six months nor more than one year. Taulung v. Kosrae, 8 FSM R. 270, 273 (App. 1998).

A state employee appointed to successive, discrete six-month temporary positions with terminations at the end of some of them, is not a permanent state employee or a member of the public service system. Taulung v. Kosrae, 8 FSM R. 270, 273-74 (App. 1998).

A management official may not suspend any employee without pay for a period of three working days or more, unless the management official gives the employee a written notice setting forth the specific reasons upon which the suspension is based and files a copy of the statement with the director. Taulung v. Kosrae, 8 FSM R. 270, 274 (App. 1998).

A limited-term employee does not have an assurance of continual employment in the sense of continuing indefinitely in time without interruption, but he is assured of employment until the end of his limited term, and of dismissal for only specified reasons, namely, when the good of the service will be served thereby. Taulung v. Kosrae, 8 FSM R. 270, 275 (App. 1998).

The procedural due process requirements of notice and an opportunity to be heard are met when Kosrae provides a limited-term employee being suspended for two weeks the notice mandated by 61 TTC 10(15)(a) and an opportunity to be heard by the official suspending him. Taulung v. Kosrae, 8 FSM R. 270, 275 (App. 1998).

A salient feature of Chapter 5 of Title 5 of the 1985 Code drew a distinction between the employees whose compensation was determined according to specific contract, which the sections anticipate and authorize, and those permanent state employees whose salary was determined according to the base salary schedule contained in § 5.502. Chapter 4 conferred a wide range of rights on permanent employees that contract employees did not enjoy, such as the right given by § 402 to continued employment "during good behavior." Cornelius v. Kosrae, 8 FSM R. 345, 350-51 (Kos. S. Ct. Tr. 1998).

There is a dichotomy between employees whose salaries are set by statute – "as prescribed by law" – and those whose salaries are subject to individual contract. Certain individuals or groups are subject to individual contracts, and excluded from the Public Service System. The Public Service System gives substantial rights to permanent employees that are denied contract employees. Cornelius v. Kosrae, 8 FSM R. 345, 351 (Kos. S. Ct. Tr. 1998).

Kosrae law has historically recognized a permanent work force of employees given specified rights whose compensation is statutorily determined; and a second group of employees who do not have the specified rights given permanent employees, who serve for a contract term, and whose compensation is determined by those contracts. It is this former group whose salaries were subject to reduction by S.L. No. 6-132. Cornelius v. Kosrae, 8 FSM R. 345, 352 (Kos. S. Ct. Tr. 1998).

The phrase "all State Government employees" as it appears in article VI, section 5, means those employees whose salaries are "prescribed by law." Only those employees whose salaries are set in the first place by statute are the employees to whom subsequent statutory reductions should apply. Cornelius v. Kosrae, 8 FSM R. 345, 352 (Kos. S. Ct. Tr. 1998).

The phrase "all State Government employees" means employees whose compensation is determined by statute, and does not include those employees who have individual contracts with Kosrae. Therefore a state law reducing state public service system employees' pay can constitutionally be applied to a Kosrae State Court justice's pay. Cornelius v. Kosrae, 8 FSM R. 345, 352 (Kos. S. Ct. Tr. 1998).

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

The statutory and regulatory authorities in effect during the time the employees' grievances took place will be applied to the decision. Langu v. Kosrae, 8 FSM R. 427, 432 (Kos. S. Ct. Tr. 1998).

Upon successfully completing probation, an employee becomes a permanent employee. Positions in the Executive Service are either permanent or temporary. Permanent positions are authorized to last longer than one year. Temporary positions are authorized to last up to twelve months. Permanent employment may be part-time, so long as the work time exceeds sixty hours per month. Temporary or limited-term appointments may be either full-time or part-time. Langu v. Kosrae, 8 FSM R. 427, 432 (Kos. S. Ct. Tr. 1998).

When employees were classified as permanent employees on their Personnel Action Forms, their scheduled work time during the school year was full-time, and their bi-weekly salaries were full-time base salaries, the employees were full-time permanent employees of the Kosrae Executive Service System. Langu v. Kosrae, 8 FSM R. 427, 433 (Kos. S. Ct. Tr. 1998).

Permanent employees have the right to hold their position during good behavior, subject to suspension, demotion, reduction-in-force or dismissal, unless an employment contract provides otherwise. Langu v. Kosrae, 8 FSM R. 427, 433 (Kos. S. Ct. Tr. 1998).

Suspension and demotion of a permanent employee are actions that may be taken only for disciplinary reasons based on good cause. Langu v. Kosrae, 8 FSM R. 427, 433 (Kos. S. Ct. Tr. 1998).

When an employee has been laid off for the summer, it is not a termination for disciplinary reasons or a reduction-in-force. A layoff is a termination of employment at the will of the employer, which may be temporary or permanent. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

A state employee's right to a given salary is based primarily upon constitutional, statutory and regulatory provisions. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

A permanent Kosrae government employee's right to hold his position during good behavior is not subject to a "lay off" because neither the term "lay off," nor the concept of a "lay off" is present anywhere in Title 5. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

Leave with pay (annual leave) must be requested by the employee in advance on a written form. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

Leave without pay may be granted to an employee if the reason is sufficient and is in the best interests of the Executive. The maximum is thirty calendar days. Leave without pay is not a disciplinary tool to be imposed upon an employee who has not requested it; instead it is a benefit to be granted to the employee in appropriate circumstances. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

There is no authority that permits the Kosrae government to impose annual leave or leave without pay upon its permanent employees. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

When state employees have been required to apply for annual leave, if it was available, and did receive their salary during the annual leave, the employees have not suffered any monetary damages with respect to their annual leave. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

The state's imposition upon its employees of leave without pay violated the Kosrae State Code, Title 5, and deprived them of their right to continued employment and salary. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

The Kosrae State Court cannot substitute its judgment for that of the Executive Service Appeals Board, but in reviewing the ESAB's findings it may examine all of the evidence in the

record in determining whether the factual findings are clearly erroneous, and if it is left with the definite and firm conviction that a mistake has been committed with respect to the findings, it must reject the findings as clearly erroneous. Langu v. Kosrae, 8 FSM R. 427, 435 (Kos. S. Ct. Tr. 1998).

Permanent state employees are subject to the laws and regulations implementing the Executive Service System, and a finding that some were exempted from all regulations and policies applicable to Kosrae government employees is clearly erroneous. Langu v. Kosrae, 8 FSM R. 427, 435 (Kos. S. Ct. Tr. 1998).

Although the statutory time periods are directory and not mandatory, a significant delay in proceedings can deprive the Executive Service Appeals Board procedure of its meaningfulness, in violation of the due process rights protected by the Constitution. Langu v. Kosrae, 8 FSM R. 427, 435 (Kos. S. Ct. Tr. 1998).

State employees are entitled to recover the base salary that they would have received during the periods of time that they were placed on leave without pay because the state's imposition of a "lay off" and leave without pay violated the employees' right to continued employment under the Kosrae Constitution and the Kosrae State Code. Langu v. Kosrae, 8 FSM R. 427, 436 (Kos. S. Ct. Tr. 1998).

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

Under Kosrae state law, a "grievance" is an employee action to present and resolve a difficulty or dispute arising in the performance of his duties and not from a disciplinary action. Abraham v. Kosrae, 9 FSM R. 57, 61 (Kos. S. Ct. Tr. 1999).

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

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

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

Under the Executive Services Regulations when they were in effect, a Kosrae state employee may present a grievance concerning a continuing practice or condition at any time. Kosrae v. Langu, 9 FSM R. 243, 246 & n.1 (App. 1999).

Under the Executive Service Regulations, when they were in effect, an appeal from a grievance was identical to that for an appeal from a disciplinary action, and was made to the Executive Service Appeals Board. Kosrae v. Langu, 9 FSM R. 243, 246 (App. 1999).

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

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

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

Issues of law, such as whether cooks were permanent state employees in the legal sense such that they were entitled to all the protections afforded to them under the statute and regulations, are reviewed de novo on appeal. Kosrae v. Langu, 9 FSM R. 243, 248 (App. 1999).

Kosrae state employees must fall within one of three categories – exempt, i.e., exempt from the protections afforded to state employees by the Kosrae Executive Service as it was then structured; probationary; or permanent. Kosrae v. Langu, 9 FSM R. 243, 248 (App. 1999).

