

THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA

General Court Orders
In Effect As of
January 15, 2001

Supreme Court
Federated States of Micronesia
P.O. Box PS-J
Palikir Station
Pohnpei, FSM
Tele. No. 320-2357

General Court Orders for the Supreme Court of the
Federated States of Micronesia

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THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA

General Court Orders)	
)	
Trial and Appellate Divisions)	No. 1981-1 through 1989-2
)	
)	

General Court Orders are rules adopted by the Chief Justice of the Federated States of Micronesia pursuant to Article XI, Section 9 of the Constitution and the Judiciary Act of 1979, 4 F.S.M.C. 117.

This set and the table of contents reflect all General Court Orders issued by the Court as of November 18, 1985, but only those which remain effective and have not been subsequently replaced are reprinted here.

* * * *

<u>GCO 1981-1</u> (As amended by 1985-8)	COURT PROCEDURES	<u>July 11, 1981</u>
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The Supreme Court of the Federated States of Micronesia will begin judicial operations on Monday, July 13, 1981. From that date on, the Court will accept cases for filing and will proceed in all respects to carry out its responsibilities and mandate under the Constitution of the Federated States of Micronesia, the National Judiciary Act, Public Law No. 1-31, and all other applicable laws and directives. This Order is issued for purposes of establishing procedures to be followed by trial counselors, attorneys and court personnel for matters in the Court's Trial and Appellate Divisions.

Applicable Court Rules

1. The Court has previously distributed proposed Rules of Civil Procedure, proposed Rules of Criminal Procedure and proposed Rules of Evidence. Those proposed rules are hereby adopted and will be employed by the Court on an interim basis, pending issuance of finalized rules after comments concerning the proposed rules have been received and analyzed.

2. Admission to the bar of this Court shall be governed by the provisions of the Rules of Admission to Practice before the Supreme Court of the Federated States of Micronesia, copies of which are being distributed concurrently with this order.

Filing of Papers

3. Locations - Papers may be filed with the Supreme Court of the Federated States of Micronesia in those offices and with the clerks at the various locations in the States of the Federated States of Micronesia where documents have previously been filed for litigation in the Trust Territory High Court and District Courts. Until further notice, the clerical staff at those

locations will serve the Supreme Court of the Federated States of Micronesia, Appellate Division and Trial Division, as well as the Trust Territory High Court and the Trust Territory District Courts. Until further notice, no filing fees will be assessed by the Court.

4. Form and Size - Pleadings and other documents shall be filed with the Court in duplicate. All pleadings and documents should be filed on letter-size paper, not larger than 8½ x 11 inches, double spaced, each page beginning not less than 1¼ inches from the top, with side margins of not less than 1¼ inches.

Clerks

5. Office hours - The clerk of this Court in each State of the Federated States of Micronesia shall keep the clerk's office open for the acceptance of filed pleadings and other documents, and for the transaction of this Court's business, from 8:00 a.m. until 4:00 p.m. daily, except Saturdays, Sundays and legal holidays.

6. Custody and handling of papers - The clerk in each state shall establish a separate file for each separate case filed or pending with this Court. All such cases shall be maintained at a location within the clerical area separate from the case files maintained for the Trust Territory High Court and the District Courts, and in files specially marked and color coded in such a manner as to permit files of the Federated States of Micronesia Supreme Court to be readily distinguishable upon sight from those of the other courts served by the Clerk.

7. Receipt of documents - Immediately upon receipt of any paper properly tendered for filing, the clerk shall stamp the original and duplicate copies to record the date of filing, and if a new case, assign a case number and mark that number clearly on the original and duplicate copies of the document. The original copy should then be inserted immediately in the case file.

8. Duplicate copies forwarded to Justices - Each duplicate copy of a paper filed with the office of the Clerk shall immediately be forwarded by the Clerk to the Justice of the Supreme Court of the Federated States of Micronesia to whom that case has been assigned. In absence of specific notice to the contrary, these copies should be delivered or forwarded to the Chief Justice in the case of papers filed with the clerks of court in Ponape and Kosrae, and duplicate copies of papers filed in Truk and Yap should immediately be forwarded or delivered to Justice Benson.

9. Keeper of seal - The Clerk in each state shall be the keeper of the Court seal, and shall apply the same upon all process issued from the Court. In authentication of all records of the proceedings of the Court and the transcripts thereof, and certificates proper to be issued by him, the seal shall be applied by the Clerk as the means of proper authentication. Clerks, Deputy Clerks and assistants to the clerk, shall be authorized to administer oaths and affirmations, take acknowledgements and certify documents as officers of the Court.

10. Shall attend sessions - The Clerk or a deputy or assistant shall attend in person the daily sessions of this Court and shall serve as interpreters and shall provide for electronic recording of Court sessions, as directed by the Court.

Writ and Process

11. Writs and process of the Court shall be under the seal of the Court and signed by the Clerk.

Subscription to Court Opinions and Orders

12. Any persons or organizations desiring to receive copies of the opinions filed by this Court and general court orders and rules of the Court upon issuance, may do so by paying to the Court a designated subscription fee and specifying a mailing address. The subscription fee for the first year of this Court's existence, covering the period from July 13, 1981 through July 12, 1983, shall be \$25.00, payable to the Court at Post Office Box J, Ponape, 96941.

* * * *

GCO 1981-2

NOTICE OF CHANGE OF DATE FOR
THE FEDERATED STATES OF MICRONESIA SUPREME
COURT WRITTEN BAR EXAMINATION

July 10, 1981

No longer effective.

* * * *

GCO 1981-3

PERMISSION FOR PUBLIC DEFENDER TRIAL
COUNSELORS TO APPEAR WITHOUT SUPERVISION
FROM JULY 11 TO AUGUST 8, 1981

July 30, 1981

No longer effective.

* * * *

GCO 1981-4

PERMISSION FOR TRUK STATE
ATTORNEY GENERAL TRIAL COUNSELORS
TO APPEAR WITHOUT SUPERVISION OF ATTORNEY FROM
AUGUST 22 THROUGH SEPTEMBER 30, 1981

July 30, 1981

No longer effective.

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GCO 1981-5

ORDERS GRANTABLE BY CLERKS

November 27, 1981

Amended by GCO 1989-2

* * * *

GCO 1982-1 (As
Amended by 1985-8)

APPOINTMENT OF ASSESSORS
UNDER THE JUDICIARY ACT

February 24, 1982

1. This court is authorized by the Federated States of Micronesia National Judiciary Act, Public Law No. 1-31, Section 12, to appoint assessors to advise about local law or custom. The Section says:

Section 12. Assessors. Any Justice of the Supreme Court may appoint one or more assessors to advise him at the trial of any case with respect to local law or custom or such other matters requiring specialized knowledge. All such advice shall be of record and the assessors shall be subject to examination and cross-examination by any party.

Standing List of Certified Assessors

2. The National Justice Ombudsman of this court is hereby authorized and instructed to develop procedures to select individuals whose name shall be included on a standing list of persons certified and willing to serve as assessors in accordance with the provisions of Section 12 of the Public Law 1-31.

3. The procedures for compiling the list of certified assessors shall be developed by the National Justice Ombudsman in consultation with customary and traditional leaders and other persons knowledgeable about local law or custom. The National Justice Ombudsman shall take particular care to recognize local variances in custom from municipality to municipality, from island to island, from state to state and among particular ethnic groups within single geographical communities, as well as among particular ethnic groups depending upon whether they live within their home islands or on another island, and shall attempt to assure that the standing list includes assessors certified as knowledgeable about the custom of each such particular community.

Appointment For Specific Cases

4. Assessors may be appointed for specific civil or criminal litigation upon the court's own motion or upon motion of a party. In so far as practicable, the following procedures will be followed.

a. When the court determines on its own motion to appoint one or more assessors, the court shall issue a written order to that effect indicating those areas of local or custom with respect to which the court will be seeking advice, and identifying the island group, municipality, or other ethnic

group whose law or custom is thought to be pertinent and specifying the identity of the proposed assessor(s), if any. A motion by any party seeking appointment of assessors shall be made as a pre-trial motion, pursuant to Rule 12 and 45 of the Rules of Criminal Procedure in criminal proceedings, and shall also contain the information referred to in the preceding sentence.

b. In its discretion, the court may hold a hearing to determine the desirability of appointing assessor(s). Purposes of such a hearing could be, among other things, to determine whether there is any dispute as to the extent and nature of local law or custom, or as to the ethnic group whose local law or custom should be considered, or to determine the identity of the person(s) to be designated to serve.

Service By an Assessor

5. An assessor appointed by the court pursuant to this rule and FSM Public Law No. 1-31 shall attend the entire trial of the litigation for which that assessor has been appointed.

6. Any assessor appointed may be called upon to comment or testify at any time during the proceedings at the discretion of the court. However, the normal practice will be that assessors will be consulted by the court and parties at the following times.

a. At the completion of the opening statements by counsel, assessors may comment as to the issues of local law and custom which they believe are pertinent to the matters discussed by counsel in their opening statements, and may suggest particular types of information which they feel may be relevant and should be adduced during the trial.

b. Immediately prior to the close of each party's case, and before the party's closing statement, assessors shall be given an opportunity to comment concerning local law and custom as applied to the evidence.

