

RULES OF APPELLATE PROCEDURE  
for the  
Federated States of Micronesia  
Supreme Court Appellate Division

Rule 1. Scope of Rules.

(a) SCOPE OF RULES. These rules govern procedure in appeals to the Federated States of Micronesia Supreme Court appellate division from the Federated States of Micronesia Supreme Court trial division, from trial proceedings before the Kosrae state court, from the highest appellate divisions of the state courts of Chuuk, Pohnpei, and Yap, and in applications for writs or other relief which the Federated States of Micronesia Supreme Court appellate division or a justice thereof is competent to give. When these rules provide for the making of a motion or application in the court appealed from the procedure for making such motion or application shall be in accordance with the practice of that court.

(b) RULES NOT TO AFFECT JURISDICTION. These rules shall not be construed to extend or limit the jurisdiction of the Federated States of Micronesia Supreme Court appellate division as established by law.

(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 Supreme Court 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 PS-J, Palikir, Pohnpei FM 96941.

Rule 2. Suspension of Rules.

In the interest of expediting decisions, or for other good cause shown, the Federated States of Micronesia Supreme Court appellate division may, except as otherwise provided in Rule 26(b), suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its discretion.

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. The notice of appeal must be filed within the time allowed by Rule 4 and the appellant shall serve copies of the notice upon all other parties to the litigation from which appeal is being taken.

In an appeal from any court other than the FSM Supreme Court trial division, the appellant shall also serve a copy of the notice of appeal upon the court appealed from. 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. Appeals by permission shall be taken in the manner prescribed by Rule 5.

(b) JOINT OR CONSOLIDATED APPEALS. If two or more persons are entitled to appeal from a judgment or order and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the Supreme Court appellate division upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(c) CONTENT OF THE NOTICE OF APPEAL. The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; shall name the Federated States of Micronesia Supreme Court appellate division as the court to which the appeal is taken, shall provide the names of all parties in the proceeding appealed from, as well as the names, addresses and telephone numbers of the legal counsel in that proceeding, and shall include certification, as specified in Rule 25(d), of service upon all other parties. Form 1 in the Appendix of Forms is a suggested form of a notice of appeal. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

#### Rule 4. When Taken.

(a) APPEALS IN CIVIL CASES.

(1) In civil cases, by the filing of a notice of appeal as

provided in Rule 3 within forty-two (42) days after the date of the entry of the judgment or order appealed from, appeals may be taken:

(A) from all final decisions of the trial divisions of the Federated States of Micronesia Supreme Court and the Kosrae State Court, and of the Chuuk State Supreme Court appellate division; from final decisions of the highest state courts in Yap and Pohnpei if the cases require interpretation of the national Constitution, national law, or a treaty; and in other cases where appeals to this Court from final decisions of the highest state courts are permitted under the Constitution of those states;

(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 Supreme Court trial division appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property;

(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; and

(E) in any other civil case in which an appeal to the FSM Supreme Court appellate division is permitted as a matter of law.

(2) Except as provided in (a)(4) of this Rule 4, a notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order shall be treated as filed after such entry and on the day thereof.

(3) If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 20 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period last expires.

(4) If a timely motion under the Rules of Civil Procedure is filed in the Supreme Court Trial Division by any party: (i) for

judgment under Rule 50(b); (ii) under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (iii) under Rule 59 to alter or amend the judgment, or (iv) under Rule 59 for a new trial or for any equivalent relief under comparable rules of any state court from which an appeal may lie, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above. No additional fees shall be required for such filing.

(5) The court appealed from, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by this Rule 4(a). Any such motion which is filed before expiration of the prescribed time may be ex parte unless the court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with local rules. No such extension shall exceed 30 days past such prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

(6) A judgment or order is entered within the meaning of this Rule 4(a) when it is entered in compliance with Rules 58 and 79(a) of the Rules of Civil Procedure, or an equivalent rule of a state court.

(b) APPEALS IN CRIMINAL CASES. In criminal cases appeals are permitted from: (1) all final decisions of the Trial Division of the Federated States of Micronesia Supreme Court and of the Kosrae state court, (2) all final decisions of the Chuuk State Supreme Court appellate division, and (3) all final decisions of the highest state courts in Pohnpei and Yap if the cases require an interpretation of the national Constitution, national law, or a treaty.

The notice of appeal by a defendant shall be filed as provided in Rule 3 within 10 days after the entry of the judgment appealed from. A notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment shall be treated as filed after such entry and on the day thereof. If a timely motion in arrest of judgment or for a new trial on any ground other than

newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within 10 days after the entry of an order denying the motion. A motion for a new trial based on the ground of newly discovered evidence will similarly extend the time for appeal from a judgment of conviction if the motion is made before or within 10 days after entry of the judgment. A judgment is entered within the meaning of this subdivision when it is filed. Upon a showing of excusable neglect the court appealed from may, before or after the time has expired, with or without motion and notice, extend the time for filing a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this subdivision.

Rule 5. Appeals by Permission.

(a) PETITION FOR PERMISSION TO APPEAL. When a justice of the Federated States of Micronesia Supreme Court trial division, in making in a civil action an order not otherwise appealable under Rule 4(a), shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the justice shall so state in writing in such order. The remaining article XI, section 3 justice(s) of the Federated States of Micronesia Supreme Court, acting as the appellate division, may permit an appeal to be taken from such order, if application is made to the appellate division within 10 days after the entry of the order with proof of service on all other parties to the action in the court from which the appeal is being taken. Application for an appeal under this Rule 5(a) shall not stay proceedings in the Federated States of Micronesia Supreme Court trial division unless the justice of the trial division or the Federated States of Micronesia Supreme Court appellate division or a justice thereof shall so order. An order may be amended to include the prescribed statement at any time, and permission to appeal may be sought within 10 days after entry of the order as amended.

(b) CONTENT OF PETITION; ANSWER. The petition shall contain a statement of the facts necessary to an understanding of the controlling question of law determined by the order of the Supreme Court trial division; a statement of the question itself; and a statement of the reasons why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation. The petition shall include or have annexed thereto a copy of the order from which appeal is sought and of any findings of fact, conclusion

of law, and opinion relating thereto. Within 10 days after service of the petition and adverse party may file an answer in opposition. The application and answer shall be submitted without oral argument unless otherwise ordered.

(c) FORM OF PAPERS; NUMBER OR COPIES. All papers may be typewritten. Three copies shall be filed with the original, but the court may require that additional copies be furnished. The Supreme Court appellate division shall enter the appeal upon the docket.

If permission to appeal is granted, the record shall be transmitted and filed in accordance with Rules 11 and 12(b). A notice of appeal need not be filed.