A permanent state employee has the right to hold his position during good behavior, subject to suspension, demotion, reduction-in-force, or dismissal, except when an employment contract provides otherwise. Kosrae v. Langu, 9 FSM R. 243, 249 (App. 1999).

A summer layoff of school cooks that required the cooks to take annual leave first, then leave without pay when school was not in session was not a reduction-in-force because a reduction-in-force means an employee's termination. Kosrae v. Langu, 9 FSM R. 243, 250 (App. 1999).

Once the Kosrae State Court has correctly determined that placing cooks on unpaid leave was a violation of law or regulation, the appropriate factfinder for the determination of cooks' back pay, which constitutes their damages, is the Executive Service Appeals Board or its successor, not the state court. Kosrae v. Langu, 9 FSM R. 243, 250 (App. 1999).

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

Under Kosrae State Code, Title 18, there is no limitation on the Kosrae State Court's

jurisdiction to hear claims based upon a grievance, filed by a former Executive Branch employee. There is no limitation on a plaintiff's right, as a former employee, to file suit on his grievance and his right to file suit on his grievance arose in 1997, when he took early retirement and terminated his state employment. Skilling v. Kosrae, 9 FSM R. 608, 612-13 (Kos. S. Ct. Tr. 2000).

While the plaintiff was a state employee, he was subject to the administrative procedures specified for grievances, but when his administrative action was still pending when he retired in 1997, because his grievance had never been ruled on, he was no longer an employee required to comply with the administrative procedures. His right to bring suit on his claim did not become complete and his cause of action therefore did not accrue his early retirement resulted in termination from state government employment. Skilling v. Kosrae, 9 FSM R. 608, 613 (Kos. S. Ct. Tr. 2000).

When two Directors of Education failed to act properly by not acting upon the plaintiff's grievance and not making a written finding on plaintiff's grievance, as required by regulation, the State cannot invoke the equitable doctrine of laches in its defense. Skilling v. Kosrae, 9 FSM R. 608, 613 (Kos. S. Ct. Tr. 2000).

A public officer's right to a given salary is based primarily upon constitutional, statutory, and regulatory provisions. The amount of compensation a public employee receives is set by law. Palsis v. Mayor of Tafunsak, 10 FSM R. 141, 144 (Kos. S. Ct. Tr. 2001).

Because the Tafunsak Municipal Constitution requires that salaries for elected Council members be established by ordinance and because a public officer's right to compensation depends entirely upon him being able to show clear authority of law entitling him to remuneration for performance of public duties, Tafunsak public officials' salaries must be appropriated by municipal ordinance. Palsis v. Mayor of Tafunsak, 10 FSM R. 141, 144 (Kos. S. Ct. Tr. 2001).

Compensation for a public officer's official services depends entirely upon the law. A public officer may only collect and retain such compensation as is specifically provided by law. Palsis v. Mayor of Tafunsak, 10 FSM R. 141, 144 (Kos. S. Ct. Tr. 2001).

When no Tafunsak municipal ordinance has been enacted to establish and pay salary for council members, other municipal officers and employees, there is no authority, as required by the municipal constitution, to pay salaries to Tafunsak municipal public officers and employees. A municipal council member is thus not entitled to receive unpaid salary, particularly when no evidence has been presented of a Tafunsak municipal ordinance enacted for appropriation of funds for payment of salaries for the 4th quarter of 1998 and when the municipal constitution requires that all payments from the municipal treasury be made according to appropriation by ordinance. Palsis v. Mayor of Tafunsak, 10 FSM R. 141, 144 (Kos. S. Ct. Tr. 2001).

Any payments for salaries of elected officials and staff made from the Tafunsak municipal treasury without the authority of a municipal ordinance establishing such salary and appropriating funds for the payment of such salary have been made in violation of the municipal constitution. Palsis v. Mayor of Tafunsak, 10 FSM R. 141, 144 (Kos. S. Ct. Tr. 2001).

While it appears that elected officials and staff of Tafunsak municipal government have been paid and continue to be paid salaries without authority of law, the Kosrae State Court

cannot approve or order any salary to be paid to a Tafunsak Municipal Council member in violation of the municipal constitution. Palsis v. Mayor of Tafunsak, 10 FSM R. 141, 144 (Kos. S. Ct. Tr. 2001).

When the Kosrae State Code Section 18.506 requires a branch head to make and transmit his final decision to the Director of Administration and the appellant within 14 days of receipt of the committee's recommendation and more than 14 days have elapsed since the branch head's receipt with no final decision by him, the branch head has failed to carry out his clear, non-discretionary duty to issue and transmit his final decision within the time period provided by law. The petitioner's right to the writ of mandamus is thus clear and undisputable and the writ will issue. Jackson v. Kosrae, 10 FSM R. 198, 199 (Kos. S. Ct. Tr. 2001).

Because the Oversight Board has not adopted any policies, rules or regulations, the Director of Administration, who is responsible for administration of the Public Service System consistent with Title 18, and any policies, rules and regulations adopted by the Oversight Board, must implement all the Speaker's decisions pertaining to the Legislative Branch's public service employees, as long as the decision is not inconsistent with Kosrae State Code, Title 18. Seventh Kosrae State Legislature v. Abraham, 10 FSM R. 299, 302 (Kos. S. Ct. Tr. 2001).

When two legislative branch employees, effective October 1, 1998, had met the statutory requirements to qualify for performance increases, but the personnel action forms to implement the increases were never submitted to the Department of Administration for processing due to administrative oversight at the Legislature; when in June 2001, the Speaker ordered the Director of Administration to implement the performance increases effective October 1, 1998 and backdated personnel action forms were submitted on both employees' behalf; when the personnel action forms contemplate an effective date that may be different than the approval date; when backdating of personnel action forms was a common practice in all three branches of state government and are routinely processed and implemented by the Department of Administration; when the Department's refusal to process the backdated personnel actions deprives both employees of the performance increases they qualified for and are entitled to by law; and when backdating employees' personnel action forms is consistent with all three state government branches' accepted and continuing practice and is not inconsistent with Kosrae State Code, Title 18; the Director of Administration is required to implement the performance increase, retroactive to October 1, 1998, and subsequent pay level adjustments ordered by the Speaker. Seventh Kosrae State Legislature v. Abraham, 10 FSM R. 299, 302-03 (Kos. S. Ct. Tr. 2001).

The Kosrae Executive Service System provides for the systemic classification of positions and for one pay level for each class of positions, and the state's action in assigning two different pay levels to the same class of positions was a violation of Kosrae State Code §§ 5.401(6), 5.410(1) and 5.506(1). Jonas v. Kosrae, 10 FSM R. 441, 444 (Kos. S. Ct. Tr. 2001).

When plaintiffs should have been classified at the time the state hired them in 1997 at the same pay level as the medical officers who the state hired as Staff Physicians I prior to the plaintiffs and when the plaintiffs' grievances were granted increasing their pay in 2000 only partially corrected the situation from May 1, 2000 forward, the plaintiffs are entitled to summary judgment for a retroactive adjustment to their entrance salary. Jonas v. Kosrae, 10 FSM R. 441, 444-45 (Kos. S. Ct. Tr. 2001).

Pre-judgment interest is rarely awarded as an element of damages. Because tort claims

are generally "unliquidated" in that the defendant does not know the precise amount he will be obligated to pay, most courts will not award interest on unliquidated monetary claims, which amount cannot be computed without a trial. Jonas v. Kosrae, 10 FSM R. 441, 445 (Kos. S. Ct. Tr. 2001).

There is no Kosrae statute allowing or directing the court to award pre-judgment interest in public employment cases involving violation of law or regulations, and although pre-judgment interest has been allowed in certain contract and conversion cases, it has not been awarded in these type of cases and will be denied. Jonas v. Kosrae, 10 FSM R. 441, 445 (Kos. S. Ct. Tr. 2001).

The Kosrae State Court's standard of review in its judicial review of State Public Service System final decisions is that the court will decide all relevant questions of law and fact, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action, and the court is authorized to compel, or hold unlawful and set aside agency actions. Jonas v. Kosrae, 10 FSM R. 453, 458 (Kos. S. Ct. Tr. 2001).

Former Kosrae State Code, Title 5 (repealed) and Regulation 11 (repealed) are applicable to positions within the Executive Service System from 1990 through 1992. Jonas v. Kosrae, 10 FSM R. 453, 458 (Kos. S. Ct. Tr. 2001).