7. An assessor shall be deemed to be the court's expert witness and shall be considered an officer of the court. Although examination and cross-examination will be permitted, each assessor is to be treated with respect and courtesy by counsel and the parties.

8. Each assessor shall be paid at the rate of \$10.00 per day of service and shall be reimbursed for reasonable travel expenses incurred in traveling to and from the court. Amount paid to assessors shall be taxable as court costs.

* * * *

GCO 1982-2

POWER OF JUSTICE OMBUDSMAN TO CONFINE
FOR VIOLATION OF SENTENCE OR PRE-
TRIAL RELEASE ORDER

April 26, 1982

Replaced and superseded by 1985-5

* * * *

GCO 1982-3

TRANSCRIPTS FEES

May 18, 1982

Replaced and superseded by 1985-7

* * * *

GCO 1982-4

AMENDMENTS TO THE RULES OF
CIVIL PROCEDURE

October 1, 1982

1. Rules 1, 4, 5 and 6 of the Rules of Civil Procedure of the Supreme Court of the Federated States of Micronesia shall be amended as set forth on the attached pages, effective November 1, 1982, and shall govern all civil proceedings then pending.

2. The principal purposes of these amendments are to place upon the litigants, rather than the Court or law enforcement officers, primary responsibility for service of process and to conform to similar amendments recently made in Rules of Civil Procedure for the United States Federal District Courts.

3. All comments and suggestions concerning these amendments will be welcome and taken into consideration.

Note: The amendments referred to in GCO 1982-4 are not set out here by are now incorporated in the Rules of Civil Procedure.

* * * *

GCO 1982-5

AMENDMENT TO THE RULES FOR
ADMISSION TO PRACTICE

December 28, 1982

The Rules for Admission to Practice Before the Supreme Court of the Federated States of Micronesia are hereby amended, by adding the following new Paragraphs VI and VII.

VI. Citizens Who Are Law Graduates To Be Certified As Trial Counselors.

Any citizen of the Federated States of Micronesia who graduates from a law school which meets the requirements

specified in Rule II.A.2. shall be certified as a trial counselor entitled to practice law, under the supervision of an attorney, before the FSM Supreme Court, upon tendering to this Court satisfactory proof of these facts and moral and character certifications in compliance with Paragraph II.B. of these Rules of Admission.

VII. The Code of Professional Responsibility

The Code of Professional Responsibility, as adopted by the American Bar Association as of this date, is hereby made applicable to the actions and practice of attorneys and trial counselors before this Court. The word "lawyer" as it appears in the Code of Professional Responsibility shall be deemed to refer to attorneys and trial counselors practicing before this Court. Note: FSM Adm. R. VII has been amended again, by GCO 1983-2.

* * * *

GCO 1983-1

PROCEDURES UPON COMPLETION OF CONDITIONS FOR DEFERRED IMPOSITION OF SENTENCE

June 8, 1983

This order is issued to establish procedures to be followed upon completion of conditions for deferred imposition of sentence.

1. Upon completion by the defendant of all conditions set forth in the Court's sentencing order, counsel for the defendant shall notify the Justice Ombudsman in the state that the conditions have been satisfactorily completed and request certification from the Justice Ombudsman to that effect.

2. The Justice Ombudsman shall promptly review the facts in the case and shall independently verify satisfactory completion by the defendant of all the conditions. Upon such verification, the Justice Ombudsman shall provide written certification to the Court that the conditions have been fulfilled.

3. Upon receipt of the verification the Court may, without hearing, issue an order declining to impose sentence.

4. In the alternative, the Court may set a hearing concerning possible imposition of sentence and, after hearing, may impose such sentence as is appropriate. No sentence shall be imposed unless the Court first holds a hearing and then explains, in writing, reasons for imposition of sentence.

If no sentence is imposed, the record of the Court proceedings shall be maintained on record in the Court and shall be subject to review by the public, but the case shall not be considered a conviction of defendant for any purpose under the laws of the Federated States of Micronesia.

* * * *

GCO 1983-2

AMENDMENT TO THE RULES FOR
ADMISSION TO PRACTICE

September 2, 1983

The Rules for Admission to Practice Before the Supreme Court of the Federated States of Micronesia are hereby amended, by adding the following new paragraph VII to read as follows:

VII. The Model Rules of Professional Conduct.

The Model Rules of Professional Conduct as adopted by the American Bar Association on August 2, 1983, are hereby made applicable to the actions and practice of attorneys and trial counselors before this Court. The word "lawyer" as it appears in the Model Rules of Professional Conduct shall be deemed to refer to attorneys and trial counselors practicing before this Court.

* * * *

GCO 1983-3

CITATION FORM

September 23, 1983

Replaced and superseded by 1983-4

* * * *

GCO 1983-4

CITATION FORM

December 15, 1983

This Order supersedes and replaces the earlier General Court Order No. 1983-3, which should be DISCARDED.

The forms of citation to legal authority indicated herein shall be used in all documents filed with this Court. A standardized format is used in order to promote clarity, completeness, and ease of locating cited material.

1. GENERALLY.

The official citation form shall be as prescribed in the latest edition of a Uniform System of Citation (available from The Harvard Law Review Association Gannett House, Cambridge, Massachusetts 02138), except as provided in 1(a), below. Citation form for FSM and Trust Territory legal authority is set out in (2) and (3), respectively, below.

(a) Parallel citations to United States Supreme Court cases shall be given because only one of the applicable reporters may be available in FSM law libraries:

Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 97 S. Ct. 1076, 51 L. Ed. 2d 326 (1977).

(b) Subsequent history, however, need to be cited only to the U.S. reporter:

Sprunt v. Denver & R.G.W.R.R., 340 P.2d 85 (Utah 1959), cert. denied, 361 U.S. 900 (1959)

(c) Pinpoint cites (references to specific pages) shall be given for the U.S. reporter and as convenient for the unofficial reporters:

Darr v. Burford, 339 U.S. 200, 204-10, 70 S. Ct. 587, 509-93, 94 L. Ed. 761 (1950).

2. FEDERATED STATES OF MICRONESIA LEGAL AUTHORITY.

(a) FSM Supreme Court cases:

(1) Trial division. Show state of decision. State shall be identified as Kos., Pon., Truk, Yap;

Lonno v. Trust Territory (I), 1 FSM Intrm. 53 (Kos. 1982).

(2) Appellate division:

Alaphonso v. FSM, 1 FSM Intrm. 209 (App. 1982).

(b) FSM Constitution:

FSM Const. art. X, § 3(a).

(c) FSM statutes:

If codified:

40 F.S.M.C. 401.

If uncoded, cite by public law number:

Pub. L. No. 1-134, 1st Cong., 4th Reg. Sess. (1980).

(d) FSM Supreme Court rules:

Sp. Joint R. 1
FSM Adm. R. I(A)
FSM App. R. 2
FSM Civ. R. 12
FSM Crim. R. 42(a)
FSM Evid. R. 401
FSM GCO 1981-1

(e) FSM constitutional history materials:

I J. of Micro. Con. Con. 299

If a committee report:

SCREP No. 14, II J. of Micro. Con. Con. 783.

- (f) FSM legislative history material:

J. of 1st Cong. 2nd Reg. Sess. 73 (1979).

If a committee report:

SCREP No. 1-121, J. of 1st Cong., 2nd Reg. Sess. 239 (1979).

- (g) Congress of Micronesia legislative history material:

Senate J. of 4th Cong., 2nd Reg. Sess. 145-49 (1972)

House J. of 4th Cong., 2nd Reg. Sess. 83 (1972)

If a committee report:

SCREP No. 119, Senate J. of 4th Cong., 2nd Cong. Sess. 410-11 (1972)

- (h) Administrative and executive material:

FSM Pub. Serv. Reg. 18.4

Exec. Pol. 7, 1 (Jan. 5, 1982).

Exec. Proc. F103 (July 1, 1982).

Adm. Dir. 13 (Aug. 26, 1982).

3. TRUST TERRITORY LEGAL AUTHORITY.

- (a) Trust Territory High Court cases:

- (1) Trial division--show place of decision as: Kos., Marsh., Mrns., Pal., Pon., Truk, Yap.

Bini v. Mwedriktok, 5 TTR 451 (Marsh. 1971).

- (2) Appellate division:

Trust Territory v. Tarkong, 5 TTR 549 (App. 1971).

- (b) United Nations Trusteeship Agreement:

Trusteeship Agreement for the Former Japanese Mandated Islands, July 18, 1947, United Nations-United States, 61 Stat. 3301, T.I.A.S. No. 1665, 8 U.N.T.S. 189, reprinted in FSM Code at 895-99 (1982).

- (c) Joint Resolution of the United States Congress regarding the Trust Territory:

48 U.S.C. 81-1687, reprinted in FSM Code at 901-03 (1092).

- (d) United States Executive Order regarding the Trust Territory:

U.S. Exec. Order No. 11,021, 3 C.F.R. 600 (1985), reprinted in FSM Code at 907-09 (1982).