Rule 6. Vacant.

Rule 7. Bond for costs on Appeal in Civil Cases.

The court appealed from may require an appellant to file a bond or provide other security in such form and amount as it finds necessary to ensure payment of costs on appeal in a civil case. The provisions of Rule 8(b) apply to a surety upon a bond given pursuant to this rule.

Rule 8. Stay or Injunction Pending Appeal.

(a) STAY MUST ORDINARILY BE SOUGHT IN THE FIRST INSTANCE IN THE COURT APPEALED FROM; MOTION FOR STAY IN THE SUPREME COURT APPELLATE DIVISION. Application for a stay of the judgment or order of the court appealed from pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the court appealed from. A motion for such relief may be made to the Supreme Court appellate division or to a justice thereof, but the motion shall show that application to the court appealed from for the relief sought is not practicable, or that the court appealed from has denied the application, or has failed to afford the relief which the applicant requested, with any reasons given by the court appealed from for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the clerk and normally will be considered by all justices of the court

eligible to act with the appellate division in the case, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single justice of the Supreme Court.

(b) STAY MAY BE CONDITIONED UPON GIVING OF BOND; PROCEEDINGS AGAINST SURETIES. Relief available in the Supreme Court appellate division under this rule may be conditioned upon the filing of a bond or other appropriate security in the court appealed from. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the court appealed from and irrevocably appoints the clerk of court appealed from the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion in the court appealed from without the necessity of an independent action. The motion and such notice of the motion as the court appealed from prescribes may be served on the clerk of that court who shall forthwith mail copies to the sureties if their addresses are known.

(c) STAYS IN CRIMINAL CASES. Stays in criminal cases shall be had in accordance with the provisions of Rule 38(a) of the Rules of Criminal Procedure.

#### Rule 9. Releases in Criminal Cases.

(a) APPEALS FROM ORDERS RESPECTING RELEASE ENTERED PRIOR TO A JUDGMENT OR CONVICTION. An appeal by a defendant from an order refusing release or imposing conditions of release shall be determined promptly. Upon entry of an order refusing release or imposing conditions of release, the court appealed from shall state orally on the record or in writing the reasons for the action taken. The appeal may be heard by a justice of the appellate division without the necessity of briefs after reasonable notice to the appellee upon such papers, affidavits, and portions of the record as the parties shall present, including any statement of the reasons of the court appealed from explaining the denial of release, or conditions. The appellate division or a justice thereof may order the release of the appellant pending this appeal.

(b) RELEASE PENDING APPEAL FROM A JUDGMENT OF CONVICTION. Application for release after a judgment of conviction shall be made in the first instance in the court appealed from. If the court appealed from refuses release pending appeal, or imposes conditions

of release, that court shall state orally on the record or in writing the reasons for the action taken. Thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending review may be made to the Supreme Court appellate division or to a justice thereof. The motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present, including any statement of reasons of the court appealed from explaining the denial of release, or conditions and after reasonable notice to the appellee. The Supreme Court appellate division or a justice thereof may order the release of the appellant pending disposition of the motion.

(c) CRITERIA FOR RELEASE. A person who has been convicted of an offense and has filed an appeal shall be released in accordance with the below-stated provisions only if the court believes that one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If the court concludes that no such a risk of flight or danger exists and it appears that the appeal is not for purpose of delay, and raises a substantial question of law or fact likely to result in: (1) reversal; (2) an order for a new trial; (3) a sentence that does not include a term of imprisonment; or (4) a reduced sentence to a term of imprisonment less than the total of the time already served, plus the expected duration of the appeal process, the person shall be released. The burden of establishing the requisite criteria rests with the defendant.

(d) PROVISION OF RELEASE. The person shall be ordered released on personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the court only if the court determines, in the exercise of its discretion, that such a release will reasonably assure that the person will not flee and will not pose a danger to any other person or to community. Unless such a determination is made, the court shall either in lieu of, or in addition to, the above methods of release, impose the first of the following conditions of release which will reasonably assure that the person will not flee or pose a danger to any other persons or to the community, or, if no single condition gives that assurance, an combination of the following conditions:

(1) place the person in the custody of a designated person or organization agreeing to supervise the person;

(2) place restrictions on the movement, association, or place of abode of the person during the period of release;



(3) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, of a sum not to exceed 10 per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

(4) require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

(5) impose any other condition deemed reasonably necessary to give the assurance as required, including confinement or a condition requiring that the person return to custody after specified hours.

In determining which conditions of release will reasonably give the assurance, the judicial officer shall, on the basis of available information, take into account the nature and circumstance of the offense charged, the accused's family ties, employment, financial resources, character and mental condition, the length of the accused's residence in the community, the accused's record of convictions, record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings and the accused's record of compliance with orders of courts and reasonable instructions of law enforcement officers. The judicial officer may also consider other factors, such as facility in nonlocal languages and experience and connections with communities elsewhere, that may bear upon the likelihood of the person attempting to flee from the locale in which the appeal is pending.

A judicial officer authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any.

#### Rule 10. The Record on Appeal.

(a) COMPOSITION OF THE RECORD ON APPEAL. The original papers filed and exhibits admitted into evidence or relied upon for demonstration purposes in the court proceedings appealed from, the transcript of proceedings designated and ordered by the parties, if any, and a certified list of the documents and exhibits, showing filing dates and party, and hearings held in the case, prepared by the clerk of the court appealed from, shall constitute the record on appeal in all cases.

Exhibits denied admission in the proceedings appealed from

shall not be part of the record unless the denial is at issue in the appeal. The presentence report of a justice ombudsman or probation officer shall not be part of the record on appeal unless the sentence decreed is at issue on appeal.

(b) THE TRANSCRIPT OF PROCEEDINGS; DUTY OF APPELLANT TO ORDER; NOTICE TO APPELLEE IF PARTIAL TRANSCRIPT IS ORDERED.

(1) Within 10 days after filing the notice of appeal from a final judgment of a trial court, the appellant shall request from the reporter a transcript only of such parts of the proceedings not already on file as the appellant deems necessary. The request shall be in writing and within the same period the appellant shall file copies of the request with the clerk of the court appealed from and with the Chief Clerk of the FSM Supreme court appellate division.

Comment: A complete transcript often is unnecessary to the full consideration of an appeal. In particular, transcripts of hearings of arguments on motions are rarely of use to an appellate court. Moreover, some entire hearings, such as hearings on discovery motions, or an initial appearance in criminal proceedings, typically would be superfluous. Requests for nonessential portions of transcripts frequently contribute to delay and expense. Counsel also are urged to endeavor to enter into stipulations to alleviate the necessity of, or to reduce the length of transcripts.