An employee was required to present a grievance related to a particular act or occurrence within 15 calendar days of the date of occurrence or the date when the employee should have become aware of it had he been exercising reasonable diligence. Jonas v. Kosrae, 10 FSM R. 453, 459-60 (Kos. S. Ct. Tr. 2001).

The time limits prescribed in the Executive Service Laws and Regulations are directory and not mandatory because the law and the regulations do not prescribe what happens if the prescribed time limits are not met. Jonas v. Kosrae, 10 FSM R. 453, 459 (Kos. S. Ct. Tr. 2001).

Because the regulation that an employee grievance be presented no later than 15 days after the subject action is directory and not mandatory, a plaintiff's late presentation of his grievance after the specified 15 day period does not bar his claim. Jonas v. Kosrae, 10 FSM R. 453, 459 (Kos. S. Ct. Tr. 2001).

An Executive Service position is a defined set of work responsibilities in the Executive. Jonas v. Kosrae, 10 FSM R. 453, 460 (Kos. S. Ct. Tr. 2001).

Each Executive Service position was required to be classified by the Director of the Department of Personnel and Employment Services and all executive branch employee positions fall within the Executive System and Kosrae State Code, Title 5, chapters 4 and 5, unless exempted under section 5.101(18). When the Director failed to classify the Head Teacher position before, during, or after the plaintiff was moved into that position, he did not perform his duties as required, and therefore violated state law. Jonas v. Kosrae, 10 FSM R. 453, 460 (Kos. S. Ct. Tr. 2001).

If an employee performs duties in addition to those stated in the classification plan for his regular position and the compensation for the position which normally includes the additional duties is greater than his regular salary, he receives the greater salary during the period of performance. Jonas v. Kosrae, 10 FSM R. 453, 460 (Kos. S. Ct. Tr. 2001).

There are several types of salary adjustment for additional duties: detail, acting assignment and temporary promotion. Jonas v. Kosrae, 10 FSM R. 453, 460 (Kos. S. Ct. Tr. 2001).

A detail is an employee's temporary assignment to a different position for a specified period, with the intention that the employee will return to his regular position and duties at the end of the detail. A position is not filled by detail, as the employee continues to the incumbent of the position from which detailed. A teacher's temporary assignment to the different position of Head Teacher for a maximum period of one year, with the intention that he would return to his regular position of Classroom Teacher II at the end of the detail no later than one year later, is a detail. Jonas v. Kosrae, 10 FSM R. 453, 461 (Kos. S. Ct. Tr. 2001).

An employee who is temporarily assigned to a position by detail will be compensated at the step in the new pay level which is equivalent to a two step increase above his regular salary. A one step increase is unlawful and is therefore set aside. Jonas v. Kosrae, 10 FSM R. 453, 461 (Kos. S. Ct. Tr. 2001).

The term demotion means reduction to lower rank or grade, or to lower type of position, or to lower pay scale. For disciplinary reasons based upon good cause a management official may demote an employee. An employee's demotion is not effective for any purpose until a management official gives the employee written notice stating the reasons for the demotion and the employee's right of appeal. Demotion for a non-disciplinary reason is a statutory violation. Jonas v. Kosrae, 10 FSM R. 453, 461-62 (Kos. S. Ct. Tr. 2001).

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

The state's failure to give an employee the required written notice of his demotion and his right of appeal is a statutory violation, and makes the demotion ineffective for any purpose. Jonas v. Kosrae, 10 FSM R. 453, 462 (Kos. S. Ct. Tr. 2001).

After successfully serving a maximum probation period of one year, an employee may be converted to a permanent employee. Jonas v. Kosrae, 10 FSM R. 453, 462 (Kos. S. Ct. Tr. 2001).

A position which is established to meet continuing government need and which is authorized to last longer than one year, must be identified as a permanent position. Jonas v. Kosrae, 10 FSM R. 453, 462 (Kos. S. Ct. Tr. 2001).

When an employee successfully served the full one year probationary period as Head Teacher, his position as Head Teacher with its higher pay level, became a permanent position when the probationary period expired. Jonas v. Kosrae, 10 FSM R. 453, 462 (Kos. S. Ct. Tr. 2001).

When a state employee's demotion was unlawful and is set aside, his salary will be established as if the demotion never occurred. Jonas v. Kosrae, 10 FSM R. 453, 462 (Kos. S. Ct. Tr. 2001).

The Kosrae State Court's standard of review in its judicial review of State Public Service

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

Former Kosrae State Code, Title 5 (repealed) and Regulation 11 (repealed) are applicable to positions within the Executive Service System from 1990 through 1997. Tolenoa v. Kosrae, 10 FSM R. 486, 489 (Kos. S. Ct. Tr. 2001).

An Executive Service position is a defined set of work responsibilities in the Executive. Tolenoa v. Kosrae, 10 FSM R. 486, 490 (Kos. S. Ct. Tr. 2001).

Each Executive Service position was required to be classified by the Director of the Department of Personnel and Employment Services and all executive branch employee positions fall within the Executive System and Kosrae State Code, Title 5, chapters 4 and 5, unless exempted under section 5.101(18). When the Director failed to classify the Head Teacher position before, during, or after the plaintiff was moved into that position, he did not perform his duties as required, and therefore violated state law. Tolenoa v. Kosrae, 10 FSM R. 486, 490 (Kos. S. Ct. Tr. 2001).

If an employee performs duties in addition to those stated in the classification plan for his regular position and the compensation for the position which normally includes the additional duties is greater than his regular salary, he receives the greater salary during the period of performance. Tolenoa v. Kosrae, 10 FSM R. 486, 490 (Kos. S. Ct. Tr. 2001).

There are several types of salary adjustment for additional duties: detail, acting assignment and temporary promotion. Tolenoa v. Kosrae, 10 FSM R. 486, 491 (Kos. S. Ct. Tr. 2001).

A detail is an employee's temporary assignment to a different position for a specified period, with the intention that the employee will return to his regular position and duties at the end of the detail. A position is not filled by detail, as the employee continues to the incumbent of the position from which detailed. A teacher's temporary assignment to the different position of Head Teacher for a maximum period of one year, with the intention that he would return to his regular position of Classroom Teacher II at the end of the detail no later than one year later, is a detail. Tolenoa v. Kosrae, 10 FSM R. 486, 491 (Kos. S. Ct. Tr. 2001).

An employee who is temporarily assigned to a position by detail will be compensated at the step in the new pay level which is equivalent to a two step increase above his regular salary. A one step increase is unlawful and is therefore set aside. Tolenoa v. Kosrae, 10 FSM R. 486, 491 (Kos. S. Ct. Tr. 2001).

When the plaintiff did not assume all of the administrative duties of the Vice Principal position and did not assume the duties of a vacant position, he was not assigned a "temporary promotion" to the position of Vice Principal. Tolenoa v. Kosrae, 10 FSM R. 486, 491-92 (Kos. S. Ct. Tr. 2001).

When an employee was given added duties as a Head Teacher, the state will be required to classify the position of head teacher, including position description and pay level, and to pay compensation equivalent to a two-step increase. Tolenoa v. Kosrae, 10 FSM R. 486, 492 (Kos. S. Ct. Tr. 2001).

The law does not require that a supervisor (Director or Governor) implement a hazardous pay differential decision made by a subordinate employee, such as the Administrator of Division of Personnel. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 569 (Kos. S. Ct. Tr. 2002).

Mandamus will be denied when there is another adequate legal remedy available to the petitioners – to file a grievance on their hazardous pay differential claim and proceed through the administrative process. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 569 (Kos. S. Ct. Tr. 2002).

Any decision made by the Director's subordinate, the Administrator of Personnel, would only be deemed as advice to the Director, and not binding on the Director of Administration and Finance. Ultimately, it is the Director who is responsible for administering the Public Service System, consistent with Title 18 and applicable regulations. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 569-70 (Kos. S. Ct. Tr. 2002).

Since a state employee classification plan that identifies class specifications for each class, including appropriate pay levels, must be approved by the Oversight Board, of which the Chief Justice is a member, it would be improper for the Chief Justice to order a classification of a position that would ultimately be reviewed and approved by him as an Oversight Board member. The court will therefore delete from its order the requirement that the state must create Head Teacher position classification. Tolenoa v. Kosrae, 11 FSM R. 179, 185 (Kos. S. Ct. Tr. 2002).