(e) United States Department of Interior Secretarial Orders:

U.S. Dept. Int. Sec. Order 3039, 44 Fed. Reg. 28116 (1979), reprinted in FSM Code at 946-50 (1982).

(f) Trust Territory statutes:

11 TTC 201

For codifications earlier than 1980, also cite the date:

11 TTC 201 (1970)
TTC 378 (1966).

* * * *

1985-1 Vacant

* * * *

GCO 1985-2

AMENDMENT TO RULES FOR
ADMISSION TO PRACTICE

May 9, 1985

The Court's present rules for admission permit law graduates from "accredited law schools" to take the Federated States of Micronesia written examination. FSM Adm. R. II.A.2.

Further reflection and experience in applying the rule has revealed that the rule in its present form is not sufficiently precise. First, students who attend law schools away from the Federated States of Micronesia and outside the jurisdiction of the United States frequently come to the Federated States of Micronesia with little or no knowledge of the case law or other principles of law, especially constitutional law principles, which form the foundation of the law in the Federated States of Micronesia. It is apparent that for such persons to function adequately they must first engage in a concentrated program to obtain and demonstrate knowledge of these core principles.

In addition, the Court has learned that in some jurisdictions, most notably Papua New Guinea, graduation from the local law school is not sufficient to qualify the graduate to practice law. Additional requirements must be met. In Papua New Guinea, for example, the additional requirements which must be fulfilled before a law graduate can be held out as an attorney are: (1) completion of a one year course in practical legal methods conducted by the Legal Training Institute; and (2) an additional six month internship under the close supervision and tutelage of an attorney. Since Papua New Guinea students are not entitled to practice law in Papua New Guinea immediately upon graduation, it is entirely reasonable and even more appropriate to impose similar requirements upon such graduates here.

Accordingly, through the past several years it has been the policy of this Court that each Papua New Guinea law student shall complete a one year internship with the Court prior to being given the opportunity to take the bar examination on the basis of graduation from law school. This has proved an effective device to assist students to sharpen their skills, to increase their knowledge of law within the Federated States of Micronesia, and to become familiar with practical aspects of the practice of law here.

Now therefore pursuant to the rulemaking power granted to the Chief Justice under Article XI, Section 9 of the Constitution of the Federated States of Micronesia and by the Judiciary Act of 1979, 4 F.S.M.C. 117, it is hereby ordered that the rules of admission to practice before the Supreme Court of the Federated States of Micronesia are hereby amended, by adding a provision to Paragraph II, A.2. so that paragraph now reads as follows:

II.A.2 Law School Graduation Standard - The applicant shall submit to the Court satisfactory proof of graduation from a law school whose graduates are entitled, upon fulfillment of requirements generally applicable in that jurisdiction for graduates of accredited law school, to admission as attorneys to practice in the jurisdiction where the law school is located, provided however, that students who graduate from law schools located outside of the jurisdictions of the Federated States of Micronesia and of the United States shall be required to complete a one year period of internship, under terms and conditions approved by this Court, prior to applying for permission to take the examination.

* * * *

GCO 1985-3

AMENDMENTS TO RULES FOR
ADMISSION TO PRACTICE

July 11, 1985

The Rules of Admission to Practice Before the Supreme Court of the Federated States of Micronesia are hereby amended, by modifying Rule I.B. to read as follows:

B. Trial Counselors. Any citizen of the Federated States of Micronesia who has been certified and is entitled to practice as a trial counselor before the highest court in any state within the Federated States of Micronesia shall be certified as a trial counselor entitled to practice law, under the supervision of an attorney, before the Supreme Court, upon tendering to this Court satisfactory proof of these facts and moral and character certifications in compliance with Paragraph II.B. of these Rules of Admission.

* * * *

GCO 1985-4

AMENDMENT TO RULE 4(d)(6)
OF THE RULES FOR CIVIL PROCEDURE

October 31, 1985

The Court having been advised that some state attorneys have encountered delays in being notified of lawsuits filed against the states under our current Rules of Civil Procedure, because the current rules do not require that service be made upon the chief legal officer of the state, although service upon the office of the FSM attorney general is required when lawsuits are initiated against the national government, and

It appearing that a requirement of service directly upon the chief legal officer of the state would enhance the likelihood of a prompt, enlightened and coordinated response by governments in lawsuits against a state or municipal corporation or other governmental organization, and

It further appearing that the addition of a requirement of service upon the chief legal officer of the state would not result in significant expense of hardship of any kind to opposing parties,

NOW THEREFORE IT IS HEREBY ORDERED THAT the Rules of Civil Procedure for this Court are hereby amended, by modifying Rule 4(d)(6) to read as follows:

4(d)(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by delivering a copy of the summons and of the complaint to the chief executive officer thereof and by delivering, or sending by registered or certified mail, a copy of the summons and of the complaint to the attorney general or chief legal officer of that state; or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.

* * * *

GCO 1985-5

POWER OF JUSTICE OMBUDSMAN
TO CONFINE FOR VIOLATION OF SENTENCE, OR
PRE-TRIAL RELEASE ORDER, OR STAY

October 31, 1985

A study of any Justice Ombudsman of the Supreme Court of the Federated States of Micronesia is to implement pre-trial release orders and sentences of this Court and to monitor compliance with those orders and sentences by persons subject thereto.

Jailers within the Federated States of Micronesia are hereby notified and instructed that any Justice Ombudsman of the Federated States of Micronesia Supreme Court is empowered to require confinement of any person subject to such a sentence or pretrial order or other Court-imposed restrictions or conditions upon presentation of such person to the jailer by the Justice Ombudsman, and execution of a written statement by the Justice Ombudsman that he:

1. has determined that there is no judicial officer immediately available to issue an order for confinement; and

2. has probable cause to believe that the person presented at the jail has violated conditions or terms of the sentence or order to which the person is subject; and

3. will file a copy of his written statement with the clerk's office of the Supreme Court of the Federated States of Micronesia and will notify a Justice of this Court as soon as reasonably possible but in any event within sixty (60) hours of the time of confinement.

IT IS HEREBY ORDERED that upon fulfillment of the above conditions, the jailer shall accept and retain custody of such person as instructed in writing by the Justice Ombudsman up to a maximum of 72 hours, and then shall release such person in absence of further notice from the Court.

This order replaces and supersedes General Court Order 1982-2.

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GCO 1985-6

EXTRAORDINARY PROCEDURES FOR
ISSUANCE OF WARRANTS BY TELEPHONE

October 31, 1985

It sometimes occurs that there is no resident judge or any judicial officer within a particular State available to issue warrants under Rule 41 of this Court's Rules of Criminal Procedure.

This General Court Order is adopted, applicable to these circumstances only, for purposes of expediting the administration of justice in such a State until a judge or judicial officer becomes available there.

Only for issuance in such a State of Warrants to be enforced within that State, Rule 41 of this Court's Rules of Criminal Procedure is amended to include the following subsection, as Rule 41(c)(2).

Rule 41(c)(2)
Warrant Upon Oral Authorization

(A) General Rule. At times when no judicial officer is available within a State upon specific written or oral authorization by a Justice of the Supreme Court, this Court's Clerk of Courts or Justice in that State may issue a warrant based upon papers filed with the Federated States of Micronesia Supreme Court and satisfying all other requirements of this Rule 41, the contents of which are communicated by telephone or by other appropriate means to the authorizing Justice. The following procedures shall be employed.

(B) Application. The person who is requesting a warrant shall file with this Court in the State where no judicial officer is then available

documents which that person believes satisfy all requirements of Rule 41, the together with documents showing unavailability of a judicial officer in the state. This Court's Clerk of Court or Justice Ombudsman in that State shall then administer the oath for the affidavit(s) submitted to establish the grounds for the application. Application for the warrant may then be made by use of either of the following methods:

1. Telephone. Upon request of the person asking for the warrant, the Clerk of Court or Justice Ombudsman shall promptly place a call to a Justice of the Supreme Court and the documents shall be read verbatim to the Justice. This may be done in the presence of the person making application, and that person may participate in the telephone conversation, but the Clerk of Court or Justice Ombudsman must remain physically present throughout the telephone conversation and shall verify the accuracy of the reading of the documents.

2. Submission of Documents. A full duplicate original set of the documents may be forwarded to the Justice with written certification by the Clerk of Courts or Justice Ombudsman that the papers submitted are true and complete copies of the documents filed with the Court in Kosrae.

(C) Authorization. If the Justice is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall authorize the Clerk of Courts or Justice Ombudsman to issue a warrant identifying the property or person to be seized, naming or describing the place to be searched, and indicating the period during which the warrant will remain in effect. Before signing the warrant, the Clerk of Courts or Justice Ombudsman shall read the warrant to the Justice. If the warrant is satisfactory, the Justice may authorize the Clerk or the Justice Ombudsman to sign it, whereupon the authorized person shall immediately sign the original warrant, and duplicate copy thereof and enter on the face of both documents the time when the warrant was ordered to be issued and the name of the authorizing Justice.