(2) If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion.

(3) Unless the entire transcript is to be included, the appellant in an appeal from the decision of a trial court shall, within the 10 days time provided in (b)(1) of this Rule 10, file a statement of the issues the appellant intends to present on the appeal and shall serve the statement on the appellee together with a copy of the request for transcript. If the appellee deems a transcript of other parts of the proceedings necessary, the appellee shall, within 10 days after the service of the statement of issues and request of appellant for a transcript, file and serve on the appellant a designation of additional parts to be included. Unless within 10 days after service of such designation the appellant has requested such parts, and has so notified the appellee, the appellee may either request the parts or move in the court appealed from for an order requiring the appellant to do so.

(4) At the time of requesting a transcript, a party must make arrangements with the reporter for payment of the cost of the transcript in accordance with the requirements of General Court Order No. 1985-7.

(c) STATEMENT OF THE EVIDENCE OR PROCEEDINGS WHEN NO REPORT WAS MADE OR WHEN THE TRANSCRIPT IS UNAVAILABLE. If no report of the evidence or proceedings at a hearing or trial was made, or if a full and satisfactory transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement shall be served on the appellee, who may serve objections or propose amendments thereto within 10 days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the court appealed from for settlement approval and as settled and approved shall be included by the clerk of the court appealed from in the record on appeal.

(d) AGREED STATEMENT AS THE RECORD ON APPEAL. In lieu of the record on appeal as defined in subdivision (a) of this rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the court appealed from and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it together with such additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the court appealed from and shall then be certified to the Supreme Court appellate division as the record on appeal and transmitted thereto by the clerk of the court appealed from within the time provided by Rule 11. Copies of this agreed statement may be filed as part of the appendix required by Rule 30.

(e) CORRECTION OR MODIFICATION OF THE RECORD. If any difference arises as to whether the record truly discloses what occurred in the court appealed from, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the court appealed from, or the Supreme Court appellate division, at any time may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the Supreme Court

appellate division.

Rule 11. Transmission of the Record.

(a) DUTY OF THE APPELLANT. Each appellant, shall comply with the provisions of Rule 10(b) and shall take any other action necessary to enable the clerk to assemble, certify and transmit the record. A single record shall be transmitted.

(b) DUTY OF REPORTER TO PREPARE AND FILE TRANSCRIPT; NOTICE TO THE SUPREME COURT APPELLATE DIVISION. Upon receipt of a request for a transcript, the reporter shall acknowledge receipt at the foot of the request and indicate the date, not more than fifty (50) days after receipt of the request for transcript, on which the reporter expects to have the transcript completed. The reporter shall transmit the request, so endorsed, to the clerk of the Supreme Court appellate division with a copy to the clerk of the court appealed from. If the transcript cannot be completed within 50 days of receipt of the request the reporter shall request an extension of time from the clerk of the Supreme appellate division and the action of the clerk of the Supreme Court appellate division shall be entered on the docket and the parties notified. In the event of the failure of the reporter to file the transcript within the time allowed, the clerk of the Supreme Court appellate division shall notify the parties and the judge or justice of the court appealed from and take such other steps as may be directed by the Supreme Court appellate division. Upon completion of the transcript the reporter shall file it with the clerk of the court appealed from and shall notify the clerk of the Supreme Court appellate division.

(c) DUTY OF THE CLERK TO PREPARE, CERTIFY AND TRANSMIT THE RECORD. Immediately upon filing of the notice of appeal, the clerk of the trial court shall transmit a copy of all docket entries of any completed trial and appellate proceedings in the litigation to the Federated States of Micronesia Supreme Court appellate division and shall begin preparing the record, as defined in Rule 10.

The clerk should assemble the filed papers in sequence according to filing dates, beginning with the first document filed and ending with the last filed document. The clerk's certified list of documents, exhibits and hearings should be at the beginning of the record and shall serve as a table of contents. Each page of the overall record should be numbered in sequence, at the lower right corner, with each document and the paper thereof marked consecutively on the lower left corner, (e.g., 1-1, 1-2, 1-3, indicating the first

three pages of the earliest filed document in the case).

The filed papers so assembled shall be bound in a volume or volumes. Any exhibits introduced and admitted, or relied upon for demonstration purposes in the court proceedings below may be similarly bound in a separate volume or placed in the same volume with the balance of the record, located after the last page of the documents filed in court.

Upon completion of assembly of the entire record as discussed above, including the transcript, the clerk of the court appealed from shall file with the chief clerk of the appellate division a certificate stating that the record is ready for the purpose of the appeal. This "record ready certificate," including a copy of the certified list of the documents filed, shall be submitted as soon as possible but no later than within 60 days after filing of the notice of appeal. If the record can not be completed by that time, the clerk of the court appealed from shall, before expiration of the 60 days, submit in writing to the appellate division chief clerk, an explanation of reasons for the delay and a request for extension of time.

(d) TEMPORARY RETENTION OF RECORD IN THE COURT APPEALED FROM FOR USE IN PREPARING APPELLATE PAPERS; DUTY OF CLERK TO TRANSMIT THE RECORD. Unless otherwise ordered by the appellate division, the record initially shall remain in the custody of the clerk of the trial court for the use of the parties in preparing their briefs and the appendix referred to in Rule 30. Upon receipt of the brief of appellee, the appellant shall request the clerk of the court appealed from to transmit the record for appeal to the clerk of the Supreme Court appellate division. Documents of unusual bulk or weight, physical exhibits other than documents, and such other parts of the record as the Supreme Court appellate division may designate, shall not be transmitted unless the clerk is directed to do so by a party or by the clerk of the Supreme Court appellate division. A party must make advance arrangements with the clerks for transportation and receipt of exhibits of unusual bulk or weight.

(e) RECORD FOR PRELIMINARY HEARING IN THE SUPREME COURT APPELLATE DIVISION. If prior to the time the record is transmitted a party desires to make in the Supreme Court appellate division a motion for dismissal, for release, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the court appealed from at the request of any party shall transmit to the Supreme Court

appellate division such parts of the original record as any party shall designate.

Rule 12. Docketing the Appeal; Filing of the Record.

(a) DOCKETING THE APPEAL. Upon receipt of the copy of the notice of appeal and of the docket entries, transmitted by the clerk of the court appealed from pursuant to Rule 10(c), the clerk of the Supreme Court appellate division shall enter the appeal upon the docket, under the appellant's name, with the names of the other parties to be added to the title as appropriate.

(b) FILING OF THE RECORD, PARTIAL RECORD, OR CERTIFICATE. Upon receipt of the "record ready certificate" from the clerk of the court appealed from pursuant to Rule 11(c), the clerk of the Supreme Court appellate division shall file it and shall immediately give notice to all parties of the date on which it was filed and the date, 40 days after this notice from the appellate division clerk, when appellant's brief will be due.

Rule 13. Vacant.

Rule 14. Vacant.

Rules 15 to 20. Vacant.

Rule 21. Writs of Mandamus and Prohibition Directed to a Judge or Judges and Other Extraordinary Writs.

(a) MANDAMUS OR PROHIBITION TO A JUDGE OR JUSTICE; PETITION FOR WRIT; SERVICE AND FILING. Application for a writ of mandamus or of prohibition directed to a judge or justice shall be made by filing a petition therefor with the clerk of the Supreme Court appellate division with proof of service on the respondent judge or justice and on all parties to the action in the trial court. The petition shall contain a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the issues presented and the relief sought; a statement of the reasons why the writ should issue; and copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition. Upon receipt of a petition conforming to the above requirements, the clerk shall file the petition and submit it to any remaining article XI, section 3 justice(s) of the Supreme Court appellate division who are not the subject of the action.

(b) ORDER DIRECTING ANSWER; DENIAL. The remaining article XI, section 3 justice(s) of the Federated States of Micronesia Supreme Court, acting as the appellate division, are eligible to consider the petition. If the remaining fulltime justice(s) are of the opinion that the writ clearly should not be granted, they shall deny the petition. Otherwise, they shall order that an answer be filed. The order shall be served by the clerk on the judge or justice named respondent and on all other parties to the action in the trial court. All parties below other than the petitioner shall also be deemed respondents for all purposes. Two or more respondents may answer jointly. If a judge or justice named respondent does not desire to appear in the proceeding, the judge or justice may so advise the clerk and all parties by letter, but the petition shall not thereby be taken as admitted. The clerk shall advise the parties of the dates on which briefs are to be filed, if briefs are required, and of the date of oral argument. The proceeding shall be given preference over ordinary civil cases. The remaining article XI, section 3 justices of the Supreme Court to whom the petition is submitted may sit as the appellate division hearing the case or, if there are fewer than three, may, at their discretion, seek appointment of a temporary justice pursuant to the special assignment powers of the chief justice under article XI, section 9 of the Constitution.

(c) OTHER EXTRAORDINARY WRITS. Application for extraordinary writs other than those provided for in subdivisions (a) and (b) of this rule shall be made by petition filed with the clerk of the Supreme Court appellate division with proof of service on the parties named as respondents. Proceedings on such application shall conform, so far as is practicable, to the procedure prescribed in subdivision (a) and (b) of this rule.

(d) FORM OF PAPERS; NUMBER OF COPIES. All papers may be typewritten. Three copies shall be filed with the original, but the court may direct that additional copies be furnished.

#### Rule 22. Habeas Corpus Proceedings.

(a) APPLICATION FOR THE ORIGINAL WRIT. An application to the Supreme Court of the Federated States of Micronesia for a writ of habeas corpus shall be made to the Supreme Court trial division. If an application is made to or transferred to the Supreme Court trial division and denied, the proper remedy is by appeal to the Supreme Court appellate division from the order of the Supreme Court trial

division denying the writ.

(b) NECESSITY OF CERTIFICATE OF PROBABLE CAUSE FOR APPEAL. In a habeas corpus proceeding in which the detention complained of arises out of process issued by a state court, an appeal by the applicant for the writ may not proceed unless a Federated States of Micronesia Supreme Court justice issues a certificate of probable cause. If an appeal is taken by the applicant, the Supreme Court justice who rendered the judgment shall either issue a certificate of probable cause or state the reasons why such a certificate should not issue. The certificate or the statement shall be forwarded to the Supreme Court appellate division with the notice of appeal and the file of the proceedings in the Supreme Court trial division. The notice of appeal may be deemed to constitute a request for a certificate of probable cause addressed to any remaining article XI, section 3 justice, sitting individually. If an appeal is taken by a state or its representative, a certificate of probable cause is not required.

Rule 23. Custody of Prisoners in Habeas Corpus Proceedings.

(a) TRANSFER OF CUSTODY PENDING REVIEW. Pending review of a decision in a habeas corpus proceeding commenced before a justice of the Federated States of Micronesia Supreme Court for the release of a prisoner, a person having custody of the prisoner shall not transfer custody to another unless such transfer is directed in accordance with the provisions of this rule. Upon application of a custodian showing a need therefor, the court rendering the decision may make an order authorizing transfer and providing for the substitution of the successor custodian as a party.

(b) DETENTION OR RELEASE OF PRISONER PENDING REVIEW OF DECISION FAILING TO RELEASE. Pending review of a decision failing or refusing to release a prisoner in such a proceeding, the prisoner may be detained in the custody from which release is sought, or in other appropriate custody, or may be released upon the prisoner's recognizance, with or without surety, as may appear fitting to the justice rendering the decision, or to the Supreme Court appellate division or a justice thereof.

(c) RELEASE OF PRISONER PENDING REVIEW OF DECISION ORDERING RELEASE. Pending review of a decision ordering the release of a prisoner in such a proceeding, the prisoner shall be released upon the prisoner's own recognizance, with or without surety, unless the justice rendering the decision or the Supreme Court appellate division or a justice thereof, shall otherwise order.



Rule 24. Proceedings in Forma Pauperis.

(a) LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS. A party who desires to proceed on appeal in forma pauperis shall file in the court appealed from a motion for leave so to proceed, together with an affidavit showing, in the detail prescribed by Form 2 of the Appendix of Forms, the party's inability to pay fees and costs or to give security therefor, the party's belief that the party is entitled to redress, and a statement of the issues which the party intends to present on appeal. If the motion is granted, the party may proceed without further application to the Supreme Court appellate division and without prepayment of fees or costs in either court or the giving of security therefor, except as provided in General Court Order 1985-7. If the motion is denied, the court appealed from shall state in writing the reasons for the denial.

Notwithstanding the provisions of the preceding paragraph, a party who has been permitted to proceed in an action in the court appealed from in forma pauperis, or who has been permitted to proceed there as one who is financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization unless, before or after the notice of appeal is filed, the court appealed from shall find that the party is not entitled so to proceed, in which event the court appealed from shall state in writing the reasons for such certification or finding.

If the court appealed from shall find that the party is not entitled to proceed in forma pauperis, the clerk of that court shall forthwith serve notice of such action. A motion for leave so to proceed may be filed in the Supreme Court appellate division within 30 days after service of notice of the action of the court appealed from. The motion shall be accompanied by a copy of the affidavit filed in the court appealed from or by the affidavit prescribed by the first paragraph of this subdivision if no affidavit has been filed in the court appealed from and by a copy of the statement of reasons given by the court appealed from for its action.

(b) Vacant.

(c) Vacant.

Rule 25. Filing and Service.

(a) FILING. Papers required or permitted to be filed in the

Supreme Court appellate division shall be filed with the clerk, as provided in Rule 1(c). Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are received by the clerk within the time fixed for filing, except that briefs shall be deemed filed on the day of mailing if the most expeditious form of delivery by mail, excepting special delivery, is utilized. If a motion requests relief which may be granted by a single article XI, section 3 justice, the justice may permit the motion to be filed with the justice, and shall note thereon the date of filing and shall thereafter transmit it to the clerk.

(b) SERVICE OF ALL PAPERS REQUIRED. Copies of all papers filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by a party or person acting for that party on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel.

(c) MANNER OF SERVICE. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) PROOF OF SERVICE. Papers presented for filing shall contain an acknowledgement of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgement or proof of service but shall require such to be filed promptly thereafter.

#### Rule 26. Computation and Extension of Time.

(a) COMPUTATION OF TIME. In computing any period of time prescribed or allowed by these rules, by an order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period extends until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule "legal holiday" includes Christmas, New Year's Day, Constitution Day

(May 10), Independence Day (November 3) and any other day designated as a holiday by the President or the Congress of the Federated States of Micronesia.

(b) ENLARGEMENT OF TIME. The court for good cause shown may upon motion enlarge the time prescribed for doing any act, or may permit an act to be done after the expiration of such time; but the Federated States of Micronesia Supreme Court appellate division may not enlarge the time for filing a notice of appeal, or a petition for permission to appeal. Nor may the court enlarge the time prescribed by law for filing a petition to enjoin, set aside, suspend, modify, enforce, or otherwise review, or a notice of appeal from, an order of an administrative agency, board, commission, or officer of the Federated States of Micronesia except as specifically authorized by law.

(c) ADDITIONAL TIME AFTER SERVICE BY MAIL. Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon that party and the paper is served by mail, 6 days shall be added to the prescribed period.

#### Rule 27. Motions.

(a) CONTENT OF MOTIONS; RESPONSE; REPLY. Unless another form is elsewhere prescribed by these rules, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by brief, affidavits, or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order [for which see subdivision (b)], within 7 days after service of the motion, but motions authorized by Rules 8 and 9 may be acted upon after reasonable notice, and the court may shorten or extend the time for responding to any motion.

(b) DETERMINATION OF MOTIONS FOR PROCEDURAL ORDERS. Notwithstanding the provisions of (a) of this Rule 27 as to motions generally, motions for procedural orders, including any motion under Rule 26(b), may be acted upon at any time, without awaiting a response, and pursuant to rule or order of the court, motions for specified types of procedural orders may be disposed of by the clerk. Any party adversely affected by such action may by application to

the court request reconsideration, vacation, or modification of such action.

(c) POWER OF A SINGLE JUSTICE TO ENTERTAIN MOTIONS. In addition to the authority expressly conferred by these rules or by law, a single article XI, section 3 justice of the Supreme Court appellate division may entertain and may grant or deny any request for relief which under these rules may properly be sought by motion, although a single justice may not dismiss or otherwise determine an appeal, except upon stipulation of all parties, or upon failure of a party to comply with the timing requirements of these rules. The Supreme Court appellate division may provide by order or rule that any motion or class of motions must be acted upon by the court. The action of a single justice may be reviewed by the court.

(d) FORM OR PAPERS; NUMBERS OF COPIES. All papers relating to motions may be typewritten. The original, plus three additional copies of each paper or brief shall be filed, but the court may require that more copies be furnished.

#### Rule 28. Briefs.

(a) BRIEF OF THE APPELLANT. The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.

(2) A statement of the issues presented for review.

(3) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record (see subdivision (e)).

(4) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes, and parts of the record relied on.

(5) A short conclusion stating the precise relief sought.

(6) The addendum referred to in Rule 28(f), if required.

(b) BRIEF OF THE APPELLEE. The brief of the appellee shall conform to the requirements of subdivision (a) (1)-(6), except that a statement of the issues or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant and authorities reproduced in the appellant's brief need not be included in the appellee's brief or addendum.

(c) REPLY BRIEF. The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross appeal. No further briefs may be filed except with leave of court.

(d) REFERENCES IN BRIEFS TO PARTIES. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee." Clarity will be promoted by use of the designations used in the lower court or in the agency proceedings, or the actual names of parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," "the ship", "the stevedore," etc.

(e) REFERENCES IN BRIEFS TO THE RECORD. References in the briefs to parts of the record reproduced in the appendix filed with the brief of the appellant (see Rule 30(a)) shall be to the pages of the Rule 30 appendix at which those parts appear (e.g., App. 28). If the record is employed pursuant to Rule 30(f), or if references are made in the briefs to parts of the record not reproduced in the appendix, the references shall be to the page of the record, e.g., R. 27, or to the pages of documents in the record (e.g., Doc. 3-5, to indicate page 5 of the third document in the record).

(f) REPRODUCTION OF STATUTES, RULES, REGULATIONS, ETC. If determination of the issues presented requires the study of statutes, rules, regulations, etc., or relevant parts thereof, or of cases or other legal authorities which are not available in a library of the FSM Supreme Court, they shall be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form.

(g) LENGTH OF BRIEFS. Except by permission of the court, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25, exclusive of pages containing the table of contents,

table of citations, and any addendum containing statutes, rules, copies of cases, etc.

(h) BRIEFS IN CASES INVOLVING CROSS APPEALS. If a cross appeal is filed, the plaintiff in the court below shall be deemed the appellant for the purposes of this rule and Rule 31, unless the parties otherwise agree or the court otherwise orders. The brief of the appellee shall contain the issues and argument involved in the appellee's appeal as well as the answer to the brief of the appellant.

(i) BRIEFS IN CASES INVOLVING MULTIPLE APPELLANTS OR APPELLEES. In cases involving more than one appellant or appellee, including cases consolidated for the purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(j) CITATIONS OF SUPPLEMENTAL AUTHORITIES. When pertinent and significant authorities come to the attention of a party before decision, a party may promptly advise the clerk of the court, by letter, with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall without argument state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

#### Rule 29. Brief of an Amicus Curiae.

A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of court granted on motion or at the request of the court, except that consent or leave shall not be required when the brief is presented by the Federated States of Micronesia or an officer or agency thereof, or by a State. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Save as all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support unless the court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer. A motion of an amicus curiae to participate in oral argument will be granted only for extraordinary reasons.

Rule 30. Appendix to the Briefs.

(a) DUTY OF THE APPELLANT TO PREPARE AND FILE; CONTENT OF APPENDIX; TIME FOR FILING; NUMBER OF COPIES. The appellant shall prepare and file with appellant's brief an appendix to the brief which shall contain relevant and essential portions of the record, including those parts to which the parties wish to direct the particular attention of the court. It is anticipated that the appendix shall normally include copies of the following, and no other documents, all preceded by the table of contents described in Rule 30(d):

(1) the trial court docket sheet or the trial court clerk's certified list referred to in Rule 10(a), or both;

(2) the notice of appeal and any order of the trial court under Rule 4(a)(5) extending the time for filing the notice of appeal;

(3) any relevant portion of the pleadings which would normally include, in civil cases, the petition or complaint and answer and the final pretrial order, if any, and, in criminal cases, the information;

(4) the judgment or interlocutory order sought to be reviewed from which the appeal is taken or sought to be reviewed;

(5) any supporting opinion, findings of fact or conclusions of law filed or delivered orally by the court(s) below (opinions, findings or conclusions delivered orally need not be reproduced on the appendix if they are contained in the transcript filed. In that event, the appropriate pages of the filed transcript should be cited in the table of contents of the appendix);

(6) any certification by the trial court pursuant to art. XI, § 8 of the Constitution of the Federated States of Micronesia, or Rule 9 of these rules.

(7) subject to the alternative provided by Rule 30(e), any exhibits relied upon by either party, or at issue, in the appeal;

(8) any portions, relied upon by counsel, of the

transcript of proceedings in the court appealed from unless these are reproduced in a transcript filed.

Except where they have independent relevance memoranda of law filed in the forum appealed from should not be included in the appendix. The fact that parts of the record are not included in the appendix shall not prevent the parties or the court from relying on such part.

The appellant shall serve and file the appendix with the appellant's brief. Four copies of the appendix shall be filed with the clerk, and one copy shall be served by the appellant on counsel for each party separately represented.

(b) DETERMINATION OF CONTENTS OF APPENDIX; COST OF PRODUCING. The parties are encouraged to agree as to the contents of the appendix, taking into consideration the guidelines for Rule 30(a). In the absence of agreement, the appellant shall, not later than 10 days after the date of notice by the clerk of the appellate division pursuant to Rule 12(b) that the record is ready, serve on the appellee a designation of the parts of the record which the appellant intends to include in the appendix and a statement of the issues which the appellant intends to present for review. If the appellee deems it necessary to direct the particular attention of the court to parts of the record not designated by the appellant, the appellee shall, within ten days after receipt of the designation, serve upon the appellant a designation of those parts. The appellant shall include in the appendix the parts thus designated. In designating parts of the record for inclusion in the appendix, the parties shall have regard for the fact that the entire record is always available to the court for reference and examination and shall not engage in unnecessary designation.

Unless the parties otherwise agree, the cost of producing the appendix shall initially be paid by the appellant, but if the appellant considers that parts of the record designated by the appellee for inclusion are unnecessary for the determination of the issues presented the appellant may so advise the appellee and the appellee shall advance the cost of including such parts. The cost of producing the appendix shall normally be taxed as costs in the case, but if either party shall cause matters to be included in the appendix unnecessarily the court may impose the cost of producing such parts on the party.

(c) Vacant.



(d) ARRANGEMENT OF THE APPENDIX. At the beginning of the appendix there shall be inserted a table of contents listing the parts of the record which the appendix contains, in the order in which the parts are set out, with references to the pages of the appendix at which each part begins. The document shall be in the order enumerated in Rule 30(a) and any other parts of the record shall follow, set out in chronological order. When matter contained in the reporter's transcripts of proceedings is set out in the appendix, the page of the transcript at which such matter may be found shall be indicated in brackets immediately before the matter which is set out. Omissions in the text of papers or of the transcripts must be indicated by asterisks. Immaterial formal matter (captions, subscriptions, acknowledgments, etc.) may be omitted. A question and its answer may be contained in a single paragraph.

(e) REPRODUCTION OF EXHIBITS. Exhibits designated for inclusion may be contained in the appendix or in a separate volume, or volumes, suitably indexed. Four copies thereof shall be filed with the appendix and one copy shall be served on counsel for each party separately represented. The transcript of a proceeding before and administrative agency, board, commission or officer used in an action in the trial court shall be regarded as an exhibit for the purpose of the this subdivision.

(f) HEARING OF APPEALS ON THE ORIGINAL RECORD WITHOUT THE NECESSITY OF AN APPENDIX. The appellate division may, by order in specific cases, dispense with the requirement of an appendix and permit appeals to be heard on the original record, with such copies of the record, or relevant parts thereof, as the court may require.

#### Rule 31. Filing and Service of Briefs

(a) TIME FOR SERVING AND FILING BRIEFS. The appellant shall serve and file a brief within 40 days after the date of notice by the clerk of the appellate division pursuant to Rule 12(b) that the record is ready. The appellee shall serve and file a brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the appellee, but, except for good cause shown, no reply brief may be filed within the last 3 days before argument. The Supreme Court appellate division shall attempt to consider cases on the merits promptly after briefs are filed, and may shorten the periods prescribed above for serving

and filing briefs, for specific cases.

(b) NUMBER OF COPIES TO BE FILED AND SERVED. The original and three additional copies of each brief shall be filed with the clerk, unless the court by order in a particular case shall direct another number. One copy shall be served on counsel for each party separately represented.

(c) CONSEQUENCE OF FAILURE TO FILE BRIEFS. If an appellant fails to file a brief within the time provided by this rule, or within the time as extended, an appellee may move for dismissal of the appeal. An appellee who fails to file a brief will not be heard at oral argument except by permission of the court.

(d) BRIEFS MUST BE SIGNED BY ATTORNEY. All briefs filed with the appellate division must be signed by a person certified as an attorney eligible to practice law before the Federated States of Micronesia Supreme Court.

#### Rule 32. Form of Briefs and Other Papers.

(a) FORM OF BRIEFS. Briefs may be produced by standard typing or by any duplicating or copying process which produces a clear black image on white paper. Briefs and appendices shall be bound in volumes having pages not exceeding 8 1/2 by 11 inches and type matter not exceeding 6 1/2 by 9 1/2 inches, with double spacing between each line of text.

The cover of the brief of the appellant should be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; that of any reply brief gray, and the cover of the appendix if separately bound, should be white. The front covers of the briefs shall contain: (1) the name of the court and the appellate division number of the case; (2) the title of the case (see Rule 12(a)); (3) the nature of the proceeding in the court (e.g., Appeal, Petition for Review); (4) the title of the document (e.g., Brief for Appellant), and (5) the names and addresses and telephone and fax numbers of counsel representing the party on whose behalf the document is filed.

(b) FORM OF OTHER PAPERS. Petitions for rehearing shall be produced in a manner prescribed by subdivision (a). Motions and other papers may be typewritten upon opaque, unglazed paper 8 1/2 by 11 inches in size. Lines of typewritten text shall be double spaced. Consecutive sheets shall be attached at the left margin.

Carbon copies may be used for filing and service if they are legible.

A motion or other paper addressed to the court shall contain a caption setting forth the name of the court, the title of the case, the file number and a brief descriptive title indicating the purpose of the paper.

Rule 33. Prehearing Conference.

The court may direct the attorneys for the parties to appear before the court or a justice thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceeding by the court. The court or justice shall make an order which recites the actions taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of counsel, and such order when entered controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.

Rule 34. Oral Argument.

(a) IN GENERAL; ORAL ARGUMENT ALLOWED. Oral argument shall be allowed in all cases except as otherwise provided in these rules.

(b) NOTICE OF ARGUMENT; POSTPONEMENT. The clerk shall advise all parties of the time and place for oral argument, and the time to be allowed each side. Thirty minutes to 45 minutes normally will be allowed each side for oral argument. A request for postponement of the argument or for allowance of additional time must be made by motion filed reasonably in advance of the date fixed for hearing. The parties may stipulate to waive oral argument.

(c) ORDER AND CONTENT OF ARGUMENT. The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records or authorities.

(d) CROSS AND SEPARATE APPEALS. A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the court otherwise directs. If a case involves a cross appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

(e) NON-APPEARANCE OF PARTIES. If the appellee fails to appear to present argument, the court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the court may hear argument on behalf of the appellee, if his counsel is present. If neither party appears, the case will be decided on the briefs unless the court shall otherwise order.

(f) SUBMISSION ON BRIEFS. By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

(g) USE OF PHYSICAL EXHIBITS AT ARGUMENT; REMOVAL. If physical exhibits other than documents are to be used at the argument, counsel shall arrange to have them placed in the court room before the court convenes on the date of the argument. After the argument, counsel shall cause the exhibits to be removed from the court room unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

Rule 35. Vacant.

Rule 36. Entry of Judgment.

The notation of a judgment in the docket constitutes entry of the judgment. The clerk shall prepare, sign, and enter the judgment following receipt of the opinion of the court unless the opinion directs settlement of the form of the judgment, in which event the clerk shall prepare, sign, and enter the judgment following final settlement by the court. The clerk shall, on the date judgment is entered, mail to all parties a copy of the opinion and notice of the date of entry of the judgment.

Rule 37. Interest on Judgments.

Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the court appealed from. If a judgment is modified or reversed with a direction that a judgment for money be entered in the court appealed from, the mandate shall contain instructions with respect to allowance of interest.

Rule 38. Damages for Delay.

If the Supreme Court appellate division shall determine that an appeal is frivolous, it may award just damages and single or double costs, including attorney's fees, to the appellee.

Rule 39. Costs.

(a) TO WHOM ALLOWED. Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the court.

(b) COSTS FOR AND AGAINST THE FEDERATED STATES OF MICRONESIA. In cases involving the Federated States of Micronesia or an agency or officer thereof, if an award of costs against the Federated States of Micronesia is authorized by law, costs shall be awarded in accordance with the provisions of subdivision (a); otherwise, costs shall not be awarded for or against the Federated States of Micronesia.

(c) COSTS OF BRIEFS AND COPIES OF RECORDS. The cost of printing or otherwise producing necessary copies of briefs, appendices or copies of records shall be taxable in the Supreme Court appellate division at rates not higher than those generally charged for such work in the area where the clerk's office is located.

(d) BILL OF COSTS; OBJECTIONS; COSTS TO BE INSERTED IN MANDATE OR ADDED LATER. A party who desires such costs to be taxed shall state them in an itemized and verified bill of costs which he shall file with the clerk, with proof of service, within 14 days after the entry of judgment. Objections to the bill of costs must be filed within 10 days of service on the party against whom costs are to be taxed unless the time is extended by the court. The clerk shall prepare and certify an itemized statement of costs taxed in the Supreme Court appellate division for insertion in the mandate, but the issuance of the mandate shall not be delayed for taxation of costs and if the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate upon request by the clerk of the Supreme Court appellate division to the clerk of the court appealed from.

(e) COSTS ON APPEAL TAXABLE IN THE COURT APPEALED FROM. Costs incurred in the preparation and transmission of the record, the costs of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for costs of the supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing the notice of appeal shall be taxed in the court appealed from as costs of the appeal in favor of the party entitled to costs under this rule.

#### Rule 40. Petition for Rehearing.

(a) TIME FOR FILING; CONTENT; ANSWER; ACTION BY COURT IF GRANTED. A petition for rehearing may be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order. The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted. No answer to a petition for rehearing will be received unless requested by the court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted the court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or make such other orders as are deemed appropriate under the circumstances of the particular case.

(b) FORM OF PETITION; LENGTH. The petition shall be in a form prescribed by Rule 32(a), and copies shall be served and filed as prescribed by Rule 31(b) for the service and filing of briefs. Except by permission of the court a petition for rehearing shall not exceed 15 pages.

#### Rule 41. Issuance of Mandate

The mandate of the court shall issue 21 days after the entry of judgement unless the time is shortened or enlarged by order. A certified copy of the judgment and a copy of the opinion of the court, if any, and any direction as to costs shall constitute the mandate, unless the court directs that a formal mandate issue. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the court. If the petition is denied, the mandate shall issue 7 days after entry of the order denying the petition unless the time is shortened or

enlarged by order.

Rule 42. Voluntary Dismissal.

(a) DISMISSAL IN THE COURT APPEALED FROM. If an appeal has not been docketed, the appeal may be dismissed by the court appealed from upon the filing in that court of a stipulation for dismissal signed by all parties, or upon motion and notice by the appellant.

(b) DISMISSAL IN THE SUPREME COURT APPELLATE DIVISION. If the parties to an appeal or other proceeding shall sign and file with the clerk of the Supreme Court appellate division an agreement that the proceeding be dismissed specifying the terms as to payment of costs, and shall pay whatever fees are due, the clerk shall enter the case dismissed, but no mandate or other process shall issue without an order of the court. An appeal may be dismissed on motion of the appellant upon such terms as may be agreed upon by the parties or fixed by the court.

Rule 43. Substitution of Parties.

(a) DEATH OF A PARTY. If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the Supreme Court appellate division, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the clerk of the appellate division. The motion of a party shall be served upon the representative in accordance with the provision of Rule 25. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the appellate division may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the court appealed from but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be effected in the Supreme Court appellate division in accordance with this subdivision. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by the party's personal representative, or, if the party has no personal representative, by the party's attorney of record within the time prescribed by these rules. After the notice of appeal is filed substitution shall be effected in the appellate division in accordance with this subdivision.

(b) SUBSTITUTION FOR OTHER CAUSES. If substitution of a party in the Supreme Court appellate division is necessary for any reason

other than death, substitution shall be effected in accordance with the procedure prescribed in subdivision (a).

(c) PUBLIC OFFICERS; DEATH OR SEPARATION FROM OFFICE.

(1) When a public officer is a party to an appeal or other proceeding in the Supreme Court appellate division in his official capacity and during its pendency dies or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer is a party to an appeal or other proceeding in his official capacity the officer may be described as a party by his official title rather than by name; but the court may require the officer's name to be added.

Rule 44. Cases Involving Constitutional Question Where Federated States of Micronesia Is Not A Party.

It shall be the duty of a party who draws in question the constitutionality of any Act of Congress in any proceeding in the Supreme Court appellate division to which the Federated States of Micronesia, or any agency thereof or any officer or employee thereof, as such officer or employee, is not a party, upon the filing of the record, or as soon thereafter as the question is raised in the Supreme Court appellate division, to give immediate notice in writing to the court of the existence of said question. The clerk shall thereupon certify such fact to the Attorney General.

Rule 45. Duties of Clerks.

(a) GENERAL PROVISIONS. Neither the clerk nor any deputy clerk shall practice as an attorney or as counselor in any court while he continues in office. The Supreme Court appellate division shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process and of making motions and orders. The office of the clerk with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but the clerk may provide that the office shall



be open for specified hours on Saturdays.

(b) THE DOCKET; CALENDAR; OTHER RECORDS REQUIRED. The clerk shall keep a book known as the docket, in such form and style as may be prescribed by the Chief Justice or other justices of the Supreme Court and shall enter therein each case. Cases shall be assigned consecutive file numbers. The file number of each case shall be noted on the page of the docket whereon the first entry is made. All papers filed with the clerk and all process, orders, and judgments shall be entered chronologically in the docket on the page assigned to the case. Entries shall be brief but shall show the nature of each paper filed or judgment or order entered. The entry of an order or judgment shall show the date the entry is made. The clerk shall keep a suitable index of cases contained in the docket.

The clerk shall prepare, under the direction of the court, a calendar of cases awaiting argument. In placing cases on the calendar for argument, the clerk shall give preference to appeals in criminal cases and to appeals and other proceedings entitled to preference by law.

Quarter-annually, the clerk shall prepare and distribute a report showing all cases pending in the Supreme Court appellate division. The clerk shall keep such other books and records as may be required from time to time by the Chief Justice or other justices of the Supreme Court.

(c) NOTICE OF ORDERS OR JUDGMENTS. Immediately upon the entry of an order or judgment the clerk shall serve a notice of entry by mail upon each party to the proceeding together with a copy of any opinion respecting the order or judgment, and shall make a note in the docket of the mailing. Service on a party represented by counsel by shall be made on counsel.

(d) CUSTODY OF RECORDS AND PAPERS. The clerk shall have custody of the records and papers of the court. The clerk shall not permit any original record or paper to be taken from the clerk's custody except as authorized by the orders or instructions of the court. Original papers transmitted as the record on appeal or review shall upon disposition of the case be returned to the court from which they were received. The clerk shall preserve copies of briefs and other printed papers filed.

(e) SIX-MONTH GOAL. It shall be the goal of the FSM Supreme Court appellate division to issue an opinion in each case within no

more than six months after oral argument or other submission of the case. If a period longer than six months elapses in a particular case, the Chief Clerk promptly shall notify in writing the Chief Justice and each justice serving on the appellate panel, and copies of such notice shall also be sent to each party in the appeal.

Rule 46. Attorneys.

(a) ADMISSION TO PRACTICE. Attorneys and trial counselors admitted to practice law before the FSM Supreme Court pursuant to the court's rules for admission to practice are eligible to appear before the Supreme Court appellate division in accordance with these Rules of Appellate Procedure.

COMMENT: See also Rule 31(d).

(b) SUSPENSION OR DISBARMENT. When it is shown to the court that any member of its bar has been suspended or disbarred from practice in any other court of record, or has been guilty of conduct unbecoming a member of the bar of the court, that person will be subject to suspension or disbarment by the court. The member shall be afforded an opportunity to show good cause, within such time as the court shall prescribe, why the member should not be suspended or disbarred. Upon the member's response to the rule to show cause, and after hearing, if requested, or upon expiration of the time prescribed for a response if no response is made, the court shall enter an appropriate order.

(c) DISCIPLINARY POWER OF THE COURT OVER ATTORNEYS AND TRAIL COUNSELORS. The Federated States of Micronesia Supreme Court appellate division may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action against any person certified to practice before the Supreme Court of the Federated States of Micronesia, for conduct unbecoming a member of the bar or for failure to comply with these rules or any rule of the court.

Rule 47. Vacant.

Rule 48. Title.

These rules may be known as the Federated States of Micronesia Supreme Court Rules of Appellate Procedure and cited as FSM App. R.  
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THE SUPREME COURT OF THE  
FEDERATED STATES OF MICRONESIA

APPELLATE DIVISION

JOHN DOE,	)	APP. NO.
	)	
Appellant(s),	)	
	)	
v.	)	NOTICE OF APPEAL from
	)	<u>Court</u> (Civil/Criminal)
JIM DOE,	)	No. _____
	)	
Appellee(s).	)	
_____	)	

Notice is hereby given that \_\_\_\_\_, (plaintiff/defendant) in the action appealed from, hereby appeals to the Federated States of Micronesia Supreme Court appellate division from the (final judgment/order) (if order other than final judgment, describe it) entered in (Civil/Criminal) No. \_\_\_\_\_ before the (identify court appealed from) on the \_\_\_\_\_ day of \_\_\_\_\_, 199\_.

The names of parties and addresses and telephone numbers of the legal counsel in the proceeding appealed from are as follows:

(Insert information here)

Service of a copy of this notice of appeal has been provided to all parties by (explain method of service).

\_\_\_\_\_  
/s/

Attorney for appellant(s)  
Address:  
Telephone No.