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

A position in the Executive Service is a defined set of work responsibilities in the Executive, and if an employee performs duties in addition to those stated in the classification plan for his regular position and the compensation for the position which normally includes the additional duties is greater than her regular salary, she receives the greater salary during the period of performance. Jackson v. Kosrae, 11 FSM R. 197, 200 (Kos. S. Ct. Tr. 2002).

When the duties performed by the plaintiff in the Diabetic and Hypertension Program were regular duties of the Head Nurse position pursuant to the classification plan and were not in addition to those stated in the classification plan for the Head Nurse position, the plaintiff is not entitled to additional compensation or a higher salary during the time she performed those duties. Jackson v. Kosrae, 11 FSM R. 197, 200 (Kos. S. Ct. Tr. 2002).

The state was not required to change the plaintiff's position to the CDC Coordinator when her duties did not substantially change after she was assigned to perform some of the CDC Coordinator duties and when it was not a "temporary promotion" to the position of CDC Coordinator because she did not assume all or nearly all of the CDC Coordinator duties, which were shared and completed by four employees including her. Jackson v. Kosrae, 11 FSM R. 197, 200 (Kos. S. Ct. Tr. 2002).

A state employee's government service is governed by law, first by the Kosrae State Code, Title 5, the Executive Service Law, and later by Title 18, the State Public Service System Law.

A public service employee does not have any contractual entitlements, and thus a state employee's contract claim against the state is without merit and will be dismissed. Jackson v. Kosrae, 11 FSM R. 197, 201 (Kos. S. Ct. Tr. 2002).

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

When a state employee did not engage in inexcusable delay or a lack of diligence in bringing suit, as the delay was caused by his engaging the administrative grievance process and waiting for the state's required response, and when the state, by its own inaction on the employee's claims, was not in compliance with the applicable regulation and statute, failed to act properly with regard to his grievance, the state, being the cause of the delay, cannot invoke the equitable doctrine of laches. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

When a state employee would not have been entitled to payment at his usual hourly rate for unused sick leave since he was never injured or ill and denied sick leave, he cannot claim that he has suffered a loss when he lost his accumulated hours of sick leave. Sam v. Chief of Police, 12 FSM R. 587, 589 (Kos. 2004).

A new law that results in a state employee's loss of his accumulated sick leave hours is not unconstitutional and a deprivation of property without due process because the right to take payment for sick leave to be taken in the future is a mere expectancy, and does not constitute a vested right entitling the employee to compensation. "Vested" means having the character or given the rights of absolute ownership. Sam v. Chief of Police, 12 FSM R. 587, 589 (Kos. 2004).

For the period of 1993-97, the law and regulations for the Executive Service System are applicable. For the period of 1997 to 2002, the law and regulations for the Kosrae State Public Service System are applicable. Former Kosrae State Code, Title 5, Chapter 4 (repealed) governed the Executive Service System during a portion of the relevant period, from 1993 to 1997. Sigrah v. Kosrae, 13 FSM R. 315, 319 (Kos. S. Ct. Tr. 2005).

Since the then applicable law limited compensation for additional duties only when the additional duties performed were duties for a position with a greater salary and the plaintiff's tasks were duties of another classified position that, in the position classification plan, was compensated at the same as his, the plaintiff is not entitled to additional compensation for the additional tasks that he performed from 1993 to 1998. Sigrah v. Kosrae, 13 FSM R. 315, 319 (Kos. S. Ct. Tr. 2005).

For additional compensation, the "additional duties" performed by the public employee must be the duties of a position that has a greater salary than the employee's regular salary. When the journeyman tradesman (refrigeration mechanic) plaintiff's "additional duties" are the duties of another journeyman tradesman position (i.e. electrician or plumber) which has the same salary as the plaintiff's regular salary, the plaintiff is not entitled to additional compensation for the additional duties since all journeyman tradesman positions, regardless of specialization, are classified at pay level 7. Sigrah v. Kosrae, 13 FSM R. 315, 319 (Kos. S. Ct. Tr. 2005).

The Kosrae State Public Service System establishes a state-wide public service system applicable to all branches of government and is governed by Kosrae State Code, Title 18. The PSS applies to all Kosrae state employees and positions except for those employees and positions which are specifically exempted. Specific exemptions include "contract employees." Allen v. Kosrae, 13 FSM R. 325, 329-30 (Kos. S. Ct. Tr. 2005).

There are no limitations on the "contract employees" exemption: all contract employees are exempt from application of the Public Service System under Kosrae State Code, Title 18. There are no limitations imposed through any other state law upon the hiring of state government employees pursuant to ungraded, PSS exempt contracts. The State is permitted to hire ungraded, PSS exempt employees by contract, in its discretion, subject only to funding and budgetary limitations. Allen v. Kosrae, 13 FSM R. 325, 331 (Kos. S. Ct. Tr. 2005).

There are no provisions in state law which prohibit the state government from hiring employees by contract for positions which are also classified under the Public Service System classification plan. Allen v. Kosrae, 13 FSM R. 325, 331 (Kos. S. Ct. Tr. 2005).

Kosrae State Code, § 18.104, which provides a preference to FSM citizens and Kosrae state residents in making appointments to positions within the PSS is not applicable to the contract position of Chief of Secondary Education. Allen v. Kosrae, 13 FSM R. 325, 331 (Kos. S. Ct. Tr. 2005).

Kosrae State Code, section 18.302, which provides that the position classification plan must classify all positions subject to the provisions of the State Public Service System according to their duties and responsibilities, is not applicable to the contract position of Chief of Secondary Education since that position was not one classified within the PSS at the time of the contract hiring. Allen v. Kosrae, 13 FSM R. 325, 331 (Kos. S. Ct. Tr. 2005).

Regardless of the reason for a Public Service System position vacancy or the length of time for the position vacancy, there is no statutory or constitutional requirement for the State to fill any vacancies of Public Service System positions. Allen v. Kosrae, 13 FSM R. 325, 332 (Kos. S. Ct. Tr. 2005).

Once a property interest is found to exist, the next step is to determine if due process rights were violated. The court looks at whether the procedures used to apply the disciplinary action were fair based on the circumstances of the case; procedures must assure a rational decision making process. Municipal defendants are not required to follow the State of Kosrae's Public Service System laws and regulations and are not required to adopt their own written procedures, but they must be fair considering all the circumstances and use a rational decision making process. Palsis v. Tafunsak Mun. Gov't, 14 FSM R. 517, 520 (Kos. S. Ct. Tr. 2006).

Kosrae State Code Title 18 creates the comprehensive Public Service System. An integral part of this system is a classification plan for all state positions subject to the plan. The position classification plan classifies all positions subject to the State Public Service System provisions according to their duties and responsibilities. Positions that are classified under the plan are filled by examination. Allen v. Kosrae, 15 FSM R. 18, 21 (App. 2007).

The Kosrae Public Service System applies to all employees and positions in the state government with fourteen different categories, including contract employees, exempted from its

provisions. There are no restrictions on the exemptions that would foreclose or prohibit the Kosrae Department of Education from hiring teachers or a Chief of Secondary Education on a PSS-exempt, contract basis. In the absence of any such limitations, the contract employee exemption applies. Allen v. Kosrae, 15 FSM R. 18, 21-22 (App. 2007).

When the Legislature has altered the statutory framework only to increase, and not decrease, Kosrae's hiring discretion for contract employees by removing the single qualification that it had placed on the contract employees exemption, the court cannot limit the hiring discretion thus conferred by the Kosrae Legislature in the absence of a statutory basis for doing so since it is the Kosrae Legislature's role to consider and determine the public policy that supports a statute, and to enact legislation that reflects that public policy. Allen v. Kosrae, 15 FSM R. 18, 22 (App. 2007).

When the Kosrae statute defines "public service" as all offices and positions in the state government not exempted by Section 18.107, the requirement that preference be given to FSM citizens with a view to insuring full participation by FSM citizens and state residents in its public service means that the preference will apply to the hiring of individuals for non-exempt, Public Service System positions. Thus, when the position for which another was hired was exempt from the PSS because it was filled on a contract basis, the preference had no application to the hiring. Allen v. Kosrae, 15 FSM R. 18, 23 (App. 2007).

The statute does not specifically require a good cause standard to be met when dismissing or demoting an employee. A management official may, for disciplinary reasons, dismiss or demote an employee when he determines that the good of the public service will be served thereby. Palsis v. Kosrae, 16 FSM R. 297, 305, 311 (Kos. S. Ct. Tr. 2009).