(D) Records. Upon issuance of a warrant pursuant to this Rule, one copy of all documents involved shall be retained by the Clerk of Courts and duplicate copies of all documents shall immediately be forwarded to the authorizing Justice.

This order supersedes and replaces General Court Order 1983-85.

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GCO 1985-7

TRANSCRIPT AND TRANSLATOR FEES

October 31, 1985

The Court wishes to extend all reasonable assistance to counsel and parties in preparing accurate transcripts and translations of court proceedings and depositions in timely fashion. Accordingly, the Court has acquired sophisticated electronic court reporting equipment. Each secretary working for a Justice of the Court and various other members of the Court's staff have been trained to operate the equipment and to prepare accurate transcript of the tape records obtained.

Therefore, pursuant to the rulemaking authority granted to the Chief Justice under Article XI, Section 9 of the Constitution of the Federated States of Micronesia and by the Judiciary Act of 1979, Public Law No. 1-31, the following rules concerning preparation of transcripts are adopted:

1. To assist in the development of an efficient system of justice in the Federated States of Micronesia, the Court will attempt to work with counsel and parties to make available court recording equipment and staff, including reporters, and translators, for the recording of depositions and the preparation of transcripts for litigation involving persons within the Federated States of Micronesia, including litigation occurring in a forum other than the Supreme Court.

2. For proceedings other than formal court proceedings before this Court, the Court staff person must take leave from this Court and must receive payment from the litigants for appearance and attendance at the deposition or other testimonial proceedings. The amount payable to a translator or court reporter for each day appearance at such a proceeding shall be \$10.00, with an additional \$3.00 per hour for attendance. A translator or court reporter shall also be reimbursed by the litigants for any expenses incurred in attending the proceedings.

3. It is the responsibility of counsel to assure that requests for transcripts are made in writing and are sufficiently specific to leave no doubt as to the testimony being requested.

4. Payments for preparation of transcripts shall be made to the reporter directly and not to the Court. The amounts payable shall be \$2.50 per transcript page (an original and two copies will be prepared; the original will be filed with the Court, under seal in the case of a deposition transcript, and the two copies will be provided to requesting counsel) with the following exceptions:

a. In forma pauperis proceedings - Where the indigent party is represented by the Office of the Public Defender or by Micronesian Legal Services Corporation in in forma pauperis proceedings, the transcript fee shall be reduced to \$1.25 per page, payable by the public agency rendering legal representation, and not by the defendant personally.

b. Accelerated preparation - Normal transcript preparation time shall be 75 days from the date of request. If delivery is requested and made on an accelerated basis (that is, more rapid production than 30 days) the transcript fees shall be increased by 50 percent.

5. Additional certified copies will be supplied at a rate of fifty cents per page.

6. Delivery of the completed transcript shall be made against payment of the transcript fee.

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GCO 1985-8

MISCELLANEOUS AMENDMENTS

November 13, 1985

The following amendments of existing General Court Orders are hereby adopted.

1. GCO 1981-1 is amended by changing numbered paragraph 9 to authorize assistant clerks to administer oaths, take acknowledgements and certify documents.

2. GCO 1982-2 is amended to designate the National Justice Ombudsman as the official responsible for developing procedures to compile a list of certified assessors for custom and traditional law.

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GCO 1985-9

NOTICES TO CRIME VICTIMS
AND PARENTS OF YOUTHFUL OFFENDERS

November 18, 1985

A principal purpose of the rule of law is to protect the innocent. Another is to provide a proper and just response to the conduct of the offender.

Yet, far too often our criminal justice system ignores the interests of victims of crime and in resolving claims against young offenders fails to contact and work with those most familiar with youthful offenders and most interested in obtaining improved conduct from them.

It has been the policy of this Court from its inception that the Justice Ombudsman will interview victims of the crime and parents and guardians of the offender in preparing a presentence report and arriving at a recommended sentence.

Still, it has become apparent that this is not enough. In some instances victims of crime are never notified of hearing dates or the resolution of the case. Some parents and guardians ignore and stay away from the proceedings as though they have no interest either in the case or in the young offenders under their supervision. Too often plea agreements are reached and criminal cases settled without any showing that the victim has been consulted, and without any indication that the parents or other responsible persons are assuming responsibility for the conduct and supervision of the youthful offender.

This rule is adopted to enable victims of crimes to be informed of the progress of the case and to be heard concerning their own knowledge and perspective about the case; and to enhance the ability of our system of justice to work with those persons closest to youthful offenders.

NOW THEREFORE IT IS HEREBY ORDERED that:

1. Victims - The government shall be responsible for notifying any victim(s) of crimes charged of the hearing dates and that the victim should feel free to attend all hearings. At the

discretion of the trial court, hearings may be postponed in those instances where the victim has not been so notified in advance.

The government shall also notify any victim(s) of the crime(s) charged of any proposed plea agreement, and obtain the comments of the victim, prior to tendering the agreement to the Court. Absent a showing of good cause, the Court may reject any proposed plea agreement submitted without compliance with this requirement.

2. Parents, guardians or supervisors - In any case where a person accused is 22 years of age or younger, counsel for the defense is responsible for identifying the parents or other person(s) with primary supervisory responsibility for that accused, and assuring the presence of such person(s) at all hearings in the case.

At the discretion of the trial court, any hearing after the initial appearance may be postponed for noncompliance with this requirement, and other sanctions may be applied.

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GCO 1986-1

AMENDMENT TO RULE 11(e) OF THE RULES
OF CRIMINAL PROCEDURES

April 9, 1986

Rule 11 (e) of this Court's Rules of Criminal Procedure are hereby amended by deleting subparts (1) through (6) of Rule 11(e) and substituting therefore the following new Rule 11(e).

(e) Plea Agreement Procedure

(1) In General. The prosecutor and counsel for the defendant, or the defendant when acting pro se, may enter into plea agreements that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to an included or related offense, the prosecutor will take certain actions or adopt certain positions, including the dismissal of other charges and the recommending or not opposing of specific sentences or dispositions on the charge to which a plea was entered. The court shall not participate in discussions leading to such plea agreements nor be bound thereby.

(2) Notice of Plea Agreement. Any plea agreement shall be disclosed by the parties to the court at the time the defendant tenders his plea. Failure by the prosecutor to comply with such agreement shall be grounds for withdrawal of the plea.

(3) Warning to Defendant. Upon disclosure of any plea agreement, the court shall not accept the tendered plea unless the defendant is informed that

the court is not bound by such agreement.

(4) Inadmissibility of Plea Discussions. Except as otherwise provide in this paragraph, evidence of a plea of guilty, later withdrawn, or of a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the offense charged or any other offense, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or penal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty later, later withdrawn, a plea of nolo contendere, or an offer to plead guilty or nolo contendere to the offense charged or any other offense is admissible in a penal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

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

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GCO 1986-2

AMENDMENT OF RULES
FOR ADMISSION TO PRACTICE

April 10, 1986

It appears proper to permit persons who respond effectively to some part(s), but not all, of an examination, to receive partial credit toward passage of the examination. It is therefore ordered that Rule 11.C. of this Court's Rules for Admission to Practice are amended by modifying the provisions under the heading, "The Written Examination" in Rule 11.C. to read as follows:

The Written Examination

All applications for written examination shall be filed, with supporting documents and application fee of twenty five (\$25.00) in the offices of the FSM Supreme Court in Pohnpei at least 30 days before the date scheduled for the written examination, although, upon showing of good cause, the Court may permit filing of applications and documents after that time.

An examination will normally be administered on the first Thursdays of March and August of each year, and the duration of each examination will be approximately five (5) hours. The written examination may cover any legal issue relevant to the practice of law within the Federated States of Micronesia constitutional law, Federated States of Micronesia statutory law, Micronesian customary law, criminal law, legal ethics, evidence, admiralty, legal research, Federated States of Micronesia procedural rules, and administrative law. The examination questions, and answers, shall be in English.

Any citizen of the Federated States of Micronesia who has graduated from a law school within the meaning of Rule II(a)(2) of these rules, and any FSM citizen who has passed at least one of the three sections of the examination, shall be permitted to take an unlimited number of examinations until such person has successfully completed the entire

examination. All other applicants shall be limited to a maximum of three (3) written examinations within a five (5) year period.

The examination shall consist of the following three sections:

<u>Section</u>	<u>Percent of Exam</u>
General	70
Evidence	20
Ethics	<u>10</u>
TOTAL	100%

A score of 65% of the points available in an examination will be a passing score. Any person who earns a score equal to 65% or more of the points available in any of the three sections identified above will receive credit for the section(s) even if he or she fails to earn 65% or more of the points available overall in that exam. Thereafter, that person need not only to complete successfully the remaining section(s) in subsequent examinations in order to receive credit for successful completion of an entire examination.

Upon Court certification of successful completion of the examination, the applicant shall be certified as an attorney entitled to practice law before the Federated States of Micronesia Supreme Court.

