

FSM CONSTITUTION

THE CONSTITUTION OF THE FEDERATED STATES OF MICRONESIA

PREAMBLE

WE, THE PEOPLE OF MICRONESIA, exercising our inherent sovereignty, do hereby establish this Constitution of the Federated States of Micronesia.

With this Constitution, we affirm our common wish to live together in peace and harmony, to preserve the heritage of the past, and to protect the promise of the future.

To make one nation of many islands, we respect the diversity of our cultures. Our differences enrich us. The seas bring us together, they do not separate us. Our islands sustain us, our island nation enlarges us and makes us stronger.

Our ancestors, who made their homes on these islands, displaced no other people. We, who remain, wish no other home than this. Having known war, we hope for peace. Having been divided, we wish unity. Having been ruled, we seek freedom.

Micronesia began in the days when man explored seas in rafts and canoes. The Micronesian nation is born in an age when men voyage among stars; our world itself is an island. We extend to all nations what we seek from each: peace, friendship, cooperation, and love in our common humanity. With this Constitution we, who have been the wards of other nations, become the proud guardian of our own islands, now and forever.

ARTICLE I Territory of Micronesia

FSM CONSTITUTION

Section 1. The territory of the Federated States of Micronesia is comprised of the Districts of the Micronesian archipelago that ratify this Constitution. Unless limited by international treaty obligations assumed by the Federated States of Micronesia, or by its own act, the waters connecting the islands of the archipelago are internal waters regardless of dimensions, and jurisdiction extends to a marine space of 200 miles measured outward from appropriate baselines, the seabed, subsoil, water column, insular or continental shelves, airspace over land and water, and any other territory or waters belonging to Micronesia by historic right, custom, or legal title.

Section 2. Each state is comprised of the islands of each District as defined by laws in effect immediately prior to the effective date of this Constitution. A marine boundary between adjacent states is determined by law, applying the principle of equidistance. State boundaries may be changed by Congress with the consent of the state legislatures involved.

Section 3. Territory may be added to the Federated States of Micronesia upon approval of Congress, and by vote of the inhabitants of the area, if any, and by vote of the people of the Federated States of Micronesia. If the territory is to become part of an existing state, approval of the state legislature is required.

Cross reference: The statutory provisions on Admission of New States are found in chapter 9 of title 1 of this code.

Section 4. New states may be formed and admitted by law, subject to the same rights, duties, and obligations as provided for in this Constitution.

FSM CONSTITUTION

ARTICLE II Supremacy

Section 1. This Constitution is the expression of the sovereignty of the people and is the supreme law of the Federated States of Micronesia. An act of the Government in conflict with this Constitution is invalid to the extent of conflict.

Case annotations: The Constitution of the Federated States of Micronesia is the supreme law and the decisions of the FSM Supreme Court must be consistent with it. Truk v. Hartman, 1 FSM Intrm. 174, 176-77 (Truk 1982).

While FSM Constitution is supreme law of the land and FSM Supreme Court may under no circumstances acquiesce in unconstitutional governmental action, states should be given full opportunity to exercise their legitimate powers in manner consistent with commands of Constitution without unnecessary intervention by nat'l courts. Etpison v. Perman, 1 FSM Intrm. 405, 428 (Pon. 1984).

Failure to apply constitutional holding retroactively does not violate supremacy clause of Constitution, FSM Const. art. II, § 1. To the contrary, courts may choose between prospective and retroactive application in order to avert injustice or hardship. Innocenti v. Wainit, 2 FSM Intrm. 173, 184-5 (App. 1986).

A state law provision attempting to place "original and exclusive jurisdiction" in Yap State Court cannot divest a nat'l court of responsibilities placed upon it by the nat'l constitution, which is "supreme law of the Federated States of Micronesia." Gimnang v. Yap, 5 FSM Intrm. 13, 23 (App.

FSM CONSTITUTION

1991).

It is duty of FSM Supreme Court to review any nat'l law, including a treaty such as the Compact of Free Association, in response to a claim that the law or treaty violates constitutional rights, and if any provision of the Compact is contrary to the constitution, which is the supreme law of the land, then that provision must be set aside as without effect. Samuel v. Pryor, 5 FSM Intrm. 91, 98 (Pon. 1991).

The FSM Constitution is the supreme law of the FSM, and any actions taken by the government which are in conflict with the FSM Constitution are invalid to the extent of conflict. Pohnpei Cmty. Action Agency v. Christian, 10 FSM Intrm. 623, 630-31 (Pon. 2002).

Although a state constitutional and a statutory provisions barring payment without a legislative appropriation are neither facially objectionable, what is not constitutionally permissible is to use the requirement defensively to avoid payment of a judgment based on a civil rights claim brought under the national civil rights statute. Principles of supremacy under Article II of the FSM Constitution preclude this result. Estate of Mori v. Chuuk, 12 FSM Intrm. 3, 11 n.5 (Chk. 2003).

Any conflict between the Pohnpei Constitution provision that no appeal of any matter relating to the Pohnpei Constitution, Pohnpei law, customs or traditions may be made to any court except the Pohnpei Supreme Court and the FSM Supreme Court's jurisdiction to hear cases under the FSM Constitution is resolved under the FSM Constitution's supremacy clause, which provides that any act

FSM CONSTITUTION

of a government that conflicts with the FSM Constitution is invalid, to the extent of the conflict. Damarlane v. Pohnpei Legislature, 15 FSM Intrm. 301, 307 (App. 2007).

A state constitution cannot control or restrict the actions of the national government, whose powers and limitations are derived solely from the national constitution, which is the supreme law of the land. Thus, a state constitution's protections cannot be invoked against the national government. FSM v. Aiken, 16 FSM Intrm. 178, 182 (Chk. 2008).

The FSM Constitution's supremacy clause does not permit a state law to prevent the enforcement of a national statute which gives a private cause of action for rights guaranteed by the FSM Constitution, especially when it is the solemn obligation of state governments to uphold the principles of the FSM Constitution and to advance the principles of unity upon which the Constitution is founded. Barrett v. Chuuk, 16 FSM Intrm. 229, 234-35 (App. 2009).

No national statute regulates a state's duties and functions, except to the extent that a national statute may limit the state's lawmaking ability in specific areas through the supremacy clause. Arthur v. FSM Dev. Bank, 16 FSM Intrm. 653, 659 (App. 2009).

While all public officials are sworn to uphold the Constitution, the Constitution places upon the courts the ultimate responsibility for interpreting the Constitution. The court is forsworn by the Supremacy Clause from enforcing national laws or treaties contrary to the Constitution itself. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt.

FSM CONSTITUTION

Auth., 17 FSM Intrm. 181, 187 (Pon. 2010).

Under the FSM Constitution's Supremacy Clause, a national statute must control over a conflicting state statute. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM Intrm. 617, 619 (Chk. 2011).

ARTICLE III Citizenship

Section 1. A person who is a citizen of the Trust Territory immediately prior to the effective date of this Constitution and a domiciliary of a District ratifying this Constitution is a citizen and national of the Federated States of Micronesia.

Cross reference: The statutory provisions on TT citizenship are found in chapter 1 of title 7 of this code.

Case annotations: Citizenship may affect, among other legal interests, rights to own land, to engage in business or be employed, and even to reside within the FSM. In re Sproat, 2 FSM Intrm. 1, 6 (Pon. 1985).

Art. III, §§ 1 and 2, of FSM Constitution are self-executing and do not contemplate, or imply the need for, court action to confirm citizenship where no challenge exists. In re Sproat, 2 FSM Intrm. 1, 7 (Pon. 1985).

Where there exists an actual controversy involving a concrete threat to citizenship rights and interests, FSM Supreme Court could be constitutionally required to determine whether a person is or is not a citizen. In re Sproat, 2 FSM Intrm. 1, 7 (Pon. 1985).

FSM CONSTITUTION

Section 2. A person born of parents one or both of whom are citizens of the Federated States of Micronesia is a citizen and national of the Federated States by birth.

Cross reference: The statutory provisions on FSM citizenship are found in chapter 2 of title 7 of this code. The statutory provisions on FSM nationals are found in chapter 3 of title 7 of this code.

Case annotations: Art. III, §§ 1 and 2, of FSM Constitution are self-executing and do not contemplate, or imply need for, court action to confirm citizenship where no challenge exists. *In re Sproat*, 2 FSM Intrm. 1, 7 (Pon. 1985).

Section 3. A citizen of the Federated States of Micronesia who is recognized as a citizen of another nation shall, within 3 years of his 18th birthday, or within 3 years of the effective date of this Constitution, whichever is later, register his intent to remain a citizen of the Federated States and renounce his citizenship of another nation. If he fails to comply with this Section, he becomes a national of the Federated States of Micronesia.

Cross reference: The statutory provisions on FSM citizenship are found in chapter 2 of title 7 of this code. The statutory provisions on FSM nationals are found in chapter 3 of title 7 of this code.

Section 4. A citizen of the Trust Territory who becomes a national of the United States of America under the terms of the Covenant to Establish a Commonwealth of the Northern Mariana Islands may become a citizen and national of the Federated States of Micronesia by applying to a court of competent jurisdiction in the Federated

FSM CONSTITUTION

States within 6 months of the date he became a United States national.

Section 5. A domiciliary of a District not ratifying this Constitution who was a citizen of the Trust Territory immediately prior to the effective date of this Constitution, may become a citizen and national of the Federated States of Micronesia by applying to a court of competent jurisdiction in the Federated States within 6 months after the effective date of this Constitution or within 6 months after his 18th birthday, whichever is later.

Section 6. This Article may be applied retroactively.

ARTICLE IV Declaration of Rights

Cross reference: The statutory provisions on Bill of Rights are found in chapter 1 of title 1 of this code.

Case annotations: In developing Constitution's Declaration of Rights, the Committee on Civil Rights, and subsequently Constitutional Convention, drew almost exclusively upon constitutional principles under United States law. FSM v. Tipen, 1 FSM Intrm. 79, 83 (Pon. 1982).

Provisions in Constitution's Declaration of Rights are to substantial degree patterned upon comparable provisions in U.S. Constitution; the FSM Supreme Court should consider carefully decisions of U.S. courts interpreting U.S. counterparts. Tosie v. Tosie, 1 FSM Intrm. 149, 154 (Kos. 1982).

Constitution secures to criminal defendant, at a minimum,

FSM CONSTITUTION

the right to receive reasonable notice of the charges against the defendant, right to examine any witnesses against the defendant, and the right to offer testimony and be represented by counsel. In re Iriarte (II), 1 FSM Intrm. 255, 260 (Pon. 1983).

No judge should mete out criminal punishment except upon notice and due hearing, unless overriding necessity precludes such indispensable safeguards for assuring fairness. In re Iriarte (II), 1 FSM Intrm. 255, 262 (Pon. 1983).

Where plaintiff has been given reasonable notice of his trial and where he and his attorney failed to appear to adduce evidence and prosecute his claim, his inactivity amounts to abandonment of his claim and is subject to dismissal under FSM Civil Rule 41(b). Etpison v. Perman, 1 FSM Intrm. 405, 414 (Pon. 1984).

A fundamental requisite of due process of law is the opportunity to be heard. Etpison v. Perman, 1 FSM Intrm. 405, 423 (Pon. 1984).

Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must be notified. Etpison v. Perman, 1 FSM Intrm. 405, 423 (Pon. 1984).

Statutory provisions which carried over from Trust Territory Code and were reproduced and referred to as "Bill of Rights" in 1 FSMC 101-114, may retain some residual vitality in the unlikely event that they furnish protection beyond those available under Constitution's Declaration of Rights. FSM v.

FSM CONSTITUTION

George, 1 FSM Intrm. 449, 454-55 (Kos. 1984).

In adopting Declaration of Rights as part of FSM Constitution and therefore the supreme law of the land, the people of Micronesia subscribed to various principles which place upon the judiciary the obligation, among others, to assure that arrests are based upon probable cause, that determinations of guilt are arrived at fairly, and that punishments for wrongdoing are proportionate to the crime and meet prescribed standards. Tammed v. FSM, 4 FSM Intrm. 266, 281-82 (App. 1990).

Since the FSM people's traditions may be protected by statute and if challenged as violative of the fundamental rights in Article IV, protection of Micronesian tradition shall be considered a compelling social purpose warranting such governmental action, Kosrae may pass a law which protects the Kosraean people's traditions. Kosrae v. Waguk, 11 FSM Intrm. 388, 390 (Kos. S. Ct. Tr. 2003).

The right to marry is a fundamental constitutional right. Prisoners retain that right, but the right is subject to substantial restrictions as a result of imprisonment. Prisons may regulate the time and place of the wedding ceremony. Sigrah v. Noda, 14 FSM Intrm. 295, 298 (Kos. S. Ct. Tr. 2006).

A fundamental right is some principle of justice so rooted in the traditions and conscience of our people as to be ranked fundamental and examples of which are the freedom of association, the right to vote, the right to travel, rights associated with certain criminal proceedings, and the right to privacy. Berman v. College of Micronesia-FSM, 15 FSM

FSM CONSTITUTION

Intrm. 76, 82 (Pon. 2007).

Section 1. No law may deny or impair freedom of expression, peaceable assembly, association, or petition.

Case annotations: Right of citizens to express their views, including views critical of public officials, is fundamental to development of a healthy political system. Therefore, courts are generally reluctant to find that expression of opinions asserted outside of the court itself, however intemperate or misguided, constitute contempt of court. *In re Iriarte (I)*, 1 FSM Intrm. 239, 247-48 (Pon. 1983).

A court approaches arguments as to the unconstitutionality of any prior restraint on the right to free speech as follows: first, the distinction is drawn between those portions of the publications that legitimately provide consumers with information and those portions which are solely related to proposing a commercial transaction. The court accords the first category constitutional protection as it approximates pure speech. As for the commercial speech contained within the publications, it would not be afforded constitutional protection unless the court found that the speech concerned a lawful activity and was not misleading. *Yang v. Western Sales Trading Co.*, 11 FSM Intrm. 607, 615 (Pon. 2003).

A court may issue a preliminary injunction when certain portions of commercial speech are misleading to consumers and merchants. *Yang v. Western Sales Trading Co.*, 11 FSM Intrm. 607, 615 (Pon. 2003).

The public interest weighs in favor of issuing a preliminary injunction when the injunction is limited in scope to protect

FSM CONSTITUTION

the public from defendants' statements which are more likely to mislead than to inform the public. Yang v. Western Sales Trading Co., 11 FSM Intrm. 607, 618 (Pon. 2003).

The right of citizens to express their views, including views critical of public officials, is fundamental to development of a healthy political system. Damarlane v. Pohnpei Legislature, 15 FSM Intrm. 301, 312 (App. 2007).

Section 2. No law may be passed respecting an establishment of religion or impairing the free exercise of religion, except that assistance may be provided to parochial schools for non-religious purposes.

Section 3. A person may not be deprived of life, liberty, or property without due process of law, or be denied the equal protection of the laws.

Case annotation: — Due Process

Due process may well require that, in a Nat'l Public Service System employment dispute, the ultimate decision-maker reviews the record of the *ad hoc* committee hearing, at least insofar as either party to personnel dispute may rely upon some portion of record. Suldan v. FSM (I), 1 FSM Intrm. 201, 206 (Pon. 1982).

Words "due process of law" shall be viewed in light of history and accepted meaning of those words prior to and at the time Constitution was written. Alaphonso v. FSM, 1 FSM Intrm. 209, 216-17 (App. 1982).

Due Process Clause of Constitution requires proof beyond a

FSM CONSTITUTION

reasonable doubt as a condition for criminal conviction in FSM. Alaphonso v. FSM, 1 FSM Intrm. 209, 217-23 (App. 1982).

As a matter of constitutional due process, trial court presented with alibi defense should consider evidence concerning the alibi along with all other evidence and shall not find defendant guilty if after considering all of that evidence, the judge feels there is reasonable doubt of defendant's guilt. Alaphonso v. FSM, 1 FSM Intrm. 209, 223-25 (App. 1982).

Art. XI, § 6(b) of FSM Constitution requires that FSM Supreme Court consider a petition for writ of *habeas corpus* alleging imprisonment of a petitioner in violation of his rights of due process. In re Iriarte (I), 1 FSM Intrm. 239, 243-44 (Pon. 1983).

Preservation of a fair decision-making process, and even the maintenance of a democratic system of gov't, requires that courts and individual judges be protected against unnecessary external pressures. In re Iriarte (I), 1 FSM Intrm. 239, 247 (Pon. 1983).