For the due process clause to apply, a life, property, or liberty interest must be implicated. In an employment case, to be property protected under the Constitution, the employment right must be supported by more than merely the employee's own personal hope. There must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Palsis v. Kosrae, 16 FSM R. 297, 307 (Kos. S. Ct. Tr. 2009).

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

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

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

Failure to exhaust administrative remedies and failure to timely file a suit for judicial review

are both affirmative defenses which have to be asserted in the answer otherwise that affirmative defense is waived. Kosrae v. Edwin, 18 FSM R. 507, 513 (App. 2013).

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

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

State employees suing for unpaid compensation for work they performed, obviously have a sufficient stake in the case's outcome when they allege that they each have suffered an actual injury (insufficient pay) and that that injury can be traced to the Director's challenged action and their claim is one that a favorable court decision can redress by awarding damages. Kosrae v. Edwin, 18 FSM R. 507, 514 (App. 2013).

When the appellees did not officiously thrust their services as vice-principals on Kosrae but had applied for the vice-principal position; thought they had been hired for the position (and did not know their contracts were invalid); and then performed the duties required by that position and as they were instructed by their superiors, Kosrae was unjustly enriched and therefore should compensate the appellees. Kosrae v. Edwin, 18 FSM R. 507, 515 (App. 2013).

An illegally-hired government employee is entitled to be paid for the work he actually performed. Kosrae v. Edwin, 18 FSM R. 507, 516 (App. 2013).

A cause of action to collect salary or wages accrues when an employee has a right to collect the money allegedly owed to him. Tilfas v. Kosrae, 21 FSM R. 81, 89 (App. 2016).

A school teacher could not have successfully maintained a cause of action for improper salary classification as of the date of his initial hiring when he had not submitted documentation to the government proving his educational background, thereby giving him a right to collect the higher salary allegedly owed to him. His cause of action began to accrue when, if ever, he submitted the relevant documents necessary to prove he should have been placed at the higher pay level. Tilfas v. Kosrae, 21 FSM R. 81, 89 (App. 2016).

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

The statute of limitations cannot be said to have continued to run as against a public employee's claim when the administrative decision was issued in his favor and the

administrative grievance process was still pending as to a determination of damages. Tilfas v. Kosrae, 21 FSM R. 81, 90 (App. 2016).

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

When a state employee's claim for wrongful probation status accrued, at the very latest, on August 26, 1989, because that was when the event triggering the cause of action occurred and when he could have first successfully maintained a suit on his claim since he remained classified as a probationary employee despite working, as of then, one day longer than one year. Thus, when that employee first exercised his administrative remedies and filed a grievance on April 30, 1997, his action for wrongful probationary status is time-barred because his grievance and the initiation of this lawsuit clearly fall outside the six-year statute of limitations. Tilfas v. Kosrae, 21 FSM R. 81, 92 (App. 2016).

– Kosrae – Termination

When shortage of work or funds requires the dismissal of a Kosrae state employee the Executive should consider an employee's individual merit, qualifications through education, training, and experience and the employee's seniority. Edwin v. Kosrae, 4 FSM R. 292, 303 (Kos. S. Ct. Tr. 1990).

Title III of the Kosrae State Court manual of administration permits dismissal of a government employee if the employee is convicted of felony. In the case of non-felonies, section 11(5)(c) permits dismissal only if it is shown that the employee's "criminal conduct . . . is detrimental to the performance of the duties and responsibilities of his position." Palsis v. Kosrae State Court, 5 FSM R. 214, 217 (Kos. S. Ct. Tr. 1991).

An employee may not be dismissed for conviction of a misdemeanor unless the nature of the conduct leading to the conviction is itself detrimental to the performance of the employee's duties. Palsis v. Kosrae State Court, 5 FSM R. 214, 218 (Kos. S. Ct. Tr. 1991).

When a law enforcement officer during performance of his duties reveals an unacceptable lack of respect for legal authority such as obstructing another officer from performing similar duties, the nature of his conduct is itself detrimental to the performance of his duties and his dismissal is justified. Palsis v. Kosrae State Court, 5 FSM R. 214, 218 (Kos. S. Ct. Tr. 1991).

An employee may be terminated without notice and an opportunity to be heard if she has abandoned her job. If not, the state must provide written notice stating the reasons for the dismissal and an opportunity to present mitigating circumstances, defenses, or other positions in opposition to the proposed disciplinary action. Klavasru v. Kosrae, 7 FSM R. 86, 89-90 (Kos. 1995).

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

A public employee, who supplied an explanation for her absence from work and who made clear, both before and after the absence that she did not intend to take permanent leave of her position, cannot be terminated for abandonment of office or disciplined without the statutory safeguard of notice and an opportunity to be heard. Klavasru v. Kosrae, 7 FSM R. 86, 92 (Kos. 1995).

Government employment that is property with the meaning of the Due Process Clause cannot be taken without due process. Only if an employment arrangement has an entitlement based upon governmental assurances of continual employment or dismissal for only specified reasons does the FSM Constitution require procedural due process as a condition to its termination. Taulung v. Kosrae, 8 FSM R. 270, 274 (App. 1998).

A permanent employee may be dismissed for disciplinary reasons based upon good cause or the employee may be dismissed within a reduction-in-force. Langu v. Kosrae, 8 FSM R. 427, 433 (Kos. S. Ct. Tr. 1998).

Kosrae's right and power to adjust its employment scheme according to the availability of funds and work is not unlimited. When the shortage of funds require dismissal of an employee, certain procedures are to be followed to ensure that seniority and qualifications are given due consideration. The government must give employees written notice that he has been reached by a reduction-in-force and that his services shall be terminated. Langu v. Kosrae, 8 FSM R. 427, 433 (Kos. S. Ct. Tr. 1998).

Termination of employment means a complete severance of the relationship of employer and employee. Reductions-in-force mean dismissal or termination of employees. Langu v. Kosrae, 8 FSM R. 427, 433 (Kos. S. Ct. Tr. 1998).

When an employee has been laid off for the summer, it is not a termination for disciplinary reasons or a reduction-in-force. A layoff is a termination of employment at the will of the employer, which may be temporary or permanent. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

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

When the statutory provisions intend and ensure that an entity is run as a corporation with its own management and employees, and not as a Kosrae state government agency and when, although the state government remains its sole shareholder, the state government does not assume its debts, does not own its assets, and has no control over its day to day operations, it is not a "state actor," and its termination of an employee is therefore not a "state action." Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666-67 (Kos. S. Ct. Tr. 2002).

Employment is a property right protected by the Kosrae Constitution when there is an assurance of continued employment or when dismissal is allowed for specified reasons. An employee's personal hope of continued employment or the expiration of a contract with no

provisions for renewal does not give rise to a property interest. Thus, when the Tafunsak Constitution states that the position of Treasurer is a four-year term and the plaintiff's employment was terminated before the term's end, this is sufficient to show an assurance of continued employment and gives rise to a property right protected by due process under the Kosrae Constitution. Palsis v. Tafunsak Mun. Gov't, 14 FSM R. 517, 520 (Kos. S. Ct. Tr. 2006).

Where the plaintiff claims that he was not given an administrative remedy and did not have an opportunity to meet or rebut the allegations against him and when the defendants began by giving the plaintiff written notice listing specific issues and specifying their concerns about the plaintiff's failure to perform his duties and gave the plaintiff several months until late February 2004 to correct his behavior; when the plaintiff did not change his behavior to perform his job responsibilities and he spoke with the defendants about resigning from employment during this time period, thus demonstrating that he met with the defendants and had an opportunity to rebut the first letter's allegations; the Council gave him a copy of its March 2004 letter to the Mayor recommending termination of his employment; when the Mayor's letter to the plaintiff based on this recommendation again gave him an opportunity to bring forth any grievances, this procedure consistently gave the plaintiff notice of the defendants' specific reasons for concern and gave him several opportunities to meet and rebut allegations and bring forth grievances and was thus fair based on the circumstances and was based on a rational decision-making process. Palsis v. Tafunsak Mun. Gov't, 14 FSM R. 517, 520 (Kos. S. Ct. Tr. 2006).

The Tafunsak Constitution provisions about the Treasurer's employment do not conflict with the provision that the Council can terminate a municipal employee with a _ vote. Palsis v. Tafunsak Mun. Gov't, 14 FSM R. 517, 520-21 (Kos. S. Ct. Tr. 2006).