* * * *

GCO 1986-3 PRISONER GROUP WORK PROJECTS AUTHORIZED

Numerous persons convicted and sentenced by this Court spend their days in jail idle, with no benefit to themselves or others. Yet the wrongdoing of these persons has caused substantial expenses to their fellow citizens. Taxpayers provide these convicted persons with shelter and food and pay the salaries of police officers who guard them.

This is a new nation, with limited resources. There is here a long history of people working for the good of their community under the direction of a leader. There is much to be done here. Surely it is odd that under these circumstances, convicted persons should be permitted only to receive from, never give to, their communities.

Many penal authorities and commentators have recognized that prisoners may realize psychological and training benefits if they are given constructive work to perform as partial payment of their debt to society.

It therefore appears that it may be healthier for prisoners as well as communities of the Federated States of Micronesia if custodians of prisoners are authorized to assign selected prisoners to appropriate work projects.

NOW THEREFORE it is hereby adopted as a rule and policy of this Court that, except as otherwise expressly indicated by the sentencing judge in the sentence or other court order, supervisors and custodians of persons convicted and sentenced to jail by this Court are authorized and encouraged to provide useful physical labor group work projects for such prisoners during the time of their imprisonment, provided that: (a) no such project shall conflict with specific community service, work release or other alternative sentencing provisions made by this Court for the prisoner; and (b) any such project must be humane, reasonable and nondegrading; and (c) all prisoners must remain under police custodial supervision at all time, and security must be maintained, so that the safety of the general community is not jeopardized.

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GCO 1987-1 AMENDMENT TO TRANSCRIPT AND TRANSLATOR FEES (GCO 1985-7)

General Court Order 1985-7, Transcript and Translator Fees, is hereby amended by modifying Paragraph 2, No. 2 to read as follows:

2. For proceedings other than formal court proceedings before this Court, the Court staff person must take leave from this Court and must receive payment from the litigants for appearance and attendance at the deposition or other testimonial proceedings. The amount payable to a translator for each day of appearances at such proceeding shall be \$10.00 with an additional payment of \$4.25 per hour attendance. A translator or a court reporter shall also be reimbursed by litigants for any incurred in attending the proceedings.

* * * *

GCO 1987-2 JUDICIAL BRANCH TO EMPLOY PER DIEM RATE SET BY EXECUTIVE ORDER EFFECTIVE
OCTOBER 1, 1987 September 16, 1987

Attached is the recent order of President John Haglelgam adjusting per diem rates of executive branch government travelers effective October 1, 1987.

It is the administrative policy of the judiciary to defer to administrative policy decisions of the President or other executive branch officials concerning administrative matters, except to the extent a particular policy would hamper the efforts the judicial branch to carry out the judiciary's constitutional role, or would otherwise be plainly inappropriate for judiciary implementation.

In this instance, no judicial branch requirements mandate departure from the executive branch policy. Therefore it is ordered that the Judicial Branch of the Federated States of Micronesia shall employ the per diem rates specified in President Haglelgam's order, effective October 1, 1987.

This does not affect the longstanding judicial branch policy that a traveler seeking full per diem reimbursement shall submit a receipt showing the traveler stayed at a hotel during the time in question. It remains judiciary policy that a traveler who does not stay at a hotel, but instead is a guest at the home of family or friend, shall receive a maximum of 80% of the normal per diem rate.

* * * *

GCO 1987-3 AMENDMENT TO RULES OF APPELLATE PROCEDURE October 2, 1987
BY ADDING NEW RULE 1(c)

This Court's Rules of Appellate Procedure are hereby amended by adding a new Rule 1(c) as follows:

- (c) PLACE FOR FILING - Except by order of the Court, any papers required by these rules to be filed with the Federated States of Micronesia Appellate Division shall be filed with the Chief Clerk of the FSM Supreme Court in Pohnpei, who is also designated as the clerk of the appellate division. The address is Post Office Box J, Pohnpei FM 96941.

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GCO 1989-1 AMENDMENT OF RULES 3(a), (d) AND (e) AND November 1, 1989
RULE 4(a)(1) OF THE RULES OF APPELLATE PROCEDURE

Rules 3(a), (d), and (e) and Rule 4(a)(1) of the FSM Supreme Court's Rules of Appellate Procedure are hereby amended to read as follows:

Rule 3. How Taken.

(a) FILING THE NOTICE OF APPEAL. An appeal permitted by these rules shall be taken by filing a notice of appeal with the clerk of the FSM Supreme Court Trial Division in the State in which the decision appealed from was made or, at the option of the appellant, directly with the clerk of the FSM Supreme Court Appellate Division at P.O. Box J, Pohnpei 96941. The notice of appeal must be filed within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the Supreme Court Appellate Division deems appropriate, which may include dismissal of the appeal.

(d) SERVICE OF THE NOTICE OF APPEAL. The clerk of the FSM Supreme Court who accepts filing of the notice of appeal shall serve notice of that filing on the other parties by mailing a copy to counsel of record of each party other than the appellant, or, if a party is not represented by counsel, to the party at that person's last known address. If the notice is filed with

a court other than the court from which an appeal is taken, the clerk accepting notice shall promptly notify the court appealed from of the filing of the notice of appeal. Any clerk of the FSM Supreme Court Trial Division who accepts filing of a notice shall immediately transmit a copy of the notice of appeal to the clerk of the FSM Supreme Court Appellate Division in Pohnpei, together with the names of the parties to whom copies of the notice of appeal have been mailed, with the date of mailing.

(e) PAYMENT OF FEES. Upon the filing of any notice of appeal, the appellant shall pay to the clerk of court with whom the notice is filed such fees as may be established by statute or by court rule.

Rule 4. When Taken.

(a) APPEALS IN CIVIL CASES.

(1) In civil cases appeals are permitted

(A) from all final decisions of the Federated States of Micronesia Supreme Court Trial Division; from final decisions of state or local courts in cases which required interpretation of the Constitution, national law, or a treaty; and from final decisions in the highest state courts in all other cases for which appeals to this Court are permitted by the pertinent state constitution;

(B) from interlocutory orders of the Federated States of Micronesia Supreme Court Trial Division granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions;

(C) from interlocutory orders of the Federated States of Micronesia Trial Division appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purpose thereof, such as directing sales or other disposals of property; and

(D) from interlocutory decrees of the Federated States of Micronesia Supreme Court Trial Division determining the rights and liabilities of the parties in admiralty cases.

The notice of appeal required by Rule 3 shall be filed within 42 days after the date of the entry of the judgment or order appealed from. If a notice of appeal to the Appellate Division of the FSM Supreme Court is mistakenly filed with a court other than that specified in Rule 3, the clerk of that other court may note thereon the date on which the notice of appeal was received and promptly transmit it to the clerk of the FSM Supreme Court Appellate Division in Pohnpei. The notice of appeal shall be deemed properly filed on the date so noted.

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GCO 1989-2

AMENDMENT OF COURT ORDER 1981-5
(ORDERS GRANTABLE BY CLERKS)

November 1, 1989

In order to allow clerks to grant orders of dismissal for failure to

prosecute and orders enlarging time by up to 30 days for pleadings or defenses, General Court Order 1981-5 regarding orders grantable by clerks is hereby amended and replaced by this General Court Order 1989-2, to read as follows:

Any clerk of this Court is authorized to grant, sign and enter the following orders without further direction by the Court, but any orders so entered may be suspended, altered, or rescinded by the Court for cause shown:

1. Orders specially appointing persons of suitable discretion and eighteen (18) years of age or older to serve process.
2. Orders for the substitution of attorneys in civil cases when requested and consented to by the parties.
3. Orders pursuant to unopposed motions to extend once for 30 days or less the time in which to plead or otherwise defend or to make any motion except a motion for a new trial, if the time originally prescribed to plead, defend or move has not expired.
4. Orders on consent satisfying a judgment or orders on consent for the payment of money, annulling bonds and exonerating sureties.
5. Judgments upon decisions of the Court in circumstances authorized in FSM Civ. R. 58; default judgments as provided in FSM Civ. R. 55(b)(1), and any other orders which under FSM Civ. R. 77(c) do not require special direction by the Court, including orders for appearances for examination in open court pursuant to FSM Civ. 69(a), orders to show cause where a judgment debtor has failed to appear when ordered to do so in a Court under FSM Civ. 69(a), judgments based upon a stipulation of the parties for entry of judgment, and orders dismissing a case for failure to prosecute, issued pursuant to the inherent powers of the court.

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GCO 1990-1

NOTICE BY FACSIMILE (FAX) EQUIPMENT

March 15, 1990

Facsimile equipment (fax) has been installed in three of the four locations of the FSM Supreme Court. The fax numbers for those locations are as follows:

Chuuk	<u>330-4126</u>
Pohnpei	<u>320-2756</u>
Yap	<u>350-2336</u>

In light of this development it seems appropriate to set procedures concerning the transfer of information by fax.