Strict judicial observance of due process is necessary to insure respect for the law. In re Iriarte (I), 1 FSM Intrm. 239, 248 (Pon. 1983).

In *habeas corpus* proceeding, court must apply due process standards to actions of courts which have issued orders of commitment. In re Iriarte (I), 1 FSM Intrm. 239, 249 (Pon. 1983).

FSM CONSTITUTION

Defendant of a criminal contempt charge is entitled to those procedural rights normally accorded other criminal defendants. In re Iriarte (II), 1 FSM Intrm, 255, 260 (Pon. 1983).

Constitution does not contemplate that FSM citizens must first petition any person or body outside the FSM as a condition to consideration of their constitutional claims by courts established under this constitution. In re Iriarte (II), 1 FSM Intrm. 255, 265 (Pon. 1983).

A *nahniken*, just as any ordinary citizen, is entitled to bail and due process. In re Iriarte (II), 1 FSM Intrm. 255, 272 (Pon. 1983).

A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. FSM v. Nota, 1 FSM Intrm. 299, 304 (Truk 1983).

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

Fundamental concept of procedural due process is that gov't may not be permitted to strip citizens of life, liberty or property in an unfair, arbitrary manner. Where such important individual interests are exposed to possible

FSM CONSTITUTION

governmental taking or deprivation, the Constitution requires that the gov't follow procedures calculated to assure a fair and rational decision-making process. Suldan v. FSM (II), 1 FSM Intrm. 339, 354-55 (Pon. 1983).

Due process demands impartiality on part of adjudicators. Suldan v. FSM (II), 1 FSM Intrm. 339, 362 (Pon. 1983).

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

Right to be informed of nature of accusation requires that a statute be sufficiently explicit to prescribe offense with reasonable certainty and not be so vague that persons of common intelligence must necessarily guess at its meaning. Laion v. FSM, 1 FSM Intrm. 503, 507 (App. 1984).

Some generality may be inescapable in proscribing conduct but standard of precision required under the right to be informed of the nature of the accusation is greater in criminal statutes than in civil statutes. Laion v. FSM, 1 FSM Intrm. 503, 508 (App. 1984).

In considering whether term "dangerous weapon" is so

FSM CONSTITUTION

vague as to render 11 FSMC 919 unconstitutional, it is relevant that a court in the U.S. has held that term sufficiently definite to meet U.S. constitutional standards. Laion v. FSM, 1 FSM Intrm. 503, 513 (App. 1984).

Suspicion of guilt can justify the extreme action of an arrest only when based upon reasonable grounds known to the arresting officer at the time of arrest so strong that a cautious man would "believe," that is, consider it more likely than not that the accused is guilty of the offense. Ludwig v. FSM, 2 FSM Intrm. 27, 33 (App. 1985).

The gov't in any criminal case is required, as a matter of due process, to prove all elements of the offense beyond a reasonable doubt. Ludwig v. FSM, 2 FSM Intrm. 27, 35 (App. 1985).

A temporary seizure is itself a significant taking of property, depriving the owner of possession, an important attribute of property. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 75 (Pon. 1985).

Where a seizure is for forfeiture rather than evidentiary purposes, constitutional prohibitions against taking property without due process come into play. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 76 (Pon. 1985).

Any attempt to grant statutory authority to permit seizure of a fishing vessel upon a lesser standard than probable cause would raise serious questions of compatibility with art. IV, §§ 3 and 4 of the Constitution. Such an interpretation should be avoided unless clearly mandated by statute. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 77 (Pon. 1985).

FSM CONSTITUTION

Due process does not require that a second judge decide motions for recusal where the trial judge accepts as true all factual allegations in the affidavit of the party seeking recusal, and must rule only on matters of law in making decision to recuse or not recuse himself. Skilling v. FSM, 2 FSM Intrm. 209, 213 (App. 1986).

Procedure for recusal provided in FSM Code, whereby a party may file a motion for recusal with an affidavit, and judge must rule on the motion, stating his reasons for granting or denying the motion, before any further proceeding is taken, allows the moving party due process. Skilling v. FSM, 2 FSM Intrm. 209, 214 (App. 1986).

Actions of a police officer in stripping a prisoner to punish and humiliate him, then beating him and damaging his pickup truck, constituted violation of the prisoner's constitutional rights to be free from cruel and unusual punishment and his due process rights. Tolenoa v. Alokoa, 2 FSM Intrm. 247, 250 (Kos. 1986).

There is no deprivation of due process in a case in which the gov't at trial elicited testimony revealing that it had custody of certain physical evidence but did not attempt to introduce it, and in which defendant made no request that it be produced. Loney v. FSM, 3 FSM Intrm. 151, 155 (App. 1987).

Due Process Clause of art. VI, § 3 of FSM Constitution requires proof beyond a reasonable doubt as a condition for criminal convictions in the FSM. Runmar v. FSM, 3 FSM Intrm. 308, 311 (App. 1988).

FSM CONSTITUTION

Where purchasers at a judicial sale are not served by summons and complaint pursuant to FSM Civil Rule 3 but receive notice of a motion seeking confirmation of the sale and made by a creditor of the party whose property was sold, and where purchasers do not object to the motion, confirmation of sale is effective and binding on purchasers and is not violative of their rights of due process. Sets v. Island Hardware, 3 FSM Intrm. 365, 368 (Pon. 1988).

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

Once it is determined that a statute establishes a property right subject to protection under Due Process Clause of FSM Constitution, constitutional principles determine what process is due as a minimum. Semes v. FSM, 4 FSM Intrm. 66, 74 (App. 1989).

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

FSM CONSTITUTION

In assessing the government's shorter term, preliminary deprivations of private property to determine what, if any procedures are constitutionally necessary in advance of the deprivation, the FSM Supreme Court will balance the degree of hardship to the person affected against the gov't interests at stake. Semes v. FSM, 4 FSM Intrm. 66, 75 (App. 1989).

Under the equal protection clause of the Declaration of Rights in the FSM Constitution, indigency alone should not disadvantage an accused in our system of criminal justice. Gilmete v. FSM, 4 FSM Intrm. 165, 169 (App. 1989).

In determining whether constitutional line of due process has been crossed, a court must look to such factors as need for application of force, relationship between need and amount of force that was used, extent of injury inflicted, and whether force was applied in a good faith effort to maintain and restore discipline or maliciously and sadistically for the very purpose of causing harm. Paul v. Celestine, 4 FSM Intrm. 205, 208-09 (App. 1990).

To be properly protected under the FSM and Kosrae State Constitutions, the employment right must be based on governmental assurance of continual employment or dismissal for only specified reasons as stated in statute, regulation, formal contract or actions of a supervisory person with authority to establish terms of employment. Edwin v. Kosrae, 4 FSM Intrm. 292, 302 (Kos. S. Ct. Tr. 1990).

Although neither the Environmental Protection Act nor the earthmoving regulations contain any absolute requirement

FSM CONSTITUTION

that a public hearing be held before an earthmoving permit may be issued, issuance by nat'l gov't officials of a permit authorizing earthmoving by a state agency without holding a hearing and based simply upon the application filed by the state agency and the minutes prepared by state officials, is arbitrary and capricious where dredging activities have been long continued in the absence of a nat'l earthmoving permit and where the parties directly affected by those activities have for several months been vigorously opposing continuation of earthmoving activities at the dredging site. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 1, 8 (Pon. 1991).

If a judge has participated as an advocate in related litigation touching upon the same parties, and in the course of that previous activity has taken a position concerning the issue now before him as a judge, the appearance of justice, as guaranteed by Due Process Clause, requires recusal. Etscheit v. Santos, 5 FSM Intrm. 35, 43 (App. 1991).

There are certain circumstances or relationships which, as a *per se* matter of due process, require almost automatic disqualification, and, if a judge has a direct, personal, substantial, pecuniary interest in the outcome of the case, recusal is constitutionally mandated. Etscheit v. Santos, 5 FSM Intrm. 35, 43 (App. 1991).

Because there is a rational basis, linked to legitimate gov't purposes of increasing availability of health care services, for providing immunity from patient suits to U.S. Public Health Service physicians, the Federal Programs and Services Agreement's immunity provisions are not in violation of a plaintiff's due process rights. Samuel v. Pryor,

FSM CONSTITUTION

5 FSM Intrm. 91, 106 (Pon. 1991).

A person's constitutional right to due process of law, and his right to be free from cruel and unusual punishment is violated when an officer instead of protecting the person from attack, threw him to the ground, and beat the person in the jail. Meitou v. Uwera, 5 FSM Intrm. 139, 144 (Chk. S. Ct. Tr. 1991).

Plaintiff's due process rights were not violated where gov't did not use condemnation procedures specified in 67 TTC 451, but followed land registration procedures to obtain title and treated plaintiff fairly and in same way it treated other landowners. Palik v. Kosrae, 5 FSM Intrm. 147, 152-54 (Kos. S. Ct. Tr. 1991).

Constitutional provisions applicable to a prisoner may vary depending on his status. A pre-trial detainee has a stronger right to liberty, which right is protected by the Due Process Clause, FSM Const. art. IV, § 3. A convicted prisoner's claims upon liberty have been diminished through due process so that person must rely primarily on art. IV, § 8 which protects him from cruel and unusual punishment. Plais v. Panuelo, 5 FSM Intrm. 179, 190 (Pon. 1991).

When a panel hearing in a summary dismissal was closed to the public and the injured party and counsel were present to attend and participate in the hearing and the panel accepted and considered all testimony and evidence offered by the parties, due process was not violated. Palsis v. Kosrae State Court, 5 FSM Intrm. 214, 217 (Kos. S. Ct. Tr. 1991).

The actions of a private corporation partly owned by a gov't

FSM CONSTITUTION

should not be considered "state action" for purposes of due process analysis. Alik v. Kosrae Hotel Corp., 5 FSM Intrm. 294, 298 (Kos. 1992).

Under FSM law there is no property right to particular levels of tort compensation triggering due process protections. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM Intrm. 358, 362-63 (Kos. 1992).

Among the rational bases supporting the constitutionality of a state statute capping wrongful death recovery are a desire to create foreseeable limits on gov't liability; to promote insurance; to encourage settlement of claims; and to ease the burden on courts and families of valuing losses incurred through death of family member. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM Intrm. 358, 363 (Kos. 1992).

Aliens are persons protected by the due process and equal protection clause of the Constitution. Berman v. FSM Supreme Court (I), 5 FSM Intrm. 364, 366 (Pon. 1992).

Employment opportunity is a liberty interest protected by due process. Berman v. FSM Supreme Court (I), 5 FSM Intrm. 364, 366 (Pon. 1992).

When counsel is allowed such a short preparation time that counsel's effectiveness is impaired then the accused is deprived of due process and effective assistance of counsel. In re Extradition of Jano, 6 FSM Intrm. 93, 101 (App. 1993).

Something more than a state merely misinterpreting its own law, such as that the state's interpretation was arbitrary,

FSM CONSTITUTION

grossly incorrect, or motivated by improper purposes, is needed to raise a legitimate due process issue. Simon v. Pohnpei, 6 FSM Intrm. 314, 316 (Pon. 1994).

Statutory ineligibility of persons convicted of Trust Territory felonies is a valid exercise of Congress's constitutional power to prescribe additional qualifications for election to Congress, and is not unconstitutional as a deprivation of a liberty interest without due process of law, or as an *ex post facto* law, or as a bill of attainder. Robert v. Mori, 6 FSM Intrm. 394, 401 (App. 1994).

With substantive due process, the court looks at the rationale or legitimacy of the governmental interest. In subjecting a statute or court rule to the requirement of substantive due process, the court asks: 1) Does the government have power to regulate the subject matter? If the statute or rule is not within the power of the government, such statute or rule will be struck down. 2) If the government has the power to regulate, the court next asks if what the statute or rule proposes to do bears a rational relationship to the implementation of the legislative goal. 3) Finally, where the statute or rule involved arguably infringes upon individuals' fundamental rights, the court must ask how important is the legislative objective. The court must ask if there is a compelling governmental interest to justify holding the statute or rule valid, even though the statute might limit fundamental rights. FSM Dev. Bank v. Adams, 14 FSM Intrm. 234, 248 n.6 (App. 2006).

The fundamental concept of procedural due process is that the government may not deprive citizens of life, liberty or property in an unfair, arbitrary manner. A taking occurs

FSM CONSTITUTION

whenever a public entity substantially deprives a private party of the beneficial use of his property for a public purpose. Ladore v. Panuel, 17 FSM Intrm. 271, 275 (Pon. 2010).

The requirement of a public purpose for a taking means that the deprivation must have as its cause some sort of public purpose. Even if the court were to interpret "public purpose" liberally to include any government policy, no interpretation of the facts could make out a government policy or public purpose which caused the deprivation when the cause was a quotidian traffic accident which raises a question of tort, not due process. Ladore v. Panuel, 17 FSM Intrm. 271, 275-76 (Pon. 2010).

When a tort claim trespass that the state occupied and continues to occupy the plaintiff's property to the exclusion of all others rises to the level of a constitutional claim and a civil rights violation, it is a taking of the plaintiff's property without just compensation. Stephen v. Chuuk, 18 FSM Intrm. 22, 25 (Chk. 2011).

— Due Process — Notice and Hearing

It is normally required that a hearing be held prior to seizure of a property. In extraordinary situations a seizure may take place prior to hearing, but the owner must be afforded a prompt post-seizure hearing at which the person seizing the property must at least make a showing of probable cause. Unreasonable delay in providing a post-seizure hearing may require that an otherwise valid seizure be set aside. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 76 (Pon. 1985).

FSM CONSTITUTION

Due Process Clause prevents governmental authorities from depriving an individual of property interests, without first according an opportunity to be heard as to whether the proposed deprivation is permissible. Falcam v. FSM (II), 3 FSM Intrm. 194, 200 (Pon. 1987).

Only in extraordinary circumstances, where immediate action is essential to protect crucially important public interests, may private property be seized without a hearing. Falcam v. FSM (II), 3 FSM Intrm. 194, 200 (Pon. 1987).

A party is not deprived of due process of law in a case in which a judgment is entered against it on a cause of action raised by the trial court, where the party had notice and an opportunity to be heard, even though the cause of action does not appear in the pleadings and no amendment of the pleadings was made. United Church of Christ v. Hamo, 3 FSM Intrm. 445, 453 (Truk 1988).

Constitutional due process requires that a nonprobationary employee of the nat'l gov't be given some opportunity to respond to charges against him before his dismissal may be implemented; including oral or written notice of charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. Semes v. FSM, 4 FSM Intrm. 66, 76 (App. 1989).

A prisoner's rights to procedural due process have been violated when he received neither notice of charges against him nor an opportunity to respond to those charges before or during confinement. Plais v. Panuelo, 5 FSM Intrm. 179, 212 (Pon. 1991).

FSM CONSTITUTION

A person for whom extradition is sought must be brought before a justice that evidence of his criminality may be heard and considered so that he may be certified as extraditable. Such a person is entitled to notice of the hearing and an opportunity to be heard and to effective assistance of counsel. *In re Extradition of Jano*, 6 FSM Intrm. 93, 99 (App. 1993).

Where a party attended the meeting at which the common boundary was set and thus had actual notice, and filed no adverse claim to the boundary location that would trigger the statutory right to notice, but claimed he was not aware of the adverse boundary until eight years later, and waited another four years before filing suit, the claimant's repeated failure to timely assert his rights does not demonstrate a due process violation. *Setik v. Sana*, 6 FSM Intrm. 549, 553 (Chk. S. Ct. App. 1994).

Where parties had no claims to the land at the time the title was determined they were not entitled to notice. Lack of notice to them does not raise a genuine issue of material fact as to validity of a Certificate of Title. Where a court proceeding determined title, lack of a record of notice in the Land Commission files does not raise a genuine issue of material fact as to the validity of the Certificate of Title because the Land Commission did not conduct the hearing on title and so would not have any record of notice. *Luzama v. Pohnpei Enterprises Co.*, 7 FSM Intrm. 40, 49 (App. 1995).

Constructive notice is a concept through which actual notice is imputed to a party regardless of whether that party has actual knowledge of the imputed facts. A party has

FSM CONSTITUTION

constructive notice when from all facts and circumstances known to him at the relevant time, he has such information as would prompt a person exercising a reasonable care to acquire knowledge of the fact in question or to infer its existence. Nahnken of Nett v. Pohnpei, 7 FSM Intrm. 171, 177 n. 11 (Pon. 1995).