The statute does not specifically require a good cause standard to be met when dismissing or demoting an employee. A management official may, for disciplinary reasons, dismiss or demote an employee when he determines that the good of the public service will be served thereby. Palsis v. Kosrae, 16 FSM R. 297, 305, 311 (Kos. S. Ct. Tr. 2009).

Although Kosrae statutes do not specifically state that a pre-dismissal hearing is required, constitutional due process in the FSM does require that a governmental, non-probationary employee be given some opportunity to respond to the charges against him before his dismissal may be implemented, which includes: oral or written notice of the charges against him, an explanation of the employer's evidence and an opportunity to present his side of the story. Palsis v. Kosrae, 16 FSM R. 297, 306 (Kos. S. Ct. Tr. 2009).

Although Kosrae statutes do not specifically state that a pre-dismissal hearing is required, once it is determined that the statute establishes a property right subject to protection under the due process clause, constitutional principles determine what process is due as a minimum. Palsis v. Kosrae, 16 FSM R. 297, 306 (Kos. S. Ct. Tr. 2009).

The constitution is consistent with the Kosrae State Code and the Public Service System statutes which will not be set aside as contrary to due process since, in the absence of statutory language to the contrary, the statutory mandate may be interpreted as assuming compliance with the constitutional requirements. Thus, when the Kosrae State Code states that written notice setting forth the specific reasons for the dismissal or demotion and the employee's rights of appeal must be transmitted to the employee but is silent as to whether a dismissal may be implemented before some kind of hearing is provided, this is not read as an attempt to authorize

immediate dismissal for all purposes without giving the employee a right to respond but instead as an indication of solicitude, demonstrating the intention to assure that employees' rights be observed. Palsis v. Kosrae, 16 FSM R. 297, 306-07 (Kos. S. Ct. Tr. 2009).

When, at the time of her termination, the plaintiff was a permanent state employee and since a "regular employee" or "permanent employee" means an employee who has been appointed to a position in the public service and who has successfully completed a probation period, the plaintiff's claim to employment was supported by more than her mere personal hope of employment and the state had a legal obligation to employ the plaintiff. Thus, the plaintiff had a property right which was protected by the due process clause. Procedural due process requires notice and an opportunity to be heard, so as to protect the employee's rights and insure that discipline is not enforced in an arbitrary manner. Palsis v. Kosrae, 16 FSM R. 297, 307 (Kos. S. Ct. Tr. 2009).

A state employee with a property right is entitled to a pre-termination hearing that includes notice and an opportunity to be heard. The employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. Palsis v. Kosrae, 16 FSM R. 297, 307 (Kos. S. Ct. Tr. 2009).

An essential principle of due process is that a deprivation of life, liberty, or property be preceded by notice and an opportunity for hearing appropriate to the nature of the case. This requires some type of hearing prior to the discharge of an employee who has a constitutionally-protected interest in his or her employment. The pre-termination hearing, though necessary, need not be elaborate. The formality and procedural requisites for the hearing can vary, depending upon the importance of the interest involved and the nature of the subsequent proceedings that are available. In general, something less than a full evidentiary hearing is sufficient prior to adverse administrative action. The pre-termination hearing does not definitively resolve the propriety of discharge, but is an initial check against mistaken decisions. The essential requirements are notice and an opportunity to respond. The state employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story and to require more than this prior to termination would intrude to an unwarranted extent on the government's interest in quickly removing an unsatisfactory employee. Palsis v. Kosrae, 16 FSM R. 297, 309 (Kos. S. Ct. Tr. 2009).

Since a state employee's pre-termination hearing need not be elaborate and since a notice of a hearing can be oral and is highly informal, given that the employee is given the opportunity for a post-deprivation hearing, where the employee was given notice on August 7, 2007 when she received a notice-of-dismissal letter and the dismissal did not become effective until August 30, 2007 and thus she was not deprived of benefits until then, an August 7, 2007 meeting constituted a pre-termination hearing as did a later August 15, 2007 meeting because, at both meetings, she was given an opportunity to respond to the charges against her and she had not yet been deprived of benefits and because the meetings served as an initial check of the charges since she was given an opportunity to explain her side of the story and the Director discussed the evidence for dismissal as stated in the termination letter and was open to questions regarding the reasons for dismissal. Also, when, at the August 15, 2007 meeting, her representative took the opportunity to be heard on her behalf, asked questions to the Director; tried to negotiate a settlement; and presented her side of the story, the requirements of notice and an opportunity to respond were met. Because she had notice and an opportunity to be heard prior to dismissal, her due process rights were not violated as a pre-termination hearing

was held. Palsis v. Kosrae, 16 FSM R. 297, 311 (Kos. S. Ct. Tr. 2009).

The good of the public service is served by an employee's dismissal if the management official determines that the employee has had 1) three consecutive performance evaluation reports with less than satisfactory ratings in any category; or 2) a total of three suspensions, whether imposed as minor discipline or disciplinary action; or 3) a conviction of any crime that the management official determines makes the employee unfit for his job; or 4) more than eight working days in two years that the employee has been taken unauthorized leave; or 5) a determination has been made that the applicant was not truthful on his employment application; or 6) the employee ceases work without explanation for more than 6 consecutive working days; or 7) any other grounds causing the management official to justifiably believe that the good of the public service will be served by dismissal. Palsis v. Kosrae, 16 FSM R. 297, 311-12 (Kos. S. Ct. Tr. 2009).

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

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

When a terminated state employee, since she was given an immediate opportunity to respond and another opportunity to respond one week later, had two opportunities to be heard after being informed of the reasons for her dismissal, and when after these two opportunities, she had two full post-termination evidentiary hearings that analyzed the Hospital's decision to terminate her employment, her procedural due process rights were not violated. Palsis v. Kosrae, 17 FSM R. 236, 242 (App. 2010).

Since a Kosrae public service system management official may, for disciplinary reasons, dismiss an employee when he determines that the good of the public service will be served thereby but since no dismissal of a permanent employee is effective for any purpose until the management official transmits to the employee, by the most practical means, a written notice setting forth the specific reasons for the dismissal and the employee's rights of appeal, the employee must be provided with notice that specifically identifies the reasons for dismissal and the employee's rights of appeal, which is the opportunity to be heard. When the trial court's findings of fact indicate that these specific mandates were satisfied, the appellate court is unable to find that the State Court's reasoning was clearly erroneous. Palsis v. Kosrae, 17 FSM R. 236, 242 (App. 2010).

– Pohnpei

A Pohnpei state government official is an employee for purposes of the Federated States of

Micronesia Income Tax Law. Rauzi v. FSM, 2 FSM R. 8, 12 (Pon. 1985).

Working for the Pohnpei state government, whose policy of public service is based explicitly on the merit, is merely a privilege which can be withheld subject to the due process of law. Paulus v. Pohnpei, 3 FSM R. 208, 217 (Pon. S. Ct. Tr. 1987).

The right to governmental employment in Pohnpei is not a fundamental right, constitutionally protected, requiring invoking a strict scrutiny test. Paulus v. Pohnpei, 3 FSM R. 208, 217 (Pon. S. Ct. Tr. 1987).

The Pohnpei State Government has discretion in hiring or firing employees, but that discretion does not carry with it the right to its arbitrary exercise. Paulus v. Pohnpei, 3 FSM R. 208, 217 (Pon. S. Ct. Tr. 1987).

Section 14(1) of the State Public Service System Act of 1981 (2L-57-81), prohibiting any person who has been convicted of a felony and is currently under sentence from being considered for any public employment or from continuing to hold any previously attained public service position, operates to effect double punishment on persons classified as felons, by preventing such individuals' attempts at rehabilitation, and as such this statute does not support Pohnpei State Government's policy of rehabilitating persons who are convicted of crimes. Paulus v. Pohnpei, 3 FSM R. 208, 219 (Pon. S. Ct. Tr. 1987).

Section 14(1) of the State Public Service System Act of 1981 (2L-57-81) is impermissibly arbitrary and irrationally unfair in its blanket prohibition of employment of any person who has been convicted of a felony and is currently under sentence; such statutory prohibition fails to tailor its impact to those convicted felons who otherwise lack the habits of industry. Consequently, this section of the statute is violative of the Equal Rights Clause of the Pohnpei Constitution by failing to demonstrate that the exclusion of all felons is necessary to achieve the articulated state goal. Paulus v. Pohnpei, 3 FSM R. 208, 220 (Pon. S. Ct. Tr. 1987).