The Court has considered, but rejected, the possibility of adopting a rule authorizing, on a general basis, the filing of documents through the use of fax. This decision has been made, among other reasons, because many fax transcriptions remain legible only a limited and uncertain period of time. Thus filed fax documents would have to be handled specially by the clerks for eventual replacement by standard typewritten documents. The Court has concluded that an effort

to accommodate counsel by accepting filing through the use of fax would impose an undue burden upon the clerks and could also result in additional paperwork, expense, duplication efforts, and confusion.

On the other hand, it does appear that fax could be used effectively, and to the benefit of all concerned, for Court notice of hearings. There would appear no need for subsequent replacement of notices of hearing and Court notice to counsel through fax would be a speedier and more dependable form of notice than any other alternative.

Based upon these considerations, IT IS ORDERED THAT:

1. The office of the clerk of court is authorized to provide notice of hearings to counsel through fax, but only for counsel living on the same island from which the notice is sent, and only when the fax can be used for that purpose without cost to the Court.

2. In absence of order of a justice of this Court, given for special cause, the office of the clerk of court shall not accept for filing any document transmitted to the clerk of court through the fax machine.

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GCO 1990-2

AMENDMENTS TO THE RULES OF
CRIMINAL PROCEDURES FOR THE TRIAL
DIVISION OF THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA

April 25, 1990

The Court has made extensive amendments to the FSM Rules of Criminal Procedure pursuant to the Chief Justice's rulemaking authority under the FSM Const. art. XI, § 9 (c).

The great majority of the amendments are technical or stylistic and are not intended to introduce substantive changes. A number of substantive amendments have been made as well, however. The following are some of the most significant:

1. Arraignments have been eliminated from FSM criminal procedure. Instead, the initial appearance, Rule 5, shall provide opportunity for the court to notify defendants of their rights and, at the trial court's discretion, to require defendants to plead.

2. The requirements of General Court Order 1985-9 have been included directly in the rules. Thus, plea agreement procedures now require notice of the crime victims (Rule 11(e)), the government must give the victims notice of all proceedings (Rule 43(e)), and defendants under 23 years of age must have a parent or supervisor present at all proceedings (Rule 43(d)).

3. Rule 32.1(c) has incorporated the justice ombudsman's power to confine persons violating the terms of supervised release, as previously set forth in General Court Order 1985-5.

4. Subject to certain hearing requirement, Rule 46(a)(1)(E) authorizes pretrial detention where other means will not suffice to assure the presence of the defendant or the safety of the victim and the community.

Numerous other more minor substantive changes also have been made, and all members of

the bar are urged to examine the new rules carefully.

NOW, THEREFORE, IT IS HEREBY ORDERED that the amended Rules of Criminal Procedure for the Trial Division of the Supreme Court of the Federated States of Micronesia issued on this date, April 25, 1990 shall govern all future criminal proceedings, and as far as just and practicable all criminal proceedings now pending, in the FSM Supreme Court trial division.

* * * *

GCO 1991-1

REVISED RULES OF APPELLATE PROCEDURE

June 10, 1991

In recent years, it has become apparent that various practitioners before the appellate division of the Federated States of Micronesia Supreme Court have received differing versions of the Rules of Appellate Procedure. To end the uncertainty caused by this situation, the Court now adopts a revised and updated version of the Rules of Appellate Procedure, effective as of June 10, 1991. The revised rules are issued pursuant to the Chief Justice's rulemaking authority under FSM Const. art. IX, c). The revised rules contain numerous amendments, many of which are technical or stylistic, but some of which are substantive as well. Some of the more important changes are as follows:

1. Filing of notice of appeal - Rule 3(a) is amended to specify that all notices of appeal to the FSM Supreme Court appellate division are to be filed with the clerk of the FSM Supreme Court trial division in the State in which the decision appealed from was made or, at the option of the appellant, directly with the clerk of the FSM Supreme Court appellate division.

2. Preparation and transmission of the record on appeal - Rules 10 and 11 have been revised considerably to assist counsel and the Office of the Chief Clerk in preparing the record for appeal expeditiously.

3. Appendix to briefs - Rule 30 provides for preparation of an appendix which shall serve as the primary reference for the parties and Court in reviewing the record of proceedings appealed from.

4. Six-month goal - A new rule 45(e) is adopted to announce the goal that opinions are to be issued no more than six months after oral argument or submission of a case.

Numerous other more minor substantive changes also have been made, and all members of the bar are urged to examine the rules carefully.

NOW THEREFORE IT IS HEREBY ORDERED that the revised Rules of Appellate Procedure of the Supreme Court of the Federated States of Micronesia issued as of June 10, 1991, shall govern all future appellate proceedings, and as far as just and practicable all appellate proceedings now pending, in the FSM Supreme Court appellate division.

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GCO 1991-2

AMENDMENTS OF RULES OF CIVIL PROCEDURE

July 4, 1991

The Supreme Court of the Federated States of Micronesia is now issuing updated and revised Rules of Civil Procedure. These revised rules are adopted pursuant to the Chief Justice's rulemaking authority under FSM Const. art. IX, § 9(c). Although the rules contain the designation "(11/90)" at the lower corner of each page, they become effective as of the date of this

Order 1991-2.

This revised set of the rules contain some amendments, most of which are technical or stylistic and are not intended to introduce substantive changes. A number of substantive amendments have been made as well, however. Perhaps the most significant among these is the modification of Rule 11 to impose duties of inquiry upon an attorney or trial counselor who signs pleadings or papers filed in Court. All members of the bar are urged to examine the rules carefully.

NOW THEREFORE IT IS HEREBY ORDERED that the amendments to the Rules of Civil Procedure for the trial division of the Supreme Court of the Federated States of Micronesia identified at the lower right hand corner as "(11/90)" are adopted effective as of July 4, 1991. These rules govern all future civil proceedings, and as far as just and practicable all civil proceedings now pending, in the FSM Supreme Court trial division.

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GCO 1991-3 AMENDMENTS TO GENERAL COURT ORDER 1985-7 August 28, 1991

The following rule is adopted to amend and replace General Court Order 1985-7.

The Court wishes to extend all reasonable assistance to counsel and parties in preparing accurate transcripts and translations of court proceedings and depositions in timely fashion. Accordingly, the Court has acquired electronic court reporting equipment. Each secretary working for a justice of the Court and various other members of the Court's staff have been trained to operate the equipment and to prepare accurate transcripts of the tape records obtained.

On the other hand, it is not appropriate for staff and employees of the national judiciary to engage in free-lance arrangements with counsel or litigants to provide transcript recording and preparation, translation, or other services of a kind typically provided by judiciary staff. To prevent possible conflicts and charges of favoritism, it is in the public interest that the Court regulate all provision of such services by the Court staff. In doing so however, the Court should guard against the possibility that Court employees and staff who provide the kinds of services referred to in this Court order may become embroiled in disputes among counsel and litigants as to the provision and payment of those services.

Therefore, pursuant to the rulemaking authority granted to the Chief Justice under article XI, of the Constitution of the Federated States of Micronesia and by the Judiciary Act of 1979, 4 F.S.M.C. 11, 112 and 117, the following rules concerning preparation of transcripts are adopted:

1. To assist in the development of an efficient system of justice in the Federated States of Micronesia, the Court will attempt to work with counsel and parties to make available court recording equipment and staff, including reporters and translators, for the recording of depositions, the preparation of transcripts and translation of documents for litigation involving persons within the Federated States of Micronesia, including litigation occurring in a forum other than the Supreme Court.

2. For proceedings other than formal court proceedings before this Court, the Court staff person must take leave from this Court and must receive payment from the litigants for appearance and attendance at the deposition or other testimonial proceedings. The amount payable to a translator or court reporter for each day's appearance at such a proceeding shall be \$10.00, with an additional \$4.25 per hour to the court reporter, and \$10.00 per hour to the translator, for time in

attendance. Translators and court reporters shall also be reimbursed by the litigants for any expenses incurred in attending the proceedings.

3. It is the responsibility of counsel to assure that requests for transcripts are made in writing and are sufficiently specific to leave no doubt as to the testimony being requested and whether normal or accelerated preparation is devised.

4. Payments for preparation of transcripts and for translation purposes shall be made to the reporter or translator directly and not the Court. The amounts payable for transcripts of depositions and court proceedings shall be \$2.50 per transcript page (an original and two copies will be prepared; the original will be filed with the Court, under seal in the case of a deposition transcript, and the two copies will be provided to requesting counsel) with the following exceptions:

a. In forma pauperis proceedings - Where the indigent party is represented by the Office of the Public Defender or by Micronesian Legal Services Corporation in in forma pauperis proceedings, the transcript fee shall be reduced to \$1.25 per page, payable by the public agency rendering legal representation, and not by the defendant personally.

b. Accelerated preparation - Normal transcript preparation time shall be 75 days from the date of request. If delivery is requested and made on an accelerated basis (that is, more rapid production than 30 days) the transcript fees shall be increased by 50 percent.

5. Additional certified copies will be supplied, to a party for whom a transcript has been prepared, at a rate of fifty cents per page.

6. Court staff are also authorized to provide translations of documents for purposes other than proceedings before this Court. For such written translations, the fee payable to the translator shall be at a rate of \$25.00 per 8½" by 11" double-spaced translated page.