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

An owner of seized property cannot challenge the statute it was seized under as unconstitutional because the statute fails to provide for notice and a hearing, if procedural due process, notice and a right to a hearing, are provided. FSM v. M.T. HL Achiever (II), 7 FSM Intrm. 256, 258 (Chk. 1995).

A litigant's constitutional right to due process is violated when a trial court relies on evidence, not a part of the record, without prior notice to the parties or without an opportunity for the parties to comment on it, and it is constitutional error for the court to rely on exhibits never identified, described or marked at trial. George v. Albert, 17 FSM Intrm. 25, 32 (App. 2010).

— Due Process — Vagueness

"Dangerous device" as defined under the Weapons Control Act is not unconstitutionally vague. The language, properly interpreted, affords sufficient notice so that conscientious citizens may avoid inadvertent violations, and constructs sufficiently definite standards to prevent arbitrary law

FSM CONSTITUTION

enforcement. Joker v. FSM, 2 FSM Intrm. 38, 45 (App. 1985).

— Taking of Property

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

Fundamental concept of procedural due process is that gov't may not strip citizens of life, liberty or property in an unfair, arbitrary manner. Where such important individual interests are exposed to possible governmental taking or deprivation, Constitution requires that gov't follow procedures calculated to assure a fair and rational decision-making process. Suldan v. FSM (II), 1 FSM Intrm. 339, 354-55 (Pon. 1983).

When a landowner voluntarily enters into a statement of intent to grant state an easement the state has not violated landowner's constitutional rights by "taking" his property without just compensation, and is not liable for trespass. Nena v. Kosrae, 5 FSM Intrm. 417, 425 (Kos. S. Ct. Tr. 1990).

Constitutional guarantee of due process only protects persons from governments, and those acting under them, established or recognized by the Constitution. Semwen v. Seaward Holdings, Micronesia, 7 FSM Intrm. 111, 113 (Chk. 1995).

FSM CONSTITUTION

A plaintiff's firing by a private employer does not state a cause of action for unconstitutional deprivation of due process because no governmental entity or official is a defendant; the defendant is not alleged to be performing an essential governmental function; and a gov't action is not at issue. Semwen v. Seaward Holdings, Micronesia, 7 FSM Intrm. 111, 113 (Chk. 1995).

Constitutional guarantees of equal protection apply if the discrimination is based on the individual's membership in one of the classes enumerated in art. IV, § 4, or if discrimination affects a "fundamental right." The law is then subject to a strict scrutiny review, under which it will be upheld only if gov't can demonstrate that the classification upon which that law is based bears a close rational relationship to some compelling governmental interest. But if the law does not concern an enumerated class or a fundamental right, the question becomes whether the classification is rationally related to a legitimate governmental purpose. FSM Social Security Admin. v. Weilbacher, 7 FSM Intrm. 137, 146 (Pon. 1995).

The mere act of United States' funding the FSM and Pohnpei does not subject it to liability for a taking because its involvement was insufficiently direct and substantial to warrant such liability and because one gov't is not liable for a taking by officials of another gov't for merely advocating measures that other gov't should take. Damarlane v. United States, 7 FSM Intrm. 167, 169-70 (Pon. 1995).

An unconstitutional taking occurs whenever a public entity substantially deprives a private party of the beneficial use of

FSM CONSTITUTION

his property for a public purpose. Therefore where neither the Trust Territory nor a U.S. gov't agency could be considered a public entity in the FSM after the effective date of the Compact they are legally incapable of committing a taking after that date. Damarlane v. United States, 7 FSM Intrm. 167, 170 (Pon. 1995).

Section 4. Equal protection of the laws may not be denied or impaired on account of sex, race, ancestry, national origin, language, or social status.

Case annotation: A patient's equal protection rights were not violated when there was no showing that the patient was treated differently from any other patient on the basis of her sex, ancestry, nat'l origin, or social status. Samuel v. Pryor, 5 FSM Intrm. 91, 106 (Pon. 1991).

Families of wrongful death victims do not constitute a suspect class for purposes of equal protection analysis. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM Intrm. 358, 362 (Kos. 1992).

Aliens are persons protected by due process and equal protection clauses of Constitution. Berman v. FSM Supreme Court (I), 5 FSM Intrm. 364, 366 (Pon. 1992).

Congress and President respectively have power to regulate immigration and conduct foreign affairs while Chief Justice may make rules governing admission of attorneys. Therefore a rule of admission that treats aliens unequally, promulgated by the Chief Justice, implicates powers expressly delegated to other branches. Berman v. FSM Supreme Court (I), 5 FSM Intrm. 364, 366 (Pon. 1992).

FSM CONSTITUTION

Without a rational valid basis for rule limiting the number of times an alien may take the bar exam it will be held unconstitutional even if it would be constitutional if the regulation were made by Congress or the President. Berman v. FSM Supreme Court (I), 5 FSM Intrm. 364, 367 (Pon. 1992).

Constitutional guarantees of equal protection apply if the discrimination is based on the individual's membership in one of the classes enumerated in art. IV, § 4, or if the discrimination affects a "fundamental right." The law is then subject to a strict scrutiny review, under which it will be upheld only if the gov't can demonstrate that the classification upon which that law is based bears a close rational relationship to some compelling governmental interest. But if the law does not concern an enumerated class or a fundamental right, the question becomes whether the classification is rationally related to a legitimate governmental purpose. FSM Social Security Admin. v. Weilbacher, 7 FSM Intrm. 137, 146 (Pon. 1995).

The equal protection analysis and standards that apply to a discriminatory law also apply to a neutral and non-discriminatory law when it is being applied in a discriminatory fashion. FSM Social Security Admin. v. Weilbacher, 7 FSM Intrm. 137, 146 (Pon. 1995).

Equal protection forbids only invidious discrimination. Where relevant differences exist between classes, different treatment by the state is permissible. However, any statute that classifies and affords different treatment is subject to the same tests as those under substantive due process: 1) Does

FSM CONSTITUTION

the legislature have power to enact the statute that classifies?
2) Does the classification bear a rational relationship to the legislative goal? The classification is presumed to be valid and the burden of proving that the statute is without a rational relationship to the legislative objective is on the challenger of the classification. 3) Where fundamental rights are involved, the classification constitutes a suspect criteria. As such, the burden of proving that the classification bears a close rational relationship to some compelling governmental interests shifts to the government. Fundamental rights are presumed to be absolute until the government proves a compelling governmental interest to curtail or restrain them. Berman v. College of Micronesia-FSM, 15 FSM Intrm. 582, 592 (App. 2008).

Section 5. The right of the people to be secure in their persons, houses, papers, and other possessions against unreasonable search, seizure, or invasion of privacy may not be violated. A warrant may not issue except on probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

Case annotations: The Ponape State consent statute does not authorize the search of a nonconsenting bar or restaurant customer. Pon. Code. ch. 3, §§ 3-13. FSM v. Tipen, 1 FSM Intrm. 79, 81 (Pon. 1982).

Under Ponape State law, a bar or restaurant patron's denial of an authorized person's request to search the person of the patron merely subjects the patron to exclusion from the establishment. Pon. Code ch. 3, §§ 3-13. FSM v. Tipen, 1 FSM Intrm. 79, 81 (Pon. 1982).

FSM CONSTITUTION

The art. IV, § 5 right to be secure against searches is not absolute. The Constitution only protects against unreasonable searches. FSM v. Tipen, 1 FSM Intrm. 79, 82 (Pon. 1982).

No right is held more sacred, or is more carefully guarded by the common law than the right of every individual to possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. FSM v. Tipen, 1 FSM Intrm. 79, 86 (Pon. 1982).

Constitutional protection of individual against unreasonable searches and limitation of powers of police apply wherever an individual may harbor a reasonable expectation of privacy. FSM v. Tipen, 1 FSM Intrm. 79, 86 (Pon. 1982).

Constitutional protection against unreasonable searches extends to contents of closed containers within one's possession and to those items one carries on one's person. FSM v. Tipen, 1 FSM Intrm. 79, 86 (Pon. 1982).

A citizen is entitled to protection of the privacy which he seeks to maintain even in a public place. FSM v. Tipen, 1 FSM Intrm. 79, 86 (Pon. 1982).

Burden is on gov't to justify a search without a warrant. FSM v. Tipen, 1 FSM Intrm. 79, 87 (Pon. 1982).

Legality of search must be tested on basis of the information known to police officer immediately before search began. FSM v. Tipen, 1 FSM Intrm. 79, 88 (Pon. 1982).

FSM CONSTITUTION

FSM Supreme Court is vested, by statute, with authority to suppress or exclude, evidence obtained by unlawful search and seizure. 12 FSMC 312. FSM v. Tipen, 1 FSM Intrm. 79, 92 (Pon. 1982).

Where investigating officers have reason to believe that somebody on private premises may have information pertaining to their investigation, they may enter those private premises, without a warrant or prior judicial authorization, to make reasonably nonintrusive efforts to determine if anybody is willing to discuss substance of their investigations. FSM v. Mark, 1 FSM Intrm. 284, 288 (Pon. 1983).

Police officers who in the performance of their duty enter upon private property without an intention to look for evidence but merely to ask preliminary questions of occupants cannot be said to be conducting a search within the meaning of Constitution. FSM v. Mark, 1 FSM Intrm. 284, 289 (Pon. 1983).

Mere observation does not constitute a search. The term "search" implies exploratory investigation or quest. FSM v. Mark, 1 FSM Instr. 284, 289 (Pon. 1983).

Wide ranging and unwarranted movement of police officers on private land may constitute an unreasonable invasion of privacy, or establish that the investigation had evolved into a search. FSM v. Mark, 1 FSM Intrm. 284, 290 (Pon. 1983).

A warrant is not necessary to authorize seizure when marijuana is in plain view of a police officer who has a right to be in the position to have that view. FSM v. Mark, 1 FSM

FSM CONSTITUTION

Intrm. 284, 294 (Pon. 1983).

It is generally agreed that for actions to constitute a search, there must be: 1) an examination of premises or a person; 2) in a manner encroaching upon one's reasonable expectation of privacy; 3) with an intention, or at least a hope, to discover contraband or evidence of guilt to be used in prosecution of a criminal action. *FSM v. Mark*, 1 FSM Intrm. 284, 298 (Pon. 1983).

The starting point and primary focus of legal analysis for a claim of unreasonable search and seizure should normally be the Constitution's Declaration of Rights, not the statutory "Bill of Rights." *FSM v. George*, 1 FSM Intrm. 449, 455 (Kos. 1984).

The principal difference between FSM Constitution art. IV, § 5 and 1 FSMC 103 is that the Constitution, in addition to prohibiting unreasonable searches and seizures also contains a prohibition against invasions of privacy. *FSM v. George*, 1 FSM Intrm. 449, 455 n. 1 (Kos. 1084).

The gov't bears the burden of proving the existence of voluntary consent. Acquiescence in the desire of law enforcement personnel to search will not be presumed but must be affirmatively demonstrated. *FSM v. George*, 1 FSM Intrm. 449, 456 (Kos. 1984).

A demand, even if courteously expressed, is different from a request, and a citizen's compliance with a police officer's demand, backed by apparent force of law, is perhaps subtly, but nonetheless significantly, different from voluntary consent to a request. *FSM v. George*, 1 FSM Intrm. 449, 458

FSM CONSTITUTION

(Kos. 1984).

On matters relating to a warrantless search, it is for the court to decide whether voluntary consent, as opposed to passive submission to legal authority, occurred. The gov't must put before the court facts, not mere conclusions of police officers, which will permit the judge to decide whether consent was given. FSM v. George, 1 FSM Intrm. 449, 458 (Kos. 1984).

Unconsented and warrantless entry into defendant's house, without any subsequent action on officer's part to impress upon the defendant that they could be influenced by his wishes as to whether a search might be conducted, erases any possibility of finding any aspect of search in house or resultant seizure of evidence, to be either consented to or untainted. FSM v. George, 1 FSM Intrm. 449, 459 (Kos. 1984).

Without probable cause, no search warrant may be obtained and no unconsented search may be conducted. FSM v. George, 1 FSM Intrm. 449, 461 (Kos. 1984).

Constitutional prohibitions against unreasonable searches, seizures or invasions of privacy must be applied with full vigor when a dwelling place is the object of the search. FSM v. George, 1 FSM Intrm. 449, 461 (Kos. 1984).

Only under rare circumstances would FSM Supreme Court likely find that homeowner who neither says nor does anything to indicate affirmative consent has consented to a warrantless search of his house. FSM v. George, 1 FSM Intrm. 449, 463 (Pon. 1984).

FSM CONSTITUTION

A constitutional search may be conducted without a warrant if search is incidental to a lawful arrest. Ludwig v. FSM, 2 FSM Intrm. 27, 32 (App. 1985).

Standard announced in second sentence of FSM Const. art. IV, § 5 for issuance of a warrant must be employed in determining reasonableness of search or seizure. Imposition of standard of probable cause for issuance of a warrant in FSM Const. art. IV, § 5 implies that no search or seizure may be considered reasonable unless justified by probable cause. Ludwig v. FSM, 2 FSM Intrm. 27, 32 (App. 1985).

Police officer making arrest has limited right to conduct a search incident to that arrest. This right to search is for limited purposes of preventing arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. Although right to search is of limited scope, it plainly authorizes a reasonable search of person being arrested. Ludwig v. FSM, 2 FSM Intrm. 27, 34 (App. 1985).

Art. IV, § 5 of FSM Constitution, based upon the fourth amendment of U.S. Constitution, permits reasonable, statutorily authorized inspections of fishing vessel in FSM ports, under various theories upheld under U.S. Constitution, when vessel is reasonably suspected of having engaged in fishing activities. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 74 (Pon. 1985).

It is extraordinarily difficult for law enforcement authorities to police the vast waters of FSM. Yet, effective law enforcement to prevent fishing violations is crucial to

FSM CONSTITUTION

economic interests of this new nation. Accordingly, historical doctrines applied under U.S. Constitution which expand right to search based upon border search, administrative inspection and exigent circumstances theories, appear suitable for application to fishing vessels within FSM. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 74 (Pon. 1985).

While power to seize vessel is crucial to interests of FSM and its states, there are also compelling factors demanding that seizures take place only where fully justified and that procedures be established and scrupulously followed to assure that power to seize is not abused. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 75 (Pon. 1985).

A temporary seizure is itself a significant taking of property, depriving the owner of possession, an important attribute of property. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 75 (Pon. 1985).

It is normally required that a hearing be held prior to seizure of a property. In "extraordinary situations" a seizure may take place prior to hearing, but the owner must be afforded a prompt post-seizure hearing at which the person seizing the property must at least make a showing of probable cause. Unreasonable delay in providing a post-seizure hearing may require that an otherwise valid seizure be set aside. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 76 (Pon. 1985).

General requirement under art. IV, § 5 of Constitution is that before search or seizure may occur there must exist "probable cause", that is, a reasonable ground for suspicion, sufficiently strong to warrant a cautious person to believe

FSM CONSTITUTION

that a crime has been committed and that the item to be seized has been used in the crime. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 76 (Pon. 1985).

Where a seizure is for forfeiture rather than evidentiary purposes, the constitutional prohibitions against taking property without due process come into play. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 76 (Pon. 1985).

Any attempt to grant statutory authority to permit seizure of a fishing vessel upon a lesser standard than probable cause would raise serious questions of compatibility with art. IV, §§ 3 and 4 of Constitution. Such an interpretation should be avoided unless clearly mandated by statute. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 77 (Pon. 1985).

In probable cause determinations court must regard evidence from vantage point of law enforcement officers acting on scene but must make its own independent determination as to whether, considering all facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience, would consider it more likely than not that a violation has occurred. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 77 (Pon. 1985).

This court will apply exclusionary rule on a case-by-case basis. The exclusionary rule has been devised as a necessary device to protect right to be free from unreasonable search and seizure. Kosrae v. Alanso, 3 FSM Intrm. 39, 44 (Kos. S. Ct. Tr. 1985).

Under exclusionary rule, any evidence obtained through an illegal search and seizure, whether physical or verbal, is a

FSM CONSTITUTION

fruit of the illegal search and seizure, is tainted by illegality, and must be excluded. Kosrae v. Alanso, 3 FSM Intrm. 39, 44 (Kos. S. Ct. Tr. 1985).