A statute providing that any person who has been convicted of a felony and who is currently under sentence shall be terminated from public employment, constitutes an unconstitutional deprivation of procedural due process by allowing for an affected individual's termination without a hearing, and thus must be struck down. Paulus v. Pohnpei, 3 FSM R. 208, 221-22 (Pon. S. Ct. Tr. 1987).

Each division of the Pohnpei Department of Treasury and Administration, except in instances where the director maintains direct management of the division, has a division chief. Smith v. Nimea, 17 FSM R. 284, 287 (Pon. 2010).

When the Department Director held a hearing, he could conceivably have been acting as the *de facto* chief of PL&MD, or, if PL&MD did have a chief then, the Director may not have had implied authority, unless he was the division chief's designee. Smith v. Nimea, 17 FSM R. 284, 287 (Pon. 2010).

All powers statutorily granted to PL&MD are necessarily a subset of those powers granted to the Pohnpei Department of Treasury and Administration, particularly in light of the statute wherein a department director may assume a division chief's responsibilities and the statute which empowers a division chief to designate another person to act in his stead. Smith v. Nimea, 17 FSM R. 284, 287-88 (Pon. 2010).

Pohnpei Code Title 9, chapter 2, section 105 states that preference shall be given to qualified legal residents of Pohnpei in making appointments and promotions and providing opportunities for training in the public service, but the term "legal residents" is not defined in Title 9. Berman v. Lambert, 17 FSM R. 442, 446 (App. 2011).

Pohnpei Code Title 19 and its definitions, apply only to private employers and their employees, not to Pohnpei public employees. Berman v. Lambert, 17 FSM R. 442, 447 (App. 2011).

Pohnpei Code Title 9 provides for a promotion preference, as well as a hiring preference. It offers two tiers of hiring and promotion preferences. A higher hiring and promotion preference is given to legal residents of Pohnpei, and the lower hiring and promotion preference for all FSM citizens who are not legal residents of Pohnpei. Berman v. Lambert, 17 FSM R. 442, 447 (App. 2011).

If the legislature wanted the statute to provide a hiring and promotion preference to Pohnpeian or FSM citizens, then the legislature would have used "citizen" rather than "legal resident." By not defining the term "legal residents" the term's meaning must be the term's common, recognized definition. Berman v. Lambert, 17 FSM R. 442, 448 (App. 2011).

The statute's plain meaning of term "legal residents of Pohnpei" is individuals who are domiciled in Pohnpei. This interpretation allows a Pohnpeian citizen living abroad, who maintained his or her domicile in Pohnpei, to receive the same hiring preference as a Pohnpeian citizen living in Pohnpei and it would give all FSM citizens and non-citizens who have moved to Pohnpei and made Pohnpei their domicile, equal opportunity for job selection and promotion. This interpretation is also internally consistent with the statute's other parts which give a second preference for employment to FSM citizens who are not legal residents of Pohnpei when applying for a position or promotion and who would receive a preference over non-citizens who are temporarily living in Pohnpei and over other non-residents. Berman v. Lambert, 17 FSM R. 442, 448 (App. 2011).

Unless the regulations directly violate a national statute or are found to be unconstitutional, Pohnpei is free to regulate its own public service system. Berman v. Lambert, 17 FSM R. 442, 449 (App. 2011).

The right to work for the Pohnpei state government is not a constitutionally protected right, and, although there is a right to seek employment, there is no fundamental right for employment particularly to public employment. Berman v. Lambert, 17 FSM R. 442, 450 (App. 2011).

Section 2-114(1), by its terms, only applies to persons who have completed their sentence and are applying for a Pohnpei public service position. It does not apply to persons already holding public service positions. Phillip v. Pohnpei, 21 FSM R. 439, 442 (Pon. 2018).

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

A court's review of a Pohnpei Personnel Review Board decision is governed by statute. Phillip v. Pohnpei, 21 FSM R. 439, 443 (Pon. 2018).

When, even though the employment contract was printed with a Pohnpei state government letterhead, the Pohnpei Visitors Bureau's actual function and operation shows that it is independent of the Pohnpei state government; when the PVB's funding is provided for under the Compact of Free Association, but is deposited with the Pohnpei Department of Treasury and Administration for custodial purposes and disbursement; and when the PVB's actual decision-making lies with its Board, the PVB is an entity that operates independent of the state government, and its Board is responsible for its General Manager's hiring, thus making the state's non-renewal of the plaintiff's contract unlawful. Santos v. Pohnpei, 21 FSM R. 495, 499 (Pon. 2018).

Although the contract in question is a personal services contract which names the State of Pohnpei as the contracting party, because the Pohnpei Visitors Bureau operates and is controlled by its Board, and not by the state government, the agreement is between the plaintiff and the PVB, through its Board of Directors. Santos v. Pohnpei, 21 FSM R. 495, 499 (Pon. 2018).

Since the Pohnpei Visitors Bureau is a non-governmental organization with duly enacted articles of incorporation and bylaws, whose funding is provided for under the Compact of Free Association, the Pohnpei state government had a ministerial duty to certify the plaintiff's employment contract after the Board's approval, because the discretion of whether to hire the plaintiff was with the PVB Board. "Ministerial" means of or relating to an act that involves obedience to instructions or laws instead of discretion, judgment, or skill. Santos v. Pohnpei, 21 FSM R. 495, 500 & n.4 (Pon. 2018).

– Pohnpei – Termination

The removal or termination of a public service system employee is a disciplinary action, and the applicable Pohnpei state statute provides that a management official may, for disciplinary reasons, dismiss an employee for such causes that will promote the public service's efficiency. Phillip v. Pohnpei, 21 FSM R. 439, 443 (Pon. 2018).

When the court cannot say that the Personnel Review Board's decision was arbitrary, capricious, or an abuse of discretion since Pohnpei had a rational basis for its decision – that the plaintiff, because of his cheating conviction, was an inappropriate role model or mentor for the children he had been employed to instruct, the plaintiff's termination was thus in compliance with Section 2-139 since his disciplinary dismissal was for such cause that would promote the public service's efficiency. Phillip v. Pohnpei, 21 FSM R. 439, 443 (Pon. 2018).

Due process requires that a non-probationary government employee be given some opportunity to respond to the charges against him before his dismissal may be implemented; including oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. Phillip v. Pohnpei, 21 FSM R. 439, 444 (Pon. 2018).

– Termination

It is inappropriate for the FSM Supreme Court to consider a claim that a government employee's termination was unconstitutional when the administrative steps essential for review

by the court of employment terminations have not yet been completed. 52 F.S.M.C. 157. Suldan v. FSM (I), 1 FSM R. 201, 202 (Pon. 1982).

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

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

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

The National Public Service System Act places broad authority in the highest management official, authorizing dismissal based upon disciplinary reasons when the official determines that the good of the public service will be served thereby. Semes v. FSM, 4 FSM R. 66, 73 (App. 1989).

The National Public Service System Act and the FSM Public Service System Regulations establish an expectation of continued employment for nonprobationary national government employees by limiting the permissible grounds and specifying necessary procedures for their dismissal; this is sufficient protection of the right to continued national government employment to establish a property interest for nonprobationary employees which may not be taken without fair proceedings, or "due process." Semes v. FSM, 4 FSM R. 66, 73 (App. 1989).

Constitutional due process requires that a nonprobationary employee of the national government be given some opportunity to respond to the charges against him before his dismissal may be implemented; including oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. Semes v. FSM, 4 FSM R. 66, 76 (App. 1989).

Implementation of the constitutional requirement that a government employee be given an opportunity to respond before dismissal is consistent with the statutory scheme of the National Public Service System Act, therefore the Act need not be set aside as contrary to due process. Semes v. FSM, 4 FSM R. 66, 77 (App. 1989).

A person whose temporary promotion became permanent has the right to be discharged only for cause, and is entitled to all of the other protections afforded a permanent employee. Isaac v. Weilbacher, 8 FSM R. 326, 337 (Pon. 1998).

A timely appeal by a public employee of his termination by submitting a letter brief to the Assistant Secretary for Personnel Administration entitles him to a hearing on his appeal within fifteen calendar days after the Personnel Officer receives the appeal, unless the appellant

requests a delay. A postponement longer than that by the government not consented to by the appellant is not in compliance with the law. Maradol v. Department of Foreign Affairs, 13 FSM R. 51, 52-53 (Pon. 2004).