7. Delivery of the completed transcript or translation shall be made against payment of the applicable fees.

* * * *

GCO 1992-1

ASSIGNMENT OF CIVIL CASES FOR TRANSITION

April 9, 1992

For purposes of transition, the assignment of civil cases filed with the FSM Supreme Court Trial Division in Pohnpei is as follows:

A. Justice Richard H. Benson - Berman v. Pohnpei State, Civ. No. 1991-053, has been assigned to Justice Benson.

B. Justice Andon Amaraich - The following cases, and all cases filed with this Court in Pohnpei after October 8, 1991, that is, No. 1991-062 et seq., assigned to Justice Andon Amaraich.

Youngstrom v. Youngstrom, Civ. No. 1990-067

FSM Development Bank v. Paul & Yunis Salvador, Civ. No. 1990-070

Bank of FSM v. Albert, Civ. No. 1990-084

Bank of FSM v. Yakahna, Civ. No. 1990-094

Bank of FSM v. Welson, Civ. 1991-008

FSM v. Toshitane Kaisho Kaizen Maru No. 22, Civ. 1991-010

UMDA v. Roque, Civ. No. 1991-011

Jackson v. Paul et al., Civ. No. 1991-014

FSM Telecommunication Corp. v. Iokapus, Civ. No. 1991-031

FSM Telecommunication Corp. v. Ching, Civ. No. 1991-032

FSM Telecommunication Corp. v. Kotaro, Civ. No. 1991-035

FSM Telecommunication Corp. v. Tipeno, Civ. No. 1991-037

Soder Salvador v. Wustig and Santos, Civ. No. 1991-043

Bank of the FSM v. Pablo, Civ. No. 1991-044

Bank of the FSM v. Yangeluo, Civ. No. 1991-045

Bank of the FSM v. James, Civ. No. 1991-046

Bank of the FSM v. Ioanis, Civ. No. 1991-047

Bank of the FSM v. Santos, Civ. No. 1991-051

Bank of the FSM v. George, Civ. No. 1991-052

Nih Corporation v. FSM, Civ. No. 1991-054

PT&S v. Wade, Civ. No. 1991-055

Leo Store v. John and A & R Store, Civ. 1991-057

Bank of the FSM v. Reyes, Civ. 1991-058

Bank of the FSM v. Frank, Civ. 1991-059

Augustine v. Katayama, Saito et al., Civ. 1991-060

C. Chief Justice Edward C. King - All other cases currently pending before this Court in Pohnpei, except for the cases of Liwi v. Finn, Civ. 1992-030 and Jano v. King, Civ. No. 1991-061, the two cases assigned by Justice Richard H. Benson, acting in the capacity of Acting Chief Justice, to Temporary Justice Arthur Ngiraklsong, shall remain the responsibility of Chief Justice Edward C. King.

GCO 1992-2 TRANSFER OF CASES BETWEEN STATE AND NATIONAL COURTS May 27, 1992

The Constitution of the Federated States of Micronesia places in the FSM Supreme Court primary jurisdiction over cases which, upon consent of the litigants, may also fall within the jurisdiction of state courts. Moreover, upon occasion cases which fall within the exclusive jurisdiction of this court may erroneously be filed with other courts. These kinds of cases may frequently require interplay, and transfer of case, between the state and national courts.

This General Court Order 1992-2 is therefore adopted, pursuant to the power granted to the Chief Justice by article XI, section 9(d) of the Constitution to govern the transfer of cases between state and national courts and to establish procedures which will permit such litigation to proceed expeditiously with a minimum of confusion.

I. Actions Removable Generally.

Any action brought in a state court of which the trial division of the FSM Supreme Court has jurisdiction may be removed by any party to the trial division of the FSM Supreme Court.

II. Procedure for Removal.

A. A party desiring to remove any civil action from a state court shall file in the trial division of the FSM Supreme Court a verified petition containing a short and plain statement of the facts which entitle the party to removal together with a copy of all process, pleadings and orders served upon or by the party in such action.

B. The petition for removal of any civil action shall be filed within sixty days after the receipt by any party, through service or otherwise, of a copy of an initial or amended pleading, motion, order or other paper from which it may first be ascertained that the case is removable.

C. The trial division, or any justice thereof, may require a petition for removal of an action to be accompanied by a bond with good and sufficient surety conditioned that the party seeking removal will pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that the case was not removable or was improperly removed.

D. Promptly after the filing of a petition for removal, the party shall give written notice thereof to all parties and shall file a copy of the petition with the clerk of the state court. This shall effect the removal. The state court then shall proceed no further unless and until the case is remanded.

III. Procedure After Removal Generally.

A. In any case removed from a state court, the trial division of the FSM Supreme Court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the state court or otherwise.

B. The trial division of the FSM Supreme Court may require the petitioner to file with the clerk copies of all records and proceedings in the state court or may cause the same to be brought before it by writ of certiorari issued to the state court.

C. If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, or that the removing party had previously waived its right to remain as determined by the previous decisions of the this Court, the trial division of the Supreme Court shall remand the case, and may order the payment of just costs. A certified copy of the order of remand shall be mailed by its clerk to the clerk of the state court. The state court may thereupon proceed with the case.

D. This General Court Order 1992-2 is not intended to diminish or enlarge the power of the FSM Supreme Court to abstain from exercising power over litigation which falls within the Court's jurisdiction or to certify issues or questions to an appellate division of a state court for decision.

E. An order remanding a case to the state court from which it was removed may be reviewable on appeal to the appellate division of the FSM Supreme Court pursuant to Rule 5(a) of the FSM Rules of Appellate Procedure or on appeal from the final judgment of the state court.

IV. Process After Removal.

In all cases removed from any state court to the trial division of the FSM Supreme Court in which any one or more of the parties has not been served with process or in which the service has not been perfected prior to removal, or in which process served proves to be defective, such process or service may be completed or new process issued in the same manner as in cases originally filed in the trial division of the FSM Supreme Court.

V. State Court Record Supplied.

Where a party is entitled to copies of the records and proceedings in any action in a state court, to be used in the trial division of the FSM Supreme Court, and the clerk of such state court, upon request, and the payment or tender of the legal fees, fails to deliver certified copies, the trial division of the FSM Supreme Court may, on receipt of an affidavit reciting such facts, direct such record to be supplied by affidavit or otherwise. Thereupon such proceedings, trial and judgment may be had in the trial division of the FSM Supreme Court, and all such process awarded, as if certified copies had been filed in the trial division of the FSM Supreme Court.

VI. Attachment or Sequestration; Security; State Court Injunctions.

Whenever any action is removed from a state court to the trial division of the FSM Supreme Court, any attachment or sequestration of the goods or estate of any party in the action in the state court shall hold the goods or estate to answer the final judgment or decree in the same manner as they would have been held to answer final judgment or decree had it been rendered by the state court.

All bonds, undertakings or security given by either party in such action prior to its removal shall remain valid and effectual notwithstanding such removal.

All injunctions, orders and other proceedings had in such action prior to its removal shall remain in full force and effect until dissolved or modified by the trial division of the FSM Supreme Court.

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GCO 1992-3

MISCELLANEOUS AMENDMENT

1992

GCO 1981-1, paragraph 7, is hereby amended to require that the clerk determine before filing that a paper subsequent to the summons and complaint has a certificate of service and contains the mailing address and telephone number of the party filing the paper or the party's attorney or trial assistant. FSM Civ. R. 5(d).

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GCO 1995-1

INTERIM DISCIPLINARY COUNSEL

December 21, 1995

The Attorney General of the Federated States of Micronesia or his designee is appointed to serve as interim disciplinary counsel in all matters regarding the discipline of attorneys admitted to practice before this Court. He shall bring and prosecute all disciplinary cases involving breaches of the Code of Professional Responsibility as adopted by this Court. His interim appointment shall expire upon the adoption of any rules of disciplinary procedure hereafter promulgated by this Court.

[Note: Disciplinary Rules were adopted on September 19, 1996 by General Court Order 1996-2.]

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1996-1 Vacant

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GCO 1996-2

ADOPTION OF DISCIPLINARY RULES
AND PROCEDURES

September 19, 1996

The Supreme Court of the Federated States of Micronesia, pursuant to the Chief Justice's rulemaking authority under FSM Const. art. XI, § 9(c), is, effective October 1, 1996, issuing Disciplinary Rules and Procedures. The Court has heretofore been operating under interim rules of disciplinary procedure. The rules adopted by this General Court Order supplant those rules and apply to any disciplinary proceedings docketed after their effective date of October 1, 1996. All members of the FSM Supreme Court Bar are encouraged to examine these rules carefully.

NOW THEREFORE IT IS HEREBY ORDERED that the Disciplinary Rules and Procedures attached hereto are adopted effective October 1, 1996. The rules govern all disciplinary action docketed after their effective date.