Few rights are more important than the freedom from unreasonable governmental intrusion into a citizen's privacy and courts must protect this right from well-intentioned, but unauthorized, governmental action. Kosrae v. Alanso, 3 FSM Intrm. 39, 44 (Kos. S. Ct. Tr. 1985).

To protect right to be free from unreasonable search and seizure, this court requires clear proof, not merely that consent was given, but also that a right was knowingly and voluntarily waived. It is fundamental that a citizen be aware of the right he is giving up in order for consent to be found. Kosrae v. Alanso, 3 FSM Intrm. 39, 44 (Kos. S. Ct. Tr. 1985).

Consent, given in the face of a police request to search without consenting person having been informed of his right to refuse consent, and without any written evidence that consent was voluntarily and knowingly given, renders such consent inadequate to permit a warrantless search absent probable cause. Kosrae v. Alanso, 3 FSM Intrm. 39, 44 (Kos. S. Ct. Tr. 1985).

Probable cause is not proof of guilt, but shows that a reasonable ground for suspicion, sufficiently strong to warrant a cautious man to believe that accused is guilty of the offense, exists. Kosrae v. Paulino, 3 FSM Intrm. 273, 276 (Kos. S. Ct. Tr. 1988).

Even on public premises a person may retain an expectation

FSM CONSTITUTION

of privacy, but where a person residing on public land makes no effort to preserve privacy of marijuana plants and seedlings, entry of police on premises and seizure of contraband that is plainly visible from outside the residence is not an unconstitutional search and seizure. FSM v. Rodriguez, 3 FSM Intrm. 368, 370 (Pon. 1988).

When investigators, acting without search warrant on advance information, conduct searches in privately owned areas beyond immediate area of a dwelling house, and seize contraband, they do not thereby violate prohibitions in art. IV, § 5 of FSM Constitution against unreasonable search and seizure. FSM v. Rosario, 3 FSM Intrm. 387, 388-89 (Pon. 1988).

While constitutional provision barring invasion of privacy only protects persons from governmental intrusion into their affairs, not from intrusions by private persons, it does indicate a policy preference in favor of protection of privacy. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM Intrm. 451, 455 (Chk. 1994).

Standard for engaging in search of private property is less exacting than standard required for seizing such property. FSM v. Zhong Yuan Yu No. 621, 6 FSM Intrm. 584, 588 n.4 (Pon. 1994).

Because the purpose of art. IV, § 5 of Constitution is to protect privacy rights of individuals against unreasonable and unauthorized searches and seizures by gov't officials it has been interpreted to require that an individual suspected of a crime be released from detention unless the gov't can establish "probable cause" to hold that individual. FSM v.

FSM CONSTITUTION

Zhong Yuan Yu No. 621, 6 FSM Intrm. 584, 588 (Pon. 1994).

Standard for determining probable cause is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of law has occurred and that the accused committed that violation. The probable cause determination must be made by deliberate, impartial, judgment of a judicial officer. FSM v. Zhong Yuan Yu No. 621, 6 FSM Intrm. 584, 588-89 (Pon. 1994).

Often the determination of probable cause is made by a competent judicial officer upon issuance of an arrest warrant, but where an arrest is not made pursuant to a warrant the arrested is entitled to a judicial determination as to whether there is probable cause to detain accused. FSM v. Zhong Yuan Yu No. 621, 6 FSM Intrm. 584, 589 (Pon. 1994).

A probable cause hearing is an informal, non-adversarial proceeding in which the formal rules of evidence and the requirement of proof beyond a reasonable doubt do not apply. FSM v. Zhong Yuan Yu No. 621, 6 FSM Intrm. 584, 589 (Pon. 1994).

An individual whose property has been seized pursuant to a civil forfeiture proceeding is entitled to a post-seizure hearing in order to determine whether there is probable cause to seize and detain that property. The probable cause standard in a civil forfeiture case is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation has occurred and that the property was used in that violation. FSM v. Zhong Yuan Yu No. 621, 6 FSM Intrm. 584, 589-90

FSM CONSTITUTION

(Pon. 1994).

The gov't has probable cause to detain a fishing vessel for illegal fishing when the evidence and information indicate that the vessel was conducting fishing operations within the FSM Exclusive Economic Zone, there was freshly caught fish aboard, and the permit provided to the officers contained a name different from actual name of vessel. FSM v. Zhong Yuan Yu No. 621, 6 FSM Intrm. 584, 590-91 (Pon. 1994).

For purposes of art. IV, § 5 protection, a search is any governmental intrusion into an area where a person has a reasonable expectation of privacy. Thus, constitutional protections do not attach unless search or seizure can be attributed to governmental conduct and defendant had a reasonable expectation of privacy in items searched. FSM Social Security Admin. v. Weilbacher, 7 FSM Intrm. 137, 142 (Pon. 1995).

Administrative searches designed to aid in collection of taxes rightly owing to gov't must be conducted according to same requirements laid down for other searches and seizures. FSM Social Security Admin. v. Weilbacher, 7 FSM Intrm. 137, 142 (Pon. 1995).

An administrative agency may either request certain records be provided or formally subpoena the desired information, rather than obtain a court-ordered search warrant. In either situation, subject of inspection may decide whether to refuse or cooperate with government's request. Only when person refuses to permit the requested search does Constitution prohibit the administrative agency from coercing that person

FSM CONSTITUTION

to turn over records without first obtaining a valid search warrant. FSM Social Security Admin. v. Weilbacher, 7 FSM Intrm. 137, 143 (Pon. 1995).

Where a person refuses to cooperate with the inspection requests of the administrative agency, the gov't will be required to demonstrate to a neutral and detached magistrate that the requested material is reasonable to the enforcement of the administrative agency's statutory responsibilities and that the inspection is being conducted pursuant to a general and neutral enforcement plan in order to obtain required search warrant. FSM Social Security Admin. v. Weilbacher, 7 FSM Intrm. 137, 143 (Pon. 1995).

For court to order property seized pursuant to a search warrant to be returned, defendants' burden is to show both that there has been an illegal seizure by the state and that they have claim of lawful possession to property. Chuuk v. Mijares, 7 FSM Intrm. 149, 150 (Chk. S. Ct. Tr. 1995).

For a party to have valid claim of lawful possession of alcohol seized by the state that party must have paid possession tax on seized items. Chuuk v. Mijares, 7 FSM Intrm. 149, 150 (Chk. S. Ct. Tr. 1995).

Section 6. The defendant in a criminal case has a right to a speedy public trial, to be informed of the nature of the accusation, to have counsel for his defense, to be confronted with the witnesses against him, and to compel attendance of witnesses in his behalf.

Case annotations: — Right to Counsel

Constitution secures to criminal defendant, as a minimum,

FSM CONSTITUTION

the right to receive reasonable notice of charges against defendant, right to examine any witnesses against defendant, and right to offer testimony and be represented by counsel. In re Iriarte (II), 1 FSM Intrm. 225, 260 (Pon. 1983).

Where defendants had been advised of their right to counsel but there was no indication that they desired or requested counsel, there is no basis for finding that their right to counsel had been violated. FSM v. Jonathan, 2 FSM Intrm. 189, 199 (Kos. 1986).

When a defendant has expressed a wish to meet with counsel before further questioning, questioning must cease at once. Any attempt by police officers to ignore or override the defendant's wish, or to dissuade him from exercising his right, violates 12 FSMC 218. FSM v. Edward, 3 FSM Intrm. 224, 235 (Pon. 1987).

For a defendant to waive his right to silence or to counsel he must do so knowingly and intelligently. There exists a presumption against such waivers. Moses v. FSM, 5 FSM Intrm. 156, 159 (App. 1991).

Where defendant's counsel had five days to prepare for defense of accused, and was granted a two day continuance, in the absence of any showing in the record or representation by counsel of resulting prejudice or ineffectiveness of counsel, trial court's refusal to grant longer continuance was not an abuse of discretion and did not violate art. IV, § 6 of FSM Constitution. Hartman v. FSM, 5 FSM Intrm. 224, 233-34 (App. 1991).

— Speedy Trial

FSM CONSTITUTION

When defendant has already agreed to a trial date that meets constitutional requirement for a speedy trial, and no reason is offered why that date is no longer constitutionally sound, later motion for speedy trial may be denied. FSM v. Wu Ya Si, 6 FSM Intrm. 573, 574 (Pon. 1994).

Section 7. A person may not be compelled to give evidence that may be used against him in a criminal case, or be twice put in jeopardy for the same offense.

Case annotations: Courts may look to Journals of the Micronesian Constitutional Convention for assistance in determining meaning of constitutional language that does not provide an unmistakable answer. Journals provide no conclusion as to whether promises of leniency by police should be regarded as having compelled a defendant to give statements and other evidence but shows that the art. IV, § 7 protection against self-incrimination was based upon the fifth amendment to the U.S. Constitution. Therefore courts within the FSM may look to U.S. decisions to assist in determining meaning of art. IV, § 7. FSM v. Jonathan, 2 FSM Intrm. 189, 193-94 (Kos. 1986).

Where a police officer promised to reduce charges if defendant cooperated but there was no other showing of police intimidation or manipulation and the defendant had recognized that his guilt was apparent, the confession was not induced by the promises but instead was a voluntary response to the futility of carrying the deceit further. FSM v. Jonathan, 2 FSM Intrm. 189, 198 (Kos. 1986).

A confession which is the product of an essentially free and

FSM CONSTITUTION

unconstrained choice by its maker may be used as evidence to establish guilt of defendant in court. FSM v. Jonathan, 2 FSM Intrm. 189, 194 (Kos. 1986).

Although questioning of witnesses and suspects is a necessary tool for effective enforcement of criminal law, courts have recognized that there is an unbroken line from physical brutality to more subtle police use of deception, intimidation and manipulation, and that vigilance is required. FSM v. Jonathan, 2 FSM Intrm. 189, 195 (Kos. 1986).

Overall circumstances and not merely the existence or nonexistence of a promise determines whether a confession will be accepted as voluntary or rendered inadmissible as involuntary. FSM v. Jonathan, 2 FSM Intrm. 189, 196 (Kos. 1986).

Police may question persons who, while they are in police custody, fall under suspicion for another crime, without regard to the fact that other persons in a similar category would be released without questioning. FSM v. Jonathan, 2 FSM Intrm. 189, 199 (Kos. 1986).

Voluntary admissions prompted by accumulation of evidence against defendant are a legitimate goal of police investigation. FSM v. Edward, 3 FSM Intrm. 224, 232 (Pon. 1987).

Where admissions have been obtained in course of questioning conducted in violation of 12 FSMC 218, statutory policy calls for a presumption that subsequent admissions were obtained as a result of the violation. FSM v.

FSM CONSTITUTION

Edward, 3 FSM Intrm. 224, 233 (Pon. 1987).

When defendant has expressed a wish to meet with counsel before further questioning, questioning must cease at once. Any attempt by police officers to ignore or override defendant's wish, or to dissuade him from exercising his right, violates 12 FSMC 218. FSM v. Edward, 3 FSM Intrm. 224, 235 (Pon. 1987).

In determining whether defendant's statement to police is "voluntary," consistent with due process requirements of the Constitution, courts should consider the totality of surrounding circumstances. Courts review actual circumstances surrounding confession and attempt to assess the psychological impact on accused of those circumstances. FSM v. Edward, 3 FSM Intrm. 224, 238 (Pon. 1987).

The court will not issue a writ of *certiorari* to review the trial court's suppression of defendant's confession in a case in which no assignments of error are furnished to the court, although such decision effectively terminates the case because gov't cannot continue its prosecution without the confession, and although no appeal is available to the gov't. In re Edward, 3 FSM Intrm. 285, 286-87 (App. 1987).

Where no motion to suppress a confession has been made before trial and no cause has been offered as to the failure to raise the objection, the trial court was justified in finding that the defendant had waived any objection to the admission of the confession. In re Juvenile, 4 FSM Intrm. 161, 163 (App. 1989).

Where trial record shows no waiver of a minor's rights

FSM CONSTITUTION

against self-incrimination, where a remarkable discrepancy exists between police procedure for taking a statement and written evidence offered at trial, where the only evidence supporting the conviction other than the confession is an accomplice's testimony, where minor is 16 years of age and had been on detention some 2 weeks prior to his confession, and where parents of the minor were absent at the time the confession was made, the trial court erred in admitting defendant's confession. *In re Juvenile*, 4 FSM Intrm. 161, 164 (App. 1989).

Defendant's statement will be suppressed when defendant has not been advised of all rights set forth in 12 FSMC 218 (1)-(5), even though he was advised of right to remain silent and right to counsel and he waived those rights. *FSM v. Sangechik*, 4 FSM Intrm. 210, 211-12 (Chk. 1990).

For a defendant to waive his right to silence or to counsel he must do so knowingly and intelligently. There exists a presumption against such waivers. *Moses v. FSM*, 5 FSM Intrm. 156, 159 (App. 1991).

A codefendant's inculpatory statement which has been admitted into evidence may not be used against any defendant other than the declarant without violating the right of confrontation guarantee of FSM Constitution. *Hartman v. FSM*, 5 FSM Intrm. 224, 229 (App. 1991).

Although there is a danger of prejudice in cases where a co-defendant's inculpatory statement is admitted into evidence, because court is hesitant to limit the broad discretion afforded the trial judge by FSM Crim. R. 14, and because many problems can be eliminated by redaction of

FSM CONSTITUTION

the statement, the court will not adopt a *per se* rule of severance at this time. Hartman v. FSM, 5 FSM Intrm. 224, 230 (App. 1991).

For confession of defendant to be admissible as evidence defendant must not merely waive his right to counsel but must also specifically waive the independent right to remain silent. Hartman v. FSM, 5 FSM Intrm. 224, 234-35 (App. 1991).

By responding voluntarily to questions asked without coercion, after he has been advised of his rights, a defendant waives his right to remain silent. FSM v. Hartman (I), 5 FSM Intrm. 350, 352 (Pon. 1992).

Use of a defendant's out of court statement as evidence against a codefendant would violate codefendant's "right of confrontation" since declarant is not a witness at the trial subject to cross examination. Hartman v. FSM, 6 FSM Intrm. 293, 301 (App. 1993).

If severance is denied, defendants' out of court statements ought to be redacted to eliminate in each references to other codefendants. Failure to do so may result in reversal of convictions in the interests of justice. After redaction, no prejudice will occur if statements then give no reference to any codefendant. Redaction can normally be accomplished by the parties. Thus court will not view statement until after redaction. Hartman v. FSM, 6 FSM Intrm. 293, 301-02 & n.12 (App. 1993).

By statute, statements taken as a result of a violation of defendant's statutory right to be brought before a judicial

FSM CONSTITUTION

officer without unnecessary delay are inadmissible, even if voluntary. Chuuk v. Arnish, 6 FSM Intrm. 611, 613 (Chk. S. Ct. Tr. 1994).

— Double Jeopardy

Principal purpose of protection against double jeopardy established by FSM Constitution, art. IV, § 7 is to prevent gov't from making repeated attempts to convict an individual for the same alleged act. Laion v. FSM, 1 FSM Intrm. 503, 521 (App. 1984).

Double jeopardy clause of FSM Constitution protects against second prosecution for same offense after acquittal, against a second prosecution for same offense after conviction and against multiple punishments for same offense. Laion v. FSM, 1 FSM Intrm. 503, 523 (App. 1984).

When assault with a dangerous weapon requires use or attempted use of a dangerous weapon, a fact not required for aggravated assault, and aggravated assault requires an intent to cause serious bodily injury, which need not be proved for conviction of assault with a dangerous weapon, conviction on both charges for the same wrongful act will not violate double jeopardy clause of Constitution. Laion v. FSM, 1 FSM Intrm. 503, 524 (App. 1984).

Where same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not. If test is met a dual conviction will not violate the constitutional protection against double jeopardy. Laion

FSM CONSTITUTION

v. FSM, 1 FSM Intrm. 503, 523-25 (App. 1984).

Where two statutory provisions aimed at similar types of wrongdoing and upholding citizen and public interests of same nature would apply to a solitary illegal act, which caused only one injury, statutes will be construed not to authorize cumulative convictions in absence of clear indication of legislative intent. However, gov't is not denied right to charge separate offenses to guard against risk that a conviction may not be obtained on one of the offenses.

Laion v. FSM, 1 FSM Intrm. 503, 529 (App. 1984).

Protection against double jeopardy in a second trial is not available until the person has first been tried in one trial. Jeopardy does not attach in a criminal trial until the first witness is sworn in to testify. FSM v. Cheng Chia-W (I), 7 FSM Intrm. 124, 128 (Pon. 1995).

Section 8. Excessive bail may not be required, excessive fines imposed, or cruel and unusual punishments inflicted. The writ of habeas corpus may not be suspended unless required for public safety in cases of rebellion or invasion.

Case annotation: — Cruel and Unusual Punishment

Actions of police officer in stripping prisoner to punish and humiliate him, then beating him and damaging his pickup truck, constituted violation of prisoner's constitutional rights to be free from cruel and unreal punishments and his due process rights. Tolenoa v. Alokoa, 2 FSM Intrm. 250 (Kos. 1986).

Municipality which employs untrained persons as police

FSM CONSTITUTION

officers, then fails to train them and authorizes their use of excessive force and summary punishment, will be held responsible for their unlawful acts, including abuse of a prisoner arrested without being advised of charges or given an opportunity for bail, whose handcuffs were repeatedly tightened during his 14 hour detention in such a way that he was injured and unable to work for one month. Moses v. Municipality of Polle, 2 FSM Intrm. 270, 271 (Truk 1986).

Where a person has not been tried, convicted and sentenced, no question of cruel and unusual punishment arises. Paul v. Celestine, 4 FSM Intrm. 205, 208 (App. 1990).

Use of force by police officers is not privileged or justified when arrestee was so drunk and unstable to resist or defend himself and when police officer used force because he was enraged at being insulted by arrestee. Meitou v. Uwera, 5 FSM Intrm. 139, 144 (Chk. S. Ct. Tr. 1991).

A person's constitutional right to due process of law, and his right to be free from cruel and unusual punishment is violated when an officer instead of protecting the person from attack, threw him to the ground, and beat the person in the jail. Meitou v. Uwera, 5 FSM Intrm. 139, 144 (Chk. S. Ct. Tr. 1991).

Constitutional provisions applicable to a prisoner may vary depending on his status. A pre-trial detainee has a stronger right to liberty, which right is protected by Due Process Clause, FSM Const. art. IV, § 3. A convicted prisoner's claims upon liberty have been diminished through due process so that person must rely primarily on art. IV, § 8 which protects him from cruel and unusual punishment.

FSM CONSTITUTION

Plais v. Panuelo, 5 FSM Intrm. 179, 190 (Pon. 1991).

In a case where a convicted prisoner, who is also a pre-trial detainee, asserts civil rights claims arising out of ill-treatment after arrest, denial of access to family is a due process claim, and physical abuse involves due process as well as cruel and unusual punishment claims. Plais v. Panuelo, 5 FSM Intrm. 179, 190 (Pon. 1991).

In interpreting provision against cruel and unusual punishment in FSM Constitution, court should consider values and realities of Micronesia, but against background of law concerning cruel and unusual punishment and internat'l standards concerning human rights. Plais v. Panuelo, 5 FSM Intrm. 179, 196-97 (Pon. 1991).

Confining prisoner in dangerously unsanitary conditions, which represent a broader gov't-wide policy of deliberate indifference to dignity and well-being of prisoners, is failure to provide civilized treatment or punishment, in violation of prisoners' protection against cruel and unusual punishment, and renders state liable under 11 FSMC 701(3). Plais v. Panuelo, 5 FSM Intrm. 179, 208 (Pon. 1991).

— *Habeas Corpus*

Art. XI, § 6(b) of FSM Constitution requires that FSM Supreme Court consider a petition for writ of *habeas corpus* alleging imprisonment of a petitioner in violation of his rights of due process. In re Iriarte (I), 1 FSM Intrm. 239, 243-44 (Pon. 1983).

In *habeas corpus* proceeding, the court must apply due

FSM CONSTITUTION

process standards to actions of courts which have issued orders of commitment. *In re Iriarte (I)*, 1 FSM Intrm. 239, 249 (Pon. 1983).

Judicial review of certification of extraditability, although not appealable, is available to an accused in custody by seeking a writ of *habeas corpus*. *In re Extradition of Jano*, 6 FSM Intrm. 23, 25 (App. 1993).

4 FSMC 117 gives both the trial division and the appellate division powers to issue all writs not inconsistent with law or with the rules of civil procedure. FSM Appellate Rule 22(a) requires petitions for writs of *habeas corpus* be first brought in the trial division. When circumstances have been shown to warrant, the appellate division clearly has the authority to suspend the rule. *In re Extradition of Jano*, 6 FSM Intrm. 31, 32 (App. 1993).

Judicial review of an extradition hearing is by petition for a writ of *habeas corpus*. *In re Extradition of Jano*, 6 FSM Intrm. 93, 97 (App. 1993).

Scope of *habeas corpus* review of extradition proceeding is 1) whether judge had jurisdiction, 2) whether court had jurisdiction over extraditee, 3) whether there is an extradition agreement in force, 4) whether crimes charged fall within the terms of the agreement, and 5) whether there was sufficient evidence to support a finding of extraditability. *In re Extradition of Jano*, 6 FSM Intrm. 93, 104 (App. 1993).

— Bail

FSM CONSTITUTION

The object in determining conditions of pretrial release is to assure the presence of defendant at trial so that justice may be done while keeping in mind the presumption of innocence and permitting defendant the maximum amount of pretrial freedom. FSM Supreme Court should attempt to weigh the various forces likely to motivate a defendant to stay and face trial against those forces likely to impel him to leave. FSM Crim. R. 46(a)(2). FSM v. Jonas (I), 231a, 233 (Pon. 1982).

Relief from improperly set or denied bail must be speedy to be effective. In re Iriarte (II), 1 FSM Intrm. 255, 265 (Pon. 1983).

The bearer of title of Nahniken, by virtue of his position's deep ties to Ponapean society, may be expected to appear and stand trial if accused of crime and to submit to sentence if found guilty. Bail, therefore should be granted. In re Iriarte (II), 1 FSM Intrm. 255, 265 (Pon. 1983).

A nahniken, just as any ordinary citizen, is entitled to bail and due process. In re Iriarte (II), 1 FSM Intrm. 255, 272 (Pon. 1983).

FSM Supreme Court must approach question of whether bail is "excessive" with recognition that defendant is presumed innocent, is to be treated with dignity, and needs a reasonable opportunity to prepare his defense. At the same time the judiciary must keep in mind his responsibility to the public to assure that defendant will be made to respond to charges leveled at him. FSM v. Etpison, 1 FSM Intrm. 370, 372 (Pon. 1983).

FSM CONSTITUTION

Once a justice certifies an accused as extraditable, the justice must then commit the person to the proper jail until surrendered. The extradition statute does not give the court the authority to release a person on bail pending any judicial review of the certification. In re Extradition of Jano, 6 FSM Intrm. 62, 63 (App. 1993).

In internat'l extradition case, bail can be granted only if "special circumstances" are shown. Neither risk of flight nor availability of suitable custodian are primary considerations. Rather the primary consideration is ability of gov't to surrender the accused to the requesting gov't. In re Extradition of Jano, 6 FSM Intrm. 62, 64 (App. 1993).

— Excessive Fines

It is premature to challenge a statute as unconstitutional for imposing excessive fines until a fine has been imposed. FSM v. Cheng Chia-W (I), 7 FSM Intrm. 124, 126 (Pon. 1995).

Section 9. Capital punishment is prohibited.

Section 10. Slavery and involuntary servitude are prohibited except to punish crime.

Case annotation: Slavery and involuntary servitude are prohibited except to punish crime. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 384 (App. 2003).

While the Constitution's prohibition of slavery and involuntary servitude may have had its source in the Trust Territory Bill of Rights and the U.S. Constitution, it has particular meaning within the FSM's historical context of

FSM CONSTITUTION

forced labor by former foreign administering authorities. Some still-living citizens of this nation have experienced firsthand the evils of slavery and involuntary servitude, and the constitutional provision was meant to ban those types of atrocities forever. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 384 (App. 2003).

Since the words "involuntary servitude" are subject to various definitions, the constitutional provision is not clear and does not permit only one possible result. A court may consult the constitutional convention journal to ascertain the framers' intent in drafting this language. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 385 (App. 2003).

The determination of what constitutes 'involuntary servitude' or what is regarded as "badges of slavery" is to be made in the context of well established Micronesian customs. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 385 (App. 2003).

Absent a violation of a criminal statute, the court cannot compel a person to labor for the liquidation of a debt to another with the threat of punishment for failure to perform. Involuntary servitude thus has been held to encompass peonage, where a person is bound to the service of a particular employer until an obligation to that person is satisfied. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 385 (App. 2003).

When a person claiming involuntary servitude is simply expected to seek and accept employment, if available, and is free to choose the type of employment and employer, and is also free to resign that employment if conditions are

FSM CONSTITUTION

unsatisfactory or to accept other employment, none of the aspects of "involuntary servitude" are present. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 385 (App. 2003).

While the trial court does not violate the Constitution's involuntary servitude provision when it orders a judgment-debtor to seek immediate employment, when the judgment-debtor has presented evidence that he is unable to work, the trial court must make specific findings with regard to his fitness for work before it orders him to seek immediate employment. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 386 (App. 2003).

Section 11. A bill of attainder or ex post facto law may not be passed.

Case annotations: — Bill of Attainder

A bill of attainder is any legislative act that applies to either named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial by substitution of a legislative for a judicial determination of guilt. Robert v. Mori, 6 FSM Intrm. 394, 401 (App. 1994).

The statutory ineligibility of persons convicted of Trust Territory felonies is valid exercise of Congress's constitutional power to prescribe additional qualifications for election to Congress, and is not unconstitutional as a deprivation of a liberty interest without due process of law, or as an *ex post facto* law, or as a bill of attainder. Robert v. Mori, 6 FSM Intrm. 394, 401 (App. 1994).

FSM CONSTITUTION

— *Ex Post Facto* Laws

While every *ex post facto* law must necessarily be retrospective not every retrospective law is an *ex post facto* law. An *ex post facto* law is one which imposes punishment for past conduct, lawful at time it was engaged in. *Robert v. Chuuk State House of Representatives*, 6 FSM Intrm. 260, 266-67 (Chk. S. Ct. Tr. 1993).

Legislation is not an *ex post facto* law where source of legislative concern can be thought to be the activity or status from which the individual is barred, even though it may bear harshly upon one affected, but the contrary is the case where statute in question is evidently aimed at person or class of persons disqualified. *Robert v. Chuuk State House of Representatives*, 6 FSM Intrm. 260, 268-69 (Chk. S. Ct. Tr. 1993).

A provision barring those convicted of a felony, even if pardoned, from membership in legislature is concerned with qualifications of legislative membership, and is not just for purpose of punishing felons and those pardoned of a felony which would violate the constitutional ban on *ex post facto* laws. *Robert v. Chuuk State House of Representatives*, 6 FSM Intrm. 260, 269-71 (Chk. S. Ct. Tr. 1993).

Regulations imposing civil disqualifications for past criminal conduct are not punishment barred by constitutional ban against *ex post facto* laws. *Robert v. Chuuk State House of Representatives*, 6 FSM Intrm. 260, 270-71 (Chk. S. Ct. Tr. 1993).

The concept of *ex post facto* laws is limited to legislation

FSM CONSTITUTION

which does any of the following: 1) makes criminal and punishable an act innocent when done; 2) aggravates a crime, or makes it greater than it was when committed; 3) increases punishment for a crime and applies the increase to crimes committed before enactment of the laws; or 4) alters legal rules of evidence so that testimony insufficient to convict for the offense when committed would be sufficient as to that particular offense and accused person. The ban on *ex post facto* law applies to criminal acts only. This means retroactive noncriminal laws may be valid. Robert v. Mori, 6 FSM Intrm. 394, 400 (App. 1994).

Statutory ineligibility of persons convicted of Trust Territory felonies is a valid exercise of Congress's constitutional power to prescribe additional qualifications for election to Congress, and is not unconstitutional as a deprivation of a liberty interest without due process of law, or as an *ex post facto* law, or as a bill of attainder. Robert v. Mori, 6 FSM Intrm. 394, 401 (App. 1994).

Section 12. A citizen of the Federated States of Micronesia may travel and migrate within the Federated States.

Section 13. Imprisonment for debt is prohibited.

Case annotations: The constitutional provision prohibiting imprisonment for debt does not restrict the manner in which 6 F.S.M.C. 1412 is applied, although that statute includes imprisonment as one possible sanction for violating an order in aid of judgment. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 381 (App. 2003).

The constitutional prohibition prohibiting imprisonment for

FSM CONSTITUTION

debt is a restriction on the courts against the enforcement of judgments of a certain character, but does not restrict a court's power to enforce its lawful orders by imprisonment for contempt. Even when the violation of the order is for failure to make payments for the recovery of a judgment enforceable by an order in aid of judgment, if the order is one which the court could lawfully make, the imprisonment is not for failure to pay the debt, but failure to obey a lawful court order. *Rodriguez v. Bank of the FSM*, 11 FSM Intrm. 367, 382 (App. 2003).

The prohibition on imprisonment for debt is to bar imprisonment for honest failure to pay contractual debts. *Rodriguez v. Bank of the FSM*, 11 FSM Intrm. 367, 382 (App. 2003).

A debtor who knows that he is under a court order to pay an amount certain, has the ability to pay the amount, and still refuses to pay it, acts against good morals and fair dealing. Such a situation amounts to being "tainted by fraud" and is within the exceptions to the prohibition on imprisonment for debt. *Rodriguez v. Bank of the FSM*, 11 FSM Intrm. 367, 382-83 (App. 2003).

ARTICLE V Traditional Rights

Section 1. Nothing in this Constitution takes away a role or function of a traditional leader as recognized by custom and tradition, or prevents a traditional leader from being recognized, honored, and given formal or functional roles at any level of government as may be prescribed by this Constitution or by statute.

FSM CONSTITUTION

Case annotations: Defendants are not within coverage of FSM Const. art. V, § 1, preserving "the role or function of a traditional leader as recognized by custom and tradition," simply by virtue of their status as municipal police officers. *Teruo v. FSM*, 2 FSM Intrm. 167, 172 (App. 1986).

The Yap Constitution provides that the state recognizes traditional rights and ownership of natural resources and areas within the marine space of the State within 12 miles from island baselines and Yap statutory law provides that traditionally recognized fishing rights wherever located within the State Fishery Zone and internal waters must be preserved and respected and also preserves existing private rights of action for civil damages, for damage to coral reefs, seagrass areas, and mangroves. Thus 67 TTC 2 is no longer Yap state law. *People of Rull ex rel. Ruepong v. M/V Kyowa Violet*, 14 FSM Intrm. 403, 414 (Yap 2006).

Section 2. The traditions of the people of the Federated States of Micronesia may be protected by statute. If challenged as violative of Article IV, protection of Micronesian tradition shall be considered a compelling social purpose warranting such governmental action.

Section 3. The Congress may establish, when needed, a Chamber of Chiefs consisting of traditional leaders from each state having such leaders, and of elected representatives from states having no traditional leaders. The constitution of a state having traditional leaders may provide for an active, functional role for them.

ARTICLE VI Suffrage

Section 1. A citizen 18 years of age may vote in national elections.

FSM CONSTITUTION

The Congress shall prescribe a minimum period of local residence and provide for voter registration, disqualification for conviction of crime, and disqualification for mental incompetence or insanity. Voting shall be secret.

Cross reference: The statutory provisions on National Elections are found in title 9 of this code.

Case annotations: The only explicit right to suffrage found in the FSM Constitution is the right to "vote in national elections." So an alleged denial of a right to suffrage in a Chuuk state election would be the denial of a right under the Chuuk Constitution's suffrage provisions, and not a denial of FSM constitutional right to suffrage. *Ueda v. Chuuk State Election Comm'n*, 16 FSM Intrm. 395, 397 (Chk. 2009).

ARTICLE VII Levels of Government

Section 1. The three levels of government in the Federated States of Micronesia are national, state, and local. A state is not required to establish a new local government where none exists on the effective date of this Constitution.

Section 2. A state shall have a democratic constitution.

Case annotations: Pohnpei State Constitution was established under authority granted by art. VII, § 2 of FSM Constitution which mandates that a state shall have a democratic constitution and also Pohnpei State Law No. 2L-131-82, § 9, which mandated the Pohnpei State Constitutional Convention "to draft a constitution for the State of Ponape ... [that] ... shall make adequate provisions

FSM CONSTITUTION

for the exercise of legislative, judicial and executive functions, and shall guarantee to all citizens of the State, a democratic form of government ..." People of Kapingamarangi v. Pohnpei Legislature, 3 FSM Intrm. 5, 8-9 (Pon. S. Ct. Tr. 1985).

ARTICLE VIII Powers of Government

Section 1. A power expressly delegated to the national government, or a power of such an indisputably national character as to be beyond the power of a state to control, is a national power.

Case annotations: There appears nothing of an indisputably nat'l character in the power to control all lesser crimes. FSM v. Boaz (II), 1 FSM Intrm. 28, 32 (Pon. 1981).

Constitution places diversity jurisdiction in Supreme Court, despite the fact that the issues involve matters within state or local, rather than nat'l, legislative powers. In re Nahnsen, 1 FSM Intrm. 97, 102 (Pon. 1982).

Power to regulate probate of wills or inheritance of property is not "beyond the power of a state to control" within meaning of art. VIII, § 1 of Constitution and is consequently a state power. Nothing about the power to regulate probate of wills or inheritance of property suggests that these are beyond the power of a state to control. In re Nahnsen, 1 FSM Intrm. 97, 107 (Pon. 1982).

State officials generally should have greater knowledge of use, local custom and expectations concerning land and personal property. They should be better equipped than nat'l

FSM CONSTITUTION

gov't to control and regulate these matters. Framers of Constitution specifically considered this issue and felt that powers of this sort should be state powers. In re Nahnsen, 1 FSM Intrm. 97, 107, 109 (Pon. 1982).

Prosecution of criminals is not a power having indisputably nat'l character. Truk v. Hartman, 1 FSM Intrm. 174, 178 (Truk 1982).

Exclusive nat'l gov't jurisdiction over major crimes is not mandated by Constitution; such jurisdiction would be exclusive in any event only if criminal jurisdiction was a power of indisputably nat'l character. Truk v. Hartman, 1 FSM Intrm. 174, 181 (Truk 1982).

Where jurisdiction exists by virtue of diversity of parties, FSM Supreme Court may resolve dispute despite the fact that matters squarely within legislative powers of states (e.g., probate, inheritance and land issue) may be involved. Ponape Chamber of Commerce v. Nett, 1 FSM Intrm. 389, 396 (Pon. 1984).

While FSM Constitution is supreme law of the land and FSM Supreme Court may under no circumstances acquiesce in unconstitutional governmental action, states should be given a full opportunity to exercise their legitimate powers in a manner consistent with commands of the Constitution without unnecessary intervention by nat'l courts. Etpison v. Perman, 1 FSM Intrm. 405, 428 (Pon. 1984).

There is nothing absurd about a weapons control scheme that recognizes that both nat'l and state governments have an interest in controlling the possession, use and sale of

FSM CONSTITUTION

weapons. While Congress and the states may eventually wish to allocate their respective roles with more precision, the current Weapons Control Act appears to provide a workable system during these early years of transition and constitutional self-government. Joker v. FSM, 2 FSM Intrm. 38, 44 (App. 1985).

Weapons Control Act seems well attuned to recognition of shared nat'l-state interest in maintaining an orderly society and goal of cooperation in law enforcement as reflected in the Major Crimes Clause, art. IX, § 2(p) of the Constitution as well as the Joint Law Enforcement Act, 12 FSMC 1201. Joker v. FSM, 2 FSM Intrm. 38, 44 (App. 1985).

Major crimes obviously were not viewed by framers as simply a local or state problem. The Major Crimes Clause undoubtedly reflects their judgment that the very integrity of this new nation could be threatened if major crimes could be committed with impunity in any part of the nation, with nat'l gov't forced helplessly to stand aside. Tammow v. FSM, 2 FSM Intrm. 53, 58 (App. 1985).

Framers of Constitution stipulated that line for determining whether a crime is major be drawn on basis of severity or gravity of the crime rather than by reference to principles of federalism developed under U.S. Constitution. Tammow v. FSM, 2 FSM Intrm. 53, 58 (App. 1985).

Members of Micronesian Constitutional Convention obviously did not believe Major Crimes Clause was improperly at odds with their general view that governmental power should be less centralized under FSM Constitution than it had been in Trust Territory days.

FSM CONSTITUTION

Tammow v. FSM, 2 FSM Intrm. 53, 59 (App. 1985).

The scope of state police powers under FSM Constitution must be determined by reference to powers of nat'l gov't under the Major Crimes Clause. It follows that legitimate exercise of nat'l gov't power to define major crimes cannot be viewed as an unconstitutional encroachment upon police powers of the states. Tammow v. FSM, 2 FSM Intrm. 53, 59 (App. 1985).

Power to impose taxes, duties, and tariffs based on imports is nat'l, not state, power and where Congress has exercised power and shares revenues with the states, a state may not also impose an additional import tax. Wainit v. Truk (II), 2 FSM Intrm. 86, 88 (Truk 1985).

The nature of the expressly delegated powers in art. IX, § 2, of the Constitution — including the powers to impose taxes, to provide for nat'l defense, ratify treaties, regulate immigration and citizenship, regulate currency, foreign commerce and navigation, and to provide for a postal system — strongly suggests that they are intended to be exclusive province of nat'l gov't, since they call for a uniform nationally coordinated approach. Innocenti v. Wainit, 2 FSM Intrm. 173, 181-82 (App. 1986).

Pohnpei State Constitution was established under authority granted by art. VII, § 2 of FSM Constitution which mandates that a state shall have a democratic constitution and also Pohnpei State Law No. 2L-131-82, § 9, which mandated Pohnpei State Constitutional Convention "to draft a constitution for the State of Ponape . . . [that] shall make adequate provisions for the exercise of legislative, judicial

FSM CONSTITUTION

and executive functions, and shall guarantee to all citizens of the State, a democratic form of government." People of Kapingamarangi v. Pohnpei Legislature, 3 FSM Intrm. 5, 8-9 (Pon. S. Ct. Tr. 1985).

Kosrae Constitution contemplates that justices of FSM Supreme Court may decide cases which arise within Kosrae and fall under the original jurisdiction of Kosrae State Court. In addition, Kosrae Constitution vests in Kosrae Chief Justice the power to include resources and justices of FSM Supreme Court as resources of Kosrae State Court, insofar as that is consistent with duties of FSM Supreme Court under FSM Constitution. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM Intrm. 92, 97 (Kos. S. Ct. Tr. 1987).

Although nat'l law requires FSM Supreme Court to protect persons against violations of civil rights, strong considerations of federalism and local self-gov't suggest that local institutions should be given an opportunity to address local issues, even civil rights issues, especially when this can be done without placing rights of parties in serious jeopardy and when local decision may obviate need for a constitutional ruling by nat'l court. Hadley v. Kolonia Town, 3 FSM Intrm. 101, 103 (Pon. 1987).

If a power is not enumerated in Constitution, the likelihood is that the framers intended it to be a state power, for the only unexpressed powers which may be exercised by nat'l gov't are powers of "such an indisputably nat'l character as to be beyond the power of a state to control." FSM Const. art. VIII, § 1. Edwards v. Pohnpei, 3 FSM Intrm. 350, 357 (Pon. 1988).

FSM CONSTITUTION

Wrongful death statutes, including \$100,000 ceiling on wrongful death claims, are part of the law of the states and are not nat'l law. Edwards v. Pohnpei, 3 FSM Intrm. 350, 359 (Pon. 1988).

FSM Supreme Court decision applying state law in case before it is final and *res judicata*; but if in a subsequent case a state court decides same issue differently, the state decision in that subsequent case is controlling precedent and nat'l courts should apply the state court rule in future cases. Edwards v. Pohnpei, 3 FSM Intrm. 350, 360 n.22 (Pon. 1988).

A lawsuit to enforce a mortgage is an attempt to enforce a type of lien against a delinquent debtor. Such a case bears a relationship to power to regulate "bankruptcy and insolvency," which Constitution in art. IX, § 2(g), places in the nat'l Congress. Bank of Guam v. Semes, 3 FSM Intrm. 370, 381 (Pon. 1988).

Nat'l Constitution does not prohibit state courts from hearing cases described in art. XI, § 6(b) if all parties accept state court jurisdiction, but parties to a dispute within scope of art. XI, § 6(b) have a constitutional rights to invoke jurisdiction of FSM Supreme Court trial division. U Corp. v. Salik, 3 FSM Intrm. 389, 392 (Pon. 1988).

The fact that control over marine areas within twelve-mile zone is not mentioned in Constitution is strong indication that framers intended states to control ownership and use of marine resources within that area. FSM v. Oliver, 3 FSM Intrm. 469, 473 (Pon. 1988).

FSM CONSTITUTION

As a general proposition, court will not lightly assume that Congress intends to assert nat'l powers which may overlap with, or encroach upon, powers allocated to states under general scheme of federalism embodied in Constitution. FSM v. Oliver, 3 FSM Intrm. 469, 480 (Pon. 1988).

Nothing in language of statute, 23 FSMC 105, or in legislative history, indicates that Congress made an affirmative determination to enact nat'l legislation applicable within 12 miles of prescribed baselines. Therefore, 23 FSMC 105 gives nat'l gov't regulatory power only outside 12 mile zone. FSM v. Oliver, 3 FSM Intrm. 469, 480 (Pon. 1988).

Decision making concerning allocation of functions as state and nat'l roles falls most squarely within role of Congress, for Congress is most political branch of nat'l gov't and is best suited to resolve policy issues. In re Cantero, 3 FSM Intrm. 481, 484 (Pon. 1988).

Art. XI, § 8 of Constitution, providing for state court certification of issues of nat'l law, gives FSM Supreme Court appellate division another tool to oversee development of nat'l law jurisprudence, but also provides option of remand so that the state court may address issues of nat'l law. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM Intrm. 33, 35 (App. 1989).

No jurisdiction is conferred on state courts by art. XI, § 6(b) of FSM Constitution, but neither does diversity jurisdiction of § 6(b) preclude state courts from acting under state law, unless or until a party to litigation invokes nat'l court jurisdiction. Hawk v. Pohnpei, 4 FSM Intrm. 85, 89 (App.

FSM CONSTITUTION

1989).

In course of formation of FSM, allocation of responsibilities between states and nation was such that impact of nat'l courts in criminal matters was to be in area of major crimes and as ultimate arbiter of human rights issues. Hawk v. Pohnpei, 4 FSM Intrm. 85, 93 (App. 1989).

Questions regarding validity of provisions of promissory notes for personal loans, executed with nat'l bank operating in each state of FSM and having in part foreign ownership, are closely connected to powers of nat'l legislature to regulate banking, foreign and interstate commerce, and bankruptcy, and to establish usury limits, and they have a distinctly nat'l character. FSM Supreme Court therefore will formulate and apply rules of nat'l law in assessing such issues. Bank of Hawaii v. Jack, 4 FSM Intrm. 216, 218 (Pon. 1990).

Statutory provisions in TT Code concerning domestic relations are part of state law because domestic relations fall within powers of states and not nat'l gov't. Pernet v. Aflague, 4 FSM Intrm. 222, 224 (Pon. 1990).

Since determination of support payments payable by a divorced husband is a matter governed by state law, FSM Supreme Court in addressing such an issue is obligated to attempt to apply pertinent state statutes in same fashion as would highest state court in pertinent jurisdiction. Pernet v. Aflague, 4 FSM Intrm. 222, 224 (Pon. 1990).

State law provision attempting to place "original and exclusive jurisdiction" in Yap State Court cannot divest nat'l

FSM CONSTITUTION

court of responsibilities placed upon it by nat'l constitution, which is "supreme law of the Federated States of Micronesia." Gimnang v. Yap, 5 FSM Intrm. 13, 23 (App. 1991).

Under nat'l law, governor of a state is allottee for all Compact funds unless he delegates in writing his right to be allottee, so where a state statute allots such funds to legislative branch without written delegation from governor, statute violates nat'l law. Gouland v. Joseph, 5 FSM Intrm. 263, 265 (Chk. 1992).

Scheme of nat'l, constitutionally-authorized foreign investment legislation is so pervasive there is no room for state to supplement it. Non-FSM citizen attorneys and their private practice of law are expressly subjected to nat'l legislative scheme. Insofar as attorneys who are engaged in private practice of law and whose business activities are within scope of nat'l FIA, the state FIA is invalid. Berman v. Pohnpei, 5 FSM Intrm. 303, 306 (Pon. 1992).

Although FSM Supreme Court has constitutional power to use its discretion to review a case from state trial court, generally, proper respect for state court requires that state appeal rights be exhausted before FSM Supreme Court would grant appellate review especially when important state interests are involved. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 322, 324 (App. 1992).

If power is of an indisputable nat'l character such that it is beyond state's power to control, then that power is to be considered a nat'l power, even though it is not an express power granted by the Constitution. FSM v. Kotobuki Maru

FSM CONSTITUTION

No. 23 (I), 6 FSM Intrm. 65, 70-71 (Pon. 1993).

A state power can be concurrently nat'l to the extent that the state cannot adequately exercise that power in manner in which it is intended either by statute or by or constitutional framework for circumstances not foreseen by framers of our Constitution. FSM v. Kotobuki Maru No. 23 (I), 6 FSM Intrm. 65, 72 (Pon. 1993).

To the extent that state is unable to police its waters and enforce its fishing regulations of its own, the nat'l gov't has an obligation to provide assistance. However, to the extent that the nat'l gov't must provide assistance, the power to regulate state waters is beyond the state's control and is in fact a concurrent nat'l power. FSM v. Kotobuki Maru No. 23 (I), 6 FSM Intrm. 65, 73 (Pon. 1993).

A condition on an MMA fishing permit which prohibits fishing within 12 miles of FSM unless authorized by the state which has jurisdiction is an exercise of the nat'l government's unexpressed concurrent nat'l power. FSM v. Kotobuki Maru No. 23 (I), 6 FSM Intrm. 65, 73 (Pon. 1993).

Nothing in FSM constitutional framework suggests that a state can unilaterally avoid the effect of a valid internat'l agreement, constitutionally arrived at, between the FSM and another nation. In re Extradition of Jano, 6 FSM Intrm. 93, 103-04 (App. 1993).

Comity, the respect of one sovereign for another, and respect for state sovereignty are important principles. Pohnpei v. Ponape Constr. Co., 6 FSM Intrm. 221, 222-23 (App. 1993).

FSM CONSTITUTION

Absence of an express grant of authority to nat'l gov't to regulate marine resources within 12 miles of island baselines indicates framers' intention that states have control over these resources. However, state authority to regulate marine resources located within 12 miles of island baselines is primary but not exclusive. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM Intrm. 594, 598 (Pon. 1994).

Framers of FSM Constitution favored state control over marine resources within 12 miles of island baselines. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM Intrm. 594, 601 (Pon. 1994).

Even when nat'l court places itself in shoes of the state court and interprets state law, the state court is always the final arbiter of the meaning of a state law. State court interpretations of state law which contradict prior rulings of nat'l courts are controlling. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM Intrm. 594, 601 (Pon. 1994).

FSM Supreme Court has exclusive jurisdiction in actions by nat'l gov't to enforce terms of fishing agreements and permits to which it is a party. FSM v. Hai Hsiang No. 63, 7 FSM Intrm. 114, 116 (Chk. 1995).

Section 2. A power not expressly delegated to the national government or prohibited to the states is a state power.

Case annotations: Primary lawmaking powers for field of torts lie with states, not with nat'l gov't, but nat'l gov't may have an implied power to regulate tort law as part of exercise of other general powers. Edwards v. Pohnpei, 3 FSM Intrm. 350, 359 (Pon. 1988).

FSM CONSTITUTION

Powers not expressly delegated to nat'l gov't nor prohibited to the states are state powers. FSM Const. art. VIII, § 2. FSM v. Oliver, 3 FSM Intrm. 469, 473 (Pon. 1988).

Nat'l gov't has exclusive power to tax income and imports. Power to levy other taxes, unless specifically barred by Constitution, is exclusive state power. Sigrah v. Kosrae, 6 FSM Intrm. 168, 169-70 (App. 1993).

Section 3. State and local governments are prohibited from imposing taxes which restrict interstate commerce.

Case annotations: Chuuk state tax on lessor or landowner who rents or leases land, building or housing unit, for residential, or office space, or other use is not an unconstitutional encroachment on nat'l government's exclusive power to tax income. Truk Continental Hotel, Inc. v. Chuuk, 6 FSM Intrm. 310, 311 (Chk. 1994).

Nat'l gov't has exclusive power to tax income and imports. Power to levy other taxes, unless specifically barred by Constitution, is exclusive state power. Sigrah v. Kosrae, 6 FSM Intrm. 168, 169-70 (App. 1993).

Under traditional constitutional analysis, taxpayers' efforts to recover tax moneys unlawfully extracted from them by a state may be relegated to state procedures and decision-makers so long as there is a reasonable procedure under state law whereby taxpayer may obtain meaningful relief. Gimnang v. Yap, 5 FSM Intrm. 13, 23-24 (App. 1991).

FSM CONSTITUTION

Constitution prohibits state and local governments from imposing taxes which restrict interstate commerce. Stinnett v. Weno, 6 FSM Intrm. 312, 313 (Chk. 1994).

Since, given social and geographic configuration of State of Chuuk and structure of transportation services available, a travel agency would necessarily be essentially interstate commerce, a tax aimed solely at a travel agency restricts or is restrictive of interstate commerce and therefore may not be levied by a state or local gov't. Stinnett v. Weno, 6 FSM Intrm. 312, 313-14 (Chk. 1994).

ARTICLE IX Legislative

Section 1. The legislative power of the national government is vested in the Congress of the Federated States of Micronesia.

Cross reference: The statutory provisions on Legislative are found in title 3 of this code.

Case annotations: — Legislative Powers

It is doubtful that Congress would have power to require that all criminal prosecutions be in name of FSM. FSM v. Boaz (II), 1 FSM Intrm. 28, 31 (Pon. 1981).

Seaman's Protection Act, originally enacted for entire Trust Territory by Congress of Micronesia, relates to matters that now fall within legislative powers of nat'l gov't under art. IX, § 2 of Constitution, and has therefore become a nat'l law of FSM under art. XV. That being so, a claim asserting rights under the Act falls within the jurisdiction of the FSM

FSM CONSTITUTION

Supreme Court under art. XI, § 6(b) of Constitution as a case arising under nat'l law. 19 FSMC 401-437. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 72 (Kos. 1982).

Tax on gross revenues falls squarely within constitutional authorization given to Congress by art. IX, § 2(e) to tax income. Ponape Federation of Coop. Ass'ns v. FSM, 2 FSM Intrm. 124, 126 (Pon. 1985).

That Congress may tax "gross income" is plainly and unmistakably provided for in words of art. IX, § 2(e) of Constitution. Ponape Federation of Coop. Ass'ns v. FSM, 2 FSM Intrm. 124, 127 (Pon. 1985).

Congress enacted P.L. No. 1-72 and confirmed legislative power of state governments to supersede Trust Territory statutes within scope of their exclusive powers. Pohnpei v. Mack, 3 FSM Intrm. 45, 54 (Pon. S. Ct. Tr. 1987).

While Congress may have power to prohibit taking of and killing of turtles within 12 mile area as matter of nat'l law, it should lie with Congress, and not the court, to determine whether the power should be exercised. FSM v. Oliver, 3 FSM Intrm. 469, 480 (Pon. 1988).

Once Congress has set a policy direction, barring constitutional violation, it is duty of this court to ascertain and follow that guidance. In re Cantero, 3 FSM Intrm. 481, 484 (Pon. 1988).

Primary responsibility, perhaps even sole responsibility, for affirmative implementation of Professional Services Clause, FSM Const. art. XIII, § 1, must lie with Congress. Carlos v.

FSM CONSTITUTION

FSM, 4 FSM Intrm. 17, 29 (App. 1989).

Fixing of voting requirements is uniquely political task and falls within purview of political arms of gov't, so long as no legal rights are violated by a particular method selected.

Constitutional Convention 1990 v. President, 4 FSM Intrm. 320, 324 (App. 1990).

Congress has no power to specify voting requirements for Con Con and therefore any attempt to exercise this power to uphold tradition is also outside powers of Congress under art. V, § 2 of Constitution, which is not an independent source of congressional power but which merely confirms power of Congress, in exercising nat'l legislative powers, to make special provisions for Micronesian tradition.

Constitutional Convention 1990 v. President, 4 FSM Intrm. 320, 328 (App. 1990).

Legislative enactment of Financial Management Act does not conflict with constitutional provision stating Chief Justice is chief administrator of nat'l judiciary. Mackenzie v. Tuuth, 5 FSM Intrm. 78, 80 (Pon. 1991).

Legislative passage of Financial Management Act rests upon provisions of Constitution, pursuant to which Dept. of Finance and General Fund were established to oversee nat'l administration and management of public money.

Mackenzie v. Tuuth, 5 FSM Intrm. 78, 81 (Pon. 1991).

Historically the concept of a single, general fund administered by one person is found in laws enacted by Congress of Micronesia. Enactment of Financial Management Act reflects continuity of purpose and

FSM CONSTITUTION

statutory consistency. Mackenzie v. Tuuth, 5 FSM Intrm. 78, 82 (Pon. 1991).

Where there is in the Constitution a textually demonstrable commitment of the issue to a coordinate branch of gov't, such as Congress being the sole judge of the elections of its members, it is a nonjusticiable political question not to be decided by the court because of the separation of powers provided for in the Constitution. Aten v. National Election Comm'r (III), 6 FSM Intrm. 143, 145 (App. 1993).

Congress has not unconstitutionally delegated its authority to define crimes by delegating to an executive agency the power to enter into fishing agreements because congressional approval is needed for these agreements to take effect. FSM v. Cheng Chia-W (I), 7 FSM Intrm. 124, 127 (Pon. 1995).

Section 2. The following powers are expressly delegated to Congress:

Case annotations: The Constitution's broadly stated express grants of power to the national government contain within them innumerable incidental or implied powers, as well as certain inherent powers. Jano v. FSM, 12 FSM Intrm. 569, 576 (App. 2004).

(a) to provide for the national defense;

Case annotations: The power to provide for the national defense includes the inherent authority to protect the nation from threats both foreign and domestic. Protecting from these threats includes regulating the possession of firearms

FSM CONSTITUTION

and ammunition. Jano v. FSM, 12 FSM Intrm. 569, 576 (App. 2004).

(b) to ratify treaties;

(c) to regulate immigration, emigration, naturalization, and citizenship;

Cross reference: The statutory provisions on Citizenship are found in title 7 of this code.

(d) to impose taxes, duties, and tariffs based on imports;

Cross reference: The statutory provisions on Taxation and Customs are found in title 54 of this code.

Case annotations: State excise tax which levies tax at port of entry on items imported into a state and which must be paid prior to release of those items from the port of entry, is an import tax within the meaning of FSM Constitution art. IX, § 2(d). Wainit v. Truk (II), 2 FSM Intrm. 86, 87 (Truk 1985).

Nat'l power to impose taxes based on imports is exclusive, and not shared by the states. Innocenti v. Wainit, 2 FSM Intrm. 173, 182 (App. 1986).

Taxes imposed on goods because of their entry into a port of entry of State of Truk, levied at port of entry in amounts based upon quality or value of imported goods, and which must be paid to the Division of Revenue prior to release of items from the port of entry, are taxes based on imports. Such a tax represents an effort to exercise powers expressly

FSM CONSTITUTION

delegated to the nat'l gov't, is beyond the powers of the state, and is null and void. Innocentiv. Wainit, 2 FSM Intrm. 173, 183-84 (App. 1986).

Although retroactive application of decision holding state tax unconstitutional would impose hardship upon a state, where funds collected under the tax have already been committed, such a result is not inequitable where the state legislature pushed on with the tax act despite strong resistance of business people to the tax in the form of a petition and establishment of an escrow account to hold contested payments, and a veto message by the governor of the state, and there is no evidence that the legislature seriously considered the constitutionality of the legislation. Innocenti v. Wainit, 2 FSM Intrm. 173, 186 (App. 1986).

A state excise tax imposed on imports is unconstitutional, regardless of the manner of tax payment. Gimnang v. Yap, 4 FSM Intrm. 212, 215 (Yap 1990).

Nat'l gov't has exclusive power to tax income and imports. Power to levy other taxes, unless specifically barred by Constitution, is exclusive state power. Sigrah v. Kosrae, 6 FSM Intrm. 168, 169-70 (App. 1993).

— Recovery of Taxes

The question whether taxes paid by plaintiffs under a taxing statute subsequently found to be unconstitutional may be refunded to them turns upon whether the tax was voluntarily paid. Innocenti v. Wainit, 2 FSM Intrm. 173, 187 (App. 1986).

FSM CONSTITUTION

Where taxpayers informed the gov't that they protested the tax as unconstitutional, and had to pay the tax in order to receive the taxed property, the payments are coerced, not voluntary, and taxpayers are entitled to the refund of all amounts paid. Innocenti v. Wainit, 2 FSM Intrm. 173, 187 (App. 1986).

The FSM Supreme Court will abstain from a claim for recovery of taxes where the defendant state requests abstention, the claim is for monetary relief, and the state has endeavored to develop a body of law in the areas of excise taxes and sovereign immunity. Gimnang v. Yap, 4 FSM Intrm. 212, 214 (Yap 1990).

Under traditional constitutional analysis, taxpayers' efforts to recover tax moneys unlawfully extracted from them by a state may be relegated to state procedures and decision-makers so long as there is a reasonable procedure under state law whereby the taxpayer may obtain meaningful relief. Gimnang v. Yap, 5 FSM Intrm. 13, 23-24 (App. 1991).

The name given a tax by a taxing authority is not necessarily controlling as to the type of tax it is. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM Intrm. 117, 119 (App. 1995).

The interval in which a tax is reported and collected and whether it is imposed without regard to profit or loss does not alter whether it is an income tax. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM Intrm. 117, 119 (App. 1995).

(e) to impose taxes on income;

FSM CONSTITUTION

Cross reference: The statutory provisions on Taxation and Customs are found in title 54 of this code.

Case annotation: The tax on gross revenues falls squarely within the constitutional authorization given to Congress by art. IX, § 2(e) to tax income. *Ponape Federation of Cooperative Associations v. FSM*, 2 FSM Intrm. 124, 126 (Pon. 1985).

Gross revenue tax as enacted by Congress of Micronesia continued in effect in FSM by virtue of the transition article of the FSM Constitution but, because it was subsequently amended by the FSM Congress and was included in the codification of FSM Statutes, may now be considered a law enacted by Congress. *Afituk v. FSM*, 2 FSM Intrm. 260, 264 (Truk 1986).

There is no evidence in the journal of the Constitutional Convention that the phrase "to impose taxes on income" in FSM Constitution, art. IX, § 2(e) was derived from the Sixteenth Amendment of the U.S. Constitution which permits the U.S. Congress to "lay and collect taxes on income" so in determining the meaning of the FSM constitutional provision, no particular weight should be given to U.S. cases. *Afituk v. FSM*, 2 FSM Intrm. 260, 264 (Truk, 1986).

Kosrae transaction tax of KC 9.301 is a selective tax rather than an income tax and is not an encroachment upon the nat'l government's exclusive power to tax income. *Youngstrom v. Kosrae*, 5 FSM Intrm. 73, 76 (Kos. 1991).

Nat'l gov't has the exclusive power to tax income and

FSM CONSTITUTION

imports. The power to levy other taxes, unless specifically barred by the Constitution, is an exclusive state power.

Sigrah v. Kosrae, 6 FSM Intrm. 168, 169-70 (App. 1993).

A transaction tax oriented toward individual transactions and not total income, and only triggered by the transactions it covers, even though paid by the vendor, is analogous to a selective sales tax and is not an unconstitutional encroachment on the nat'l government's exclusive power to tax income. Sigrah v. Kosrae, 6 FSM Intrm. 168, 170 (App. 1993).

A Chuuk state tax on a lessor or landowner who rents or leases land, building or housing unit, for residential, or office space, or other use is not an unconstitutional encroachment on the nat'l government's exclusive power to tax income. Truk Continental Hotel, Inc. v. Chuuk, 6 FSM Intrm. 310, 311 (Chk. 1994) (Overruled in a February, 1995 case).

Only the nat'l gov't may constitutionally tax income. The states' taxing power does not include the power to tax income. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM Intrm. 117, 119 (App. 1995).

Rents are income taxable under the FSM Income Tax Statute, and a state tax on gross rental receipts combines to create vertical multiple taxation of a form of income. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM Intrm. 117, 119 (App. 1995).

The name given a tax by a taxing authority is not necessarily controlling as to the type of tax it is. Truk Continental Hotel.

FSM CONSTITUTION

Inc. v. Chuuk, 7 FSM Intrm. 117, 119 (App. 1995).

The interval in which a tax is reported and collected and whether it is imposed without regard to profit or loss does not alter whether it is an income tax. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM Intrm. 117, 119 (App. 1995).

If a state wishes to obtain funding from a consumption tax, it can avoid a constitutional confrontation by making the taxable incident the sale or rental transaction, and by expressing the requirement that the tax be paid by the consumer. Therefore a state tax on the gross rental receipts of a landlord is an unconstitutional tax on income. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM Intrm. 117, 120 (App. 1995).

(f) to issue and regulate currency;

Cross reference: The statutory provisions on Money and Currency are found in title 57 of this code.

(g) to regulate banking, foreign and interstate commerce, insurance, the issuance and use of commercial paper and securities, bankruptcy and insolvency, and patents and copyrights;

Cross reference: The statutory provisions on Commercial Banking are found in title 29 of this code. The statutory provisions on Development Banking are found in title 30 of this code. The statutory provisions on Insurance are found in title 37 of this code. The statutory provisions on Copyrights, Patents and Trademarks are found in title 35 of this code.

FSM CONSTITUTION

Case annotations: — Interstate and Foreign Commerce

Although foreign and interstate commerce and shipping involve profound nat'l interests, where Congress has not seen fit to assert those interests and there is no nat'l regulation or law to enforce, the fact that a case affects interstate and foreign commerce and shipping is not sufficient to deny abstention if other strong grounds for abstention exist. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM Intrm. 37, 47 (Pon. 1989).

Questions regarding the validity of the provisions of promissory notes for personal loans, executed with a nat'l bank operating in each state of the FSM and having in part foreign ownership, are closely connected to the powers of the nat'l legislature to regulate banking, foreign and interstate commerce, and bankruptcy, and to establish usury limits, and they have a distinctly nat'l character. The FSM Supreme Court therefore will formulate and apply rules of nat'l law in assessing such issues. Bank of Hawaii v. Jack, 4 FSM Intrm. 216, 218 (Pon. 1990).

Power to regulate the incorporation and operation of corporations falls within the constitutional power of the nat'l gov't to regulate foreign and interstate commerce. Mid-Pac Constr. Co. v. Senda, 4 FSM Intrm. 376, 380 (Pon. 1990).

A municipal license fee ordinance which separately defines banking and insurance businesses and specifically imposes a different rate upon those businesses than would be imposed upon other kinds of businesses on its face appears to be an effort to regulate banking and insurance and is unconstitutional and void. Actouka v. KoloniaTown, 5 FSM

FSM CONSTITUTION

Intrm. 121, 122 (Pon. 1991).

When the imported materials in a Philippine slingshot are not manufactured abroad with the intent that they be assembled into a Philippine slingshot but are manufactured abroad as other articles or as parts of other articles and are legitimately imported for other purposes but are then recycled into Philippine slingshot parts, a Philippine slingshot is manufactured locally, out of locally available materials. It does not pass through foreign or interstate commerce. That some of those materials were once imported as something else to be used for some other purpose is not enough to implicate the national government's activity or function to regulate foreign commerce. FSM v. Masis, 15 FSM Intrm. 172, 176 (Chk. 2007).

The Constitution grants the national government, not the state governments, the power to regulate foreign and interstate commerce and taxation is regulation just as prohibition is. Continental Micronesia, Inc. v. Chuuk, 17 FSM Intrm. 152, 160 (Chk. 2010).

A service tax on plane passengers does not have only an incidental effect on foreign commerce; its only effect is on foreign commerce. A tax on shipping cargo or freight affects only foreign commerce or interstate commerce since the airline does not fly to anywhere in Chuuk except Weno. Since state and local governments are prohibited from imposing taxes which restrict interstate commerce, to the extent that the tax is imposed on freight or cargo shipped from Chuuk to other FSM states, would appear to be specifically barred by the Constitution and to the extent it is imposed on cargo or freight shipped elsewhere, it would be

FSM CONSTITUTION

regulation of foreign commerce in effect, an export tax.
Continental Micronesia, Inc. v. Chuuk, 17 FSM Intrm. 152, 160 (Chk. 2010).

(h) to regulate navigation and shipping except within lagoons, lakes, and rivers;

Cross reference: The statutory provisions on Admiralty and Maritime are found in title 19 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

(i) to establish usury limits on major loans;

Cross reference: The statutory provisions on Usury are found in chapter 2 of title 34 of this code.

(j) to provide for a national postal system;

Cross reference: The statutory provisions on Postal System are found in title 39 of this code.

(k) to acquire and govern new territory;

(l) to govern the area set aside as the national capital;

Cross reference: The statutory provisions on Capital of the Federated States of Micronesia are found in chapter 4 of title 1 of this code.

(m) to regulate the ownership, exploration, and exploitation of natural resources within the marine space of the Federated States of Micronesia beyond 12 miles from island baselines;

FSM CONSTITUTION

Cross reference: The statutory provisions on Marine Resources are found in title 24 of this code. The statutory provisions on Admiralty and Maritime are found in title 19 of this code.

(n) to establish and regulate a national public service system;

Cross reference: The statutory provisions on Public Employment are found in title 52 of this code.

(o) to impeach and remove the President, Vice-President, and justices of the Supreme Court;

Cross reference: The statutory provisions on Impeachment and Removal are found in chapter 7 of title 1 of this code.

(p) to define national crimes and prescribe penalties, having due regard for local custom and tradition;

Editor's note: Art. IX, § 2(p) was amended by Constitutional Convention Committee Proposal No. 90-13, SD1 which became effective on July 2, 1991. A copy of this amendment follows this Constitution.

The original language of art. IX, § 2(p) was as follows:

"(p) to define major crimes and prescribe penalties, having due regard for local custom and tradition; and"

Case annotations prior to the effective date of the constitutional amendment interpret art. IX, § 2(p) as

FSM CONSTITUTION

originally worded.

Cross reference: The statutory provisions on Crimes are found in title 11 of this code.

Case annotations: — Major Crimes

A simple assault, one without a weapon or the intent to inflict serious bodily injury, is punishable only by six months' imprisonment. Therefore, it is neither a major crime under the Nat'l Criminal Code, because it does not call for three years' imprisonment, nor a felony. *FSM v. Boaz (I)*, 1 FSM Intrm. 22, 24 n.* (Pon. 1981).

Because Congress defined a major crime under the Nat'l Criminal Code as one calling for imprisonment of three years or more and because assaults under Title 11 of the Trust Territory Code are punishable by only six months' imprisonment, it is clear that the assault provisions of the Trust Territory Code are left intact. *FSM v. Boaz (II)*, 1 FSM Intrm. 28, 30 (Pon. 1981).

Exclusive nat'l gov't jurisdiction over major crimes is not mandated by the Constitution; such jurisdiction would be exclusive in any event only if criminal jurisdiction was a power of indisputably nat'l character. *Truk v. Hartman*, 1 FSM Intrm. 174, 181 (Truk 1982).

The Nat'l Criminal Code is an exercise of Congress' power to define and provide penalties for major crimes. FSM Const. art. IX, § 2(p). *In re Otokichy*, 1 FSM Intrm. 183, 187 (App. 1982).

FSM CONSTITUTION

The Weapons Control Act violations punishable by imprisonment of three or more years are nat'l crimes. Joker v. FSM, 2 FSM Intrm. 38, 41 (App. 1985).

In light of the Constitution's Transition Clause, action by the FSM Congress is not necessary in order to establish that violations of the Weapons Control Act are prohibited within the FSM. The only question is whether those are state or nat'l law prohibitions or both. If the definition of major crimes in the Nat'l Criminal Code bears upon the Weapons Control Act at all, it is only for that purpose of allocating between state and nat'l law. Joker v. FSM, 2 FSM Intrm. 38, 43 (App. 1985).

The Weapons Control Act seems well attuned to the recognition of shared nat'l-state interest in maintaining an orderly society and the goal of cooperation in law enforcement as reflected in the Major Crimes Clause, art. IX, § 2(p) of the Constitution as well as the Joint Law Enforcement Act, 12 FSMC 1201. Joker v. FSM, 2 FSM Intrm. 38, 44 (App. 1985).

The Major Crimes Clause, with its admonition to Congress to have due regard for local custom and tradition, unmistakably reflects awareness of the framers that Congress would be empowered under this clause to regulate crimes that would require consideration of local custom and tradition. Tammow v. FSM, 2 FSM Intrm. 53, 57 (App. 1985).

Major crimes obviously were not viewed by the framers as simply a local or state problem. The Major Crimes Clause undoubtedly reflects their judgment that the very integrity of

FSM CONSTITUTION

this new nation could be threatened if major crimes could be committed with impunity in any part of the nation, with the nat'l gov't forced helplessly to stand aside. Tammow v. FSM, 2 FSM Intrm. 53, 58 (App. 1985).

The framers of the Constitution stipulated that the line for determining whether a crime is major be drawn on the basis of severity or gravity of the crime rather than by reference to principles of federalism developed under the U.S. Constitution. Tammow v. FSM, 2 FSM Intrm. 53, 58 (App. 1985).

The members of the Micronesian Constitutional Convention obviously did not believe the Major Crimes Clause was improperly at odds with their general view that governmental power should be less centralized under the FSM Constitution than it had been in Trust Territory days. Tammow v. FSM, 2 FSM Intrm. 53, 59 (App. 1985).

The precise line to be drawn in defining major crimes is to be determined by Congress. The policy determined in the Constitutional Convention was that the major-minor crimes distinction be based on the severity of the crime; and that local custom be taken into account. Tammow v. FSM, 2 FSM Intrm. 53, 60 (App. 1985).

Even where the parties have not asserted that any principle of custom or tradition applies, the Court has an obligation of its own to consider custom and tradition. Semens v. Continental Air Lines, Inc.(I), 2 FSM Intrm. 131, 140 (Pon. 1985).

The general rule of criminal procedure is that jurisdiction

FSM CONSTITUTION

over a particular crime places in the trial division the necessary authority to find a defendant guilty of any offense necessarily included in the offense charged. Kosrae v. Tosie, 4 FSM Intrm. 61, 63 (Kos. 1989).

In the course of the formation of the FSM, the allocation of responsibilities between states and nation was such that the impact of the nat'l courts in criminal matters was to be in the area of major crimes and as the ultimate arbiter of human rights issues. Hawk v. Pohnpei, 4 FSM Intrm. 85, 93 (App. 1989).

— National Crimes

The intent of the Constitutional Convention is that major crimes, as defined by Congress and committed prior to voter ratification, fall within the jurisdiction of the nat'l gov't and may be prosecuted pursuant to the nat'l law after the effective date of the amendment. In re Ress, 5 FSM Intrm. 273, 276 (Chk. 1992).

Where the crimes charged are no longer those expressly delegated to Congress to define, or are not indisputably of a nat'l character the FSM Supreme Court has no subject matter jurisdiction. FSM v. Jano, 6 FSM Intrm. 9, 11 (Pon. 1993).

Ever since the ratification of the constitutional amendment removed from Congress the power to define "major crimes" and substituted for it the power to define "national crimes" the nat'l gov't has had no general criminal jurisdiction. That jurisdiction now lies with the states. In re Extradition of Jano, 6 FSM Intrm. 93, 102 (App. 1993).

FSM CONSTITUTION

Congress has not unconstitutionally delegated its authority to define crimes by delegating to an executive agency the power to enter into fishing agreements because congressional approval is needed for these agreements to take effect. *FSMv. Cheng Chia-W (I)*, 7 FSM Intrm. 124, 127 (Pon. 1995).

(q) to override a Presidential veto by not less than a 3/4 vote of all the state delegations, each delegation casting one vote; and

Case annotations: The Constitution does not limit the grounds upon which the President can veto bills. The President can veto any bill for any reason he chooses. The Constitution requires the President to return to Congress, within ten days, a bill he has vetoed along with his objections. Congress then makes its own determination of whether those objections will stand by either overriding or sustaining the veto. Invalidation or nullification of a Presidential veto is textually committed by the Constitution to Congress because the power to override a Presidential veto is expressly delegated to Congress. *Christian v. Urusemal*, 14 FSM Intrm. 291, 294 (App. 2006).

(r) to promote education and health by setting minimum standards, coordinating state activities relating to foreign assistance, providing training and assistance to the states and providing support for post-secondary educational programs and projects.

Editor's note: Art. IX, § 2(r) was added by Constitutional Convention Committee Proposal No. 90-25, CD1, SD1 which became effective on July 2, 1991. A copy of this

FSM CONSTITUTION

amendment follows this Constitution.

Cross reference: The statutory provisions on Education are found in title 40 of this code. The statutory provisions on Public Health, Safety and Welfare are found in title 41 of this code.

Case annotations: The nature of the expressly delegated powers in art. IX, § 2, of the Constitution--including the power to impose taxes, to provide for the nat'l defense, ratify treaties, regulate immigration and citizenship, regulate currency, foreign commerce and navigation, and to provide for a postal system--strongly suggests that they are intended to be the exclusive province of the nat'l gov't, since they call for a uniform nationally coordinated approach. *Innocenti v. Wainit*, 2 FSM Intrm. 173, 181-82 (App. 1986).

Section 3. The following powers may be exercised concurrently by Congress and the states:

- (a) to appropriate public funds;
- (b) to borrow money on the public credit; and
- (c) to establish systems of social security and public welfare.

Editor's note: Art. IX, § 3 was amended by Constitutional Convention Committee Proposal No. 90-25, CD1, SD1 which became effective on July 2, 1991. A copy of this amendment follows this Constitution.

The original language of art. IX, § 3 formerly included a

FSM CONSTITUTION

subsection (c) which read as follows:

"(c) to promote education and health; and"

Cross reference: The statutory provisions on Social Security and Prior-Service Benefits are found in title 53 of this code.

Section 4. A treaty is ratified by vote of 2/3 of the members of Congress, except that a treaty delegating major powers of government of the Federated States of Micronesia to another government shall also require majority approval by the legislatures of 2/3 of the states.

Section 5. National taxes shall be imposed uniformly. Not less than 50% of the revenues shall be paid into the treasury of the state where collected.

Section 6. Net revenue derived from ocean floor mineral resources exploited under Section 2(m) shall be divided equally between the national government and the appropriate state government.

Section 7. The President, Vice-President, or a justice of the Supreme Court may be removed from office for treason, bribery, or conduct involving corruption in office by a 2/3 vote of the members of Congress. When the President or Vice-President is removed, the Supreme Court shall review the decision. When a justice of the Supreme Court is removed, the decision shall be reviewed by a special tribunal composed of one state court judge from each state appointed by the state chief executive. The special tribunal shall meet at the call of the President.

Cross reference: The statutory provisions on Impeachment

FSM CONSTITUTION

and Removal are found in chapter 7 of title 1 of this code.

Section 8. The Congress consists of one member elected at large from each state on the basis of state equality, and additional members elected from congressional districts in each state apportioned by population. Members elected on the basis of state equality serve for a 4-year term, and all other members for 2 years. Each member has one vote, except on the final reading of bills. Congressional elections are held biennially as provided by statute.

Cross reference: The statutory provisions on National Elections are found in title 9 of this code.

Section 9. A person is ineligible to be a member of Congress unless he is at least 30 years of age on the day of election and has been a citizen of the Federated States of Micronesia for at least 15 years, and a resident of the state from which he is elected for at least 5 years. A person convicted of a felony by a state or national government court is ineligible to be a member of Congress. The Congress may modify this provision or prescribe additional qualifications; knowledge of the English language may not be a qualification.

Cross reference: The statutory provisions on National Elections are found in title 9 of this code.

Case annotations: While the Constitution makes ineligible for election to Congress persons convicted of felonies in FSM courts, the Constitution gives to Congress the power to modify that ineligibility by statute. *Robert v. Mori*, 6 FSM Intrm. 394, 398 (App. 1994).

Congress has the Constitutional power to prescribe, by

FSM CONSTITUTION

statute, additional qualifications for eligibility for election to Congress beyond those found in the Constitution. Such additional qualifications must be consistent with the rest of the Constitution. Knowledge of English may not be a qualification. Robert v. Mori, 6 FSM Intrm. 394, 399 (App. 1994).

Congress, not the FSM Supreme Court, has the constitutional power to make persons granted a pardon of a felony conviction eligible for election to Congress. The court cannot exercise a power reserved to Congress. Robert v. Mori, 6 FSM Intrm. 394, 401 (App. 1994).

Section 10. At least every 10 years Congress shall reapportion itself. A state is entitled to at least one member of Congress on the basis of population in addition to the member elected at large. A state shall apportion itself by law into single member congressional districts. Each district shall be approximately equal in population after giving due regard to language, cultural, and geographic differences.

Section 11. A state may provide that one of its seats is set aside for a traditional leader who shall be chosen as provided by statute for a two-year term, in lieu of one representative elected on the basis of population. The number of congressional districts shall be reduced and reapportioned accordingly.

Section 12. A vacancy in Congress is filled for the unexpired term. In the absence of provision by law, an unexpired term is filled by special election, except that an unexpired term of less than one year is filled by appointment by the state chief executive.

Cross reference: The statutory provisions on National Elections are found in title 9 of this code. The statutory

FSM CONSTITUTION

provisions on the Legislative are found in title 3 of this code.

Section 13. A member of Congress may not hold another public office or employment. During the term for which he is elected and three years thereafter, a member may not be elected or appointed to a public office or employment created by national statute during his term. A member may not engage in any activity which conflicts with the proper discharge of his duties. The Congress may prescribe further restrictions.

Case annotation: Where plaintiffs seek to challenge issuance to a third party of a permit which plaintiffs reasonably allege will cause them harm, and where they allege that the actions of a nat'l senator were crucial to issuance of the permit, those plaintiffs have standing to be heard on the question of whether the senator's membership on the board is violative of the "incompatibility clause," art. IX, § 3 of the FSM Constitution. Aisek v. FSM Foreign Investment Board, 2 FSM Intrm. 95, 101 (Pon. 1985).

Section 14. The Congress may prescribe an annual salary and allowances for members. An increase of salary may not apply to the Congress enacting it.

Cross reference: The statutory provisions on the Legislative are found in title 3 of this code.

Section 15. A member of Congress is privileged from arrest during his attendance at Congress and while going to and from sessions, except for treason, felony, or breach of the peace. A member answers only to Congress for his statements in Congress.

Section 16. The Congress shall meet in regular, public session as

FSM CONSTITUTION

prescribed by statute. A special session may be convened at the call of the President of the Federated States of Micronesia, or by the presiding officer on the written request of 2/3 of the members.

Cross reference: The statutory provisions on Legislative are found in title 3 of this code.

Section 17.

(a) The Congress shall be the sole judge of the elections and qualifications of its members, may discipline a member, and, by 2/3 vote, may suspend or expel a member.

Case annotations: Where there is in Constitution a textually demonstrable commitment of the issue to a coordinate branch of gov't, such as Congress being the sole judge of the elections of its members, it is a nonjusticiable political question not to be decided by the court because of separation of powers provided for in Constitution. *Aten v. National Election Comm'r (III)*, 6 FSM Intrm. 143, 145 (App. 1993).

(b) The Congress may determine its own rules of procedure and choose a presiding officer from among its members.

(c) The Congress may compel the attendance and testimony of witnesses and the production of documents or other matters before Congress or any of its committees.

Case annotations: Legislative power to investigate is not unlimited. There is no general authority to expose private affairs of individuals without justification in terms of the functions of the legislature, and right to privacy embodied in Article III, section 3 of the Chuuk Constitution is a restraint

FSM CONSTITUTION

on the investigative power of the legislature. *In re Legislative Subpoena*, 7 FSM Intrm. 261, 265 (Chk. S. Ct. Tr. 1995).

Legislature's investigative powers are greatest when it is inquiring into and publicizing corruption, maladministration or inefficiency in agencies or branches of gov't. *In re Legislative Subpoena*, 7 FSM Intrm. 261, 265 (Chk. S. Ct. Tr. 1995).

Section 18. A majority of the members is a quorum, but a smaller number may adjourn from day to day and compel the attendance of absent members.

Section 19. The Congress shall keep and publish a journal of its proceedings. A roll call vote entered on the journal shall be taken at the request of 1/5 of the members present. Legislative proceedings shall