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

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

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

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

The National Public Service System Act and the Public Service System Regulations establish continued employment for non-probationary national government employees by limiting the permissible grounds and specifying the necessary procedures for their dismissal. This is sufficient protection of the right to continued national government employment to establish a non-probationary employee's property interest which may not be taken without due process, including notice and an opportunity to be heard. Poll v. Victor, 18 FSM R. 235, 244 (Pon. 2012).

When an employee's termination, effectuated on October 28, 2009, could not have taken effect before he was given an opportunity to be heard, which he later received at the ad hoc committee hearing, his termination would be effective, at the earliest, on the December 21, 2009 date of the ad hoc committee's decision because the ad hoc committee hearing was his first opportunity to respond to the charges against him. Poll v. Victor, 18 FSM R. 235, 245 (Pon. 2012).

When there was evidence of the terminated employee receiving approval of an advance leave request of 60 hours, but there was no evidence of how much of this advance leave was actually used, how much had already been paid back, and how much was still outstanding, the court will deny the government's request to offset the employee's pay to cover for the advance

leave still owed since there is a lack of evidence on this matter. Poll v. Victor, 18 FSM R. 235, 245 (Pon. 2012).

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

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

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

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

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

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

If the government wants to terminate an employee for unsatisfactory job performance, it must follow the procedures established in the National Public Service System Act and accompanying regulations, including providing the employee with notice of his right to file an administrative appeal. If, after an administrative appeal, the employee is terminated for unsatisfactory performance then the employee may appeal to the FSM Supreme Court, and the

court will evaluate the administrative appeal's record to determine if the decision to terminate the employee for unsatisfactory job performance is supported by substantial evidence. Manuel v. FSM, 19 FSM R. 382, 387 n.3 (Pon. 2014).

If an employee ceases work without explanation for not less than six consecutive working days, the management official shall file with the personnel officer a statement showing termination of employment because of abandonment of position. Manuel v. FSM, 19 FSM R. 382, 389 (Pon. 2014).

When an employee's supervisor is contacted with a request for leave due to illness, the supervisor is on notice that the requesting employee is absent for a reason other than a desire to abandon his employment; when any senior management official who read the departmental attendance log and saw LWOP beside the employee's name should have understood that the employee did not wish to resign, but rather that his absences were approved; when it is clear that the employee did not cease work without explanation for six consecutive days and at worst only four of the six absences were without explanation, the employee did not cease work without explanation for six consecutive days and the court must conclude that a finding that the employee abandoned his employment is not supported by substantial evidence. Manuel v. FSM, 19 FSM R. 382, 389-90 (Pon. 2014).

It is well established that a plaintiff seeking an award of back pay as damages for wrongful termination has a duty to mitigate damages by actively seeking alternative employment. Manuel v. FSM, 19 FSM R. 382, 391 (Pon. 2014).

The failure to mitigate damages is an affirmative defense for which the defendant bears the burden of proof. The common law rule establishing failure to mitigate damages as an affirmative defense is sound because to hold otherwise would be to impose a burdensome requirement upon every plaintiff in a wrongful termination case and because a holding that failure to mitigate damages is an affirmative defense puts the burden of proof on defendants, who presumably would refrain from litigating this issue unless the question of failure to mitigate damages is actually in dispute. Manuel v. FSM, 19 FSM R. 382, 391 (Pon. 2014).

Reinstatement to his former position and back pay from the date of termination to the date of reinstatement are remedies generally available to an employee who has shown wrongful discharge. However, the amount of back pay must be reduced to the extent that the plaintiff has mitigated his damages by securing other employment. Manuel v. FSM, 19 FSM R. 382, 391-92 (Pon. 2014).

A wrongfully discharged employee is entitled to the equitable remedy of reinstatement to his former position. Reinstatement is appropriate even if the position has been filled by another employee since, if a replacement's existence constituted a complete defense against reinstatement, then reinstatement could be effectively blocked in every case simply by immediately hiring an innocent third-party after the unlawful discharge has occurred, thus rendering the reinstatement remedy's deterrent effect a nullity. Manuel v. FSM, 19 FSM R. 382, 392 (Pon. 2014).

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

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

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

A pattern of untruthfulness that had preceded the probationary employee's lying about posting comments on a website, along with his disrespectful and insubordinate attitude to his supervisor, were more than sufficient to terminate a probationary employee, even if he had not posted any comments. Alexander v. Hainrick, 20 FSM R. 377, 383 (App. 2016).

If the preponderance of evidence shows that a government employee would have been terminated even in the absence of the protected free speech conduct, then the employee's termination should be upheld. Alexander v. Hainrick, 20 FSM R. 377, 383 (App. 2016).

To grant a wrongfully discharged probationary employee a substantial back pay award would be to convert him from the probationary employee he was to a regular or permanent employee, and he cannot be treated as a regular employee since he did not successfully complete his probationary period before he was terminated. Thus, the most a court could do would be to reinstate him as a probationary employee. Alexander v. Hainrick, 20 FSM R. 377, 383 (App. 2016).

A complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face, but a plaintiff's allegation that there was a "sheer possibility" that her termination was based on petty and insufficient grounds, is inadequate, as far as withstanding a Rule 12(b)(6) challenge. Solomon v. FSM, 20 FSM R. 396, 401 (Pon. 2016).

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

When the plaintiff's reasoning neglects to cite what constituted an alleged illegal termination since the only factual averments which depict allegedly untoward conduct on the defendants' part, albeit nebulous, only apply to one defendant, the requisite nexus to support a substantive due process violation is wanting. Solomon v. FSM, 20 FSM R. 396, 402 (Pon. 2016).

– Yap

Section 23 of Yap State Law 1-35, affecting resignation and abandonment of employment positions, does not provide for administrative remedies or administrative appeal of any kind. Dabchur v. Yap, 3 FSM R. 203, 205 (Yap S. Ct. App. 1987).

Abandonment of a public office is a voluntary form of resignation wherein the employee's intention to relinquish his position must be clear, either through declaration or overt acts. Dabchur v. Yap, 3 FSM R. 203, 207 (Yap S. Ct. App. 1987).

Where the statute in question classifies "constructive" abandonment as an employee ceasing work "without explanation" for not less than six consecutive working days, any explanation from the employee, written or verbal, would suffice to indicate the employer that the employee does not intend to relinquish his position absolutely. Dabchur v. Yap, 3 FSM R. 203, 207 (Yap S. Ct. App. 1987).

An employee who contests the factual allegation of voluntary abandonment is not entitled to any administrative remedies or administrative appeal, and has recourse only in the court. Dabchur v. Yap, 3 FSM R. 203, 208 (Yap S. Ct. App. 1987).

Once Yap's Director of Education took over control of YHS, appointed a DOE employee as the YHS Acting Director, and exercised the power to terminate a YHS employee on a Yap Assistant Attorney General's advice, YHS employees are then state employees since when an individual or entity exercises the power to fire an employee, they become an employer of that employee. Reg v. Falan, 14 FSM R. 426, 436 (Yap 2006).

– Yap – Termination

No dismissal or demotion of a permanent Yap state employee is effective for any purpose until the management official transmits to the employee, by the most practical means, a written notice setting forth the specific reasons for the dismissal or demotion and the employee's rights of appeal. The rights of appeal that the employee should be informed of include: 1) an appeal through the Chief of Division of Personnel, 2) a hearing before an ad hoc committee where the plaintiff has a right to be heard and evidence is taken and recorded, and 3) a full written report of findings and recommendations to the highest management official at the agency. Reg v. Falan, 14 FSM R. 426, 436 (Yap 2006).

When the termination letter sent to the plaintiff stated the reason for his termination, but did not set forth his appeal rights, the plaintiff's dismissal from state employment was not effective. Reg v. Falan, 14 FSM R. 426, 436 (Yap 2006).

Reinstatement to his former position and back pay to the date of his termination to the date he is reinstated are remedies are generally available to an employee who has shown wrongful discharge. But the amount awarded in back pay should be reduced to the extent the plaintiff has mitigated his damages by securing other employment. Reg v. Falan, 14 FSM R. 426, 436-37 (Yap 2006).

When a plaintiff suing for wrongful discharge has introduced no evidence of his efforts to mitigate his damages by attempting to secure a job during his periods of unemployment, the plaintiff is precluded from recovery of damages for these periods. Reg v. Falan, 14 FSM R. 426, 437 (Yap 2006).