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GCO 1997-1

ADOPTION OF AMENDMENTS TO THE RULES
FOR ADMISSION TO PRACTICE BEFORE
THE SUPREME COURT OF THE FEDERATED STATES OF MICRONESIA

January 17, 1997

The Supreme Court of the Federated States of Micronesia, pursuant to the Chief Justice's rulemaking authority under FSM Const. art. XI, § 9(c), hereby issues the following amendments to the Rules for Admission to Practice previously adopted by this Court. The amendments adopted by this General Court Order supplant and/or modify those previously adopted rules and apply to any applications to practice and bar examination conducted after their effective date. All members of the FSM Supreme Court Bar are encouraged to examine these rules carefully.

NOW THEREFORE IT IS HEREBY ORDERED that the amendments to the Rules for Admission to Practice are hereby adopted effective February 1, 1997. The rules govern all applications for admission to practice and bar examinations conducted after their effective date.

Paragraph one of FSM Adm. R. II(A)(1) as amended shall read as follows:

Bar Membership Standard - The applicant shall submit to the Court a certificate of good standing establishing that the applicant is in good standing as an attorney eligible to practice law before the highest court in all jurisdiction(s), other than those within the Federated States of Micronesia, in which the applicant is, or has been, licensed to practice.

Paragraph one of the FSM Adm. R. II(D) as amended shall read as follows:

All applications for written examination or reexamination shall be filed,

with supporting documents and application fee of twenty five (\$25.00) dollars, in the offices of the FSM Supreme Court in Pohnpei at least 30 days prior to the date scheduled for the written examination, although, upon showing of good cause the Court may permit filing of applications and documents after that time.

Paragraph three of FSM Adm. R. II(D) as amended shall read as follows:

Any otherwise qualified applicant shall be permitted to take an unlimited number of examinations until such person has successfully completed the entire examination. An applicant who fails any section(s) of the examination shall be required to take all remaining section(s), not previously passed, at any subsequent reexamination.

FSM Adm. R. III entitled Admission Through Reciprocity is vacated.

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GCO 1999-1

PAROLE REQUESTS AND REVIEW PROCEDURES

May 27, 1999

This order is issued to establish: (1) procedural rules governing requests for the review of sentences to determine eligibility for parole; and, (2) guidelines to be followed in the event a sentence review is undertaken following such a request. These rules are promulgated pursuant to the Chief Justice's rulemaking authority under Section 9, Article XI of the Constitution of the Federated States of Micronesia and 11 F.S.M.C. 1401 which authorizes the review of sentences to determine eligibility for parole and permits the Chief Justice to create rules to implement the statute.

Citations to these rules shall be as follows: FSM Par. R. followed by the rule number and subpart of the rule cited.

NOW THEREFORE IT IS HEREBY ORDERED that the rules governing Parole Requests and Review Procedures attached hereto are adopted and shall become effective August 1, 1999. These rules shall govern requests for review of sentences filed after this effective date and sentence reviews undertaken thereafter.

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GCO 1999-2

SUPPLEMENTAL RULES FOR CERTAIN
ADMIRALTY AND MARITIME CLAIMS

May 27, 1999

The Supreme Court of the Federated States of Micronesia issues the following Supplemental Rules for Certain Admiralty and Maritime Claims. These rules are adopted pursuant to the Chief Justice's rulemaking authority under Section 9, Article XI of the Constitution of the Federated States of Micronesia.

Citations to these rules shall be as follows: FSM Mar. R. followed by the letter designation and subpart of the rule cited.

NOW THEREFORE IT IS HEREBY ORDERED that the Supplemental Rules for Certain Admiralty and Maritime Claims attached hereto are adopted and shall become effective August 1, 1999. These rules shall govern all admiralty and maritime claims to which they apply docketed after this effective date.

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GCO 2001-1

AMENDMENTS TO THE RULES FOR ADMISSION TO
PRACTICE BEFORE THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA

January 15, 2001

The Supreme Court of the Federated States of Micronesia, pursuant to the Chief Justice's authority to make and publish rules governing admission to practice under FSM Const. art. XI, section 9(e), hereby issues the following amendments to the Rules for Admission to Practice previously adopted by this Court.

These amendments permit Federated States of Micronesia citizens, who graduate from the College of Micronesia's Trial Counselor Certificate Program, to sit for the FSM Bar Written Examination. Accordingly, these amendments will add a fourth subsection to the "Experience and Educational Requirement" provision set forth in the Rules for Admission to Practice, Section II(A). The amendments adopted by this General Court Order modify and are in addition to those previously adopted and shall apply to any applications to practice and bar examinations conducted after their effective date.

NOW THEREFORE IT IS HEREBY ORDERED that the following amendments to the FSM Rules for Admission to Practice are hereby adopted effective January 15, 2001.

Section II(A) as amended, and Section II(A)(4) as added shall read as follows:

A. Experience or Educational Requirement - Each noncitizen of the Federated States of Micronesia seeking the opportunity to take the FSM Written Examination must demonstrate compliance with standard 1 below. Applicants who are citizens of the Federated States of Micronesia may demonstrate compliance with any one of the four following standards.

4. College of Micronesia - Trial Counselor Certificate Program Standard The applicant shall submit to the Court satisfactory proof of graduation from the College of Micronesia's Trial Counselor Certificate Program.

GCO 2005-01

BANKRUPTCY PROCEDURES

June 6, 2005

The following procedures shall be used in all cases filed pursuant to Title 31 of the Code of the Federated States of Micronesia unless and until superseded by later promulgated Bankruptcy

Rules of Procedure.

1. **Filing**: Immediately upon receipt of an Application or Petition for Bankruptcy tendered for filing, court clerk's receiving such documents shall stamp the original and duplicate copies and record the date and time of filing and initial it.
2. **Numbering**: Next, the clerk shall assign the case the next available bankruptcy number using the bankruptcy docket book. Bankruptcy cases are to be numbered in order of receipt or filing by the clerks. Each of our offices is assigned with a different numbering system for its cases. Numbers shall start with a letter P, C, K or Y, representing first letter for each State in which case is being filed, follows with the letter B (Bankruptcy), and the next available number on the docket book and end with the year in which the case is filed. For example, the first bankruptcy case filed in 2005 in Pohnpei would be numbered PB 001-2005; the first case filed in Chuuk would be numbered CB 1000-2005; the first case filed in Kosrae would be numbered KB 2000-2005; and first case filed in Yap would be YB 3000-2005.
3. **Form and Size**: Pleadings and other documents shall be filed with the Court in duplicate. All pleadings and documents should be filed on letter –size paper, not larger than 8½ x 11 inches, double spaced, each page beginning not less than 1 ¼ inches from the top, with side margins of not less than 1¼ inches.
4. **Number of Copies Required**: One original and 2 copies are required in every bankruptcy case submitted for filing. Clerk shall retain original and 2 duplicate copies. The receiving clerk shall create and maintain two separate folders for every bankruptcy cases submitted for filing. One should be designated Court File and other designated J file. All the original documents shall be inserted in the Court file. It may be available for viewing by public and attorneys, unless otherwise ordered by the court. The Court File shall not be taken out of clerk's office, without Chief Clerk's approval. The J file shall contain duplicate copies of all documents filed and is only for the justice presiding over the case and is treated as confidential. Inter-office memorandums, staff attorney's bench memorandums or research are to be contained on the left-hand side of the J file. Immediately after filing of the documents submitted for filing, the clerk shall insert a duplicate copy in the J file and promptly bring the J file to the attention of the presiding justice.
5. **Color Coded File**: Bankruptcy cases shall be assigned and filed in yellow coded folders.
6. **Docket Books**: There shall be a separate docket book assigned for registration of bankruptcy cases. The docket books shall be bound books containing brief notations of all documents filed and actions taken in each case. It shall be kept in the clerk's office and be made available for review by any interested person, unless otherwise ordered by the court.
7. **Indexing**: Clerks shall create an index card for every case filed. It shall be kept alphabetically and filed in accordance with the information relating to party's last name or name of business, case number, type of case, disposition of the case and any related cases involving the same party.
8. **Filing Fees**: An application for relief filed under Title 31 of the Code of the Federated States of Micronesia must be accompanied with a filing fee. The court will set an amount. The process for recording of filing fees will be established for proper accounting of all funds received by the clerks under this title.

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GCO 2005-02

BANKRUPTCY RULES AND FORMS

September 16, 2005

The Supreme Court of the Federated States of Micronesia hereby issues the following Rules of Bankruptcy Procedure and Official Bankruptcy Forms. These rules and forms are adopted pursuant to the Chief Justice's rule-making power under Section 9(c), Article XI of the Constitution of the Federated States of Micronesia and 31 F.S.M.C. 104(3) and 110.

Citations to these rules shall be as follows: FSM Bankr. R. __ followed by the number and subpart of the rule cited.

NOW THEREFORE IT IS HEREBY ORDERED that the Rules of Bankruptcy Procedure and Official Bankruptcy Forms attached hereto are adopted and shall be effective immediately.

IT IS FURTHER ORDERED that these rules will be subject to review and revision after one year's use and practitioners are invited and encouraged to submit their comments and proposals, in light of their experience during that time, for improvement of the rules and forms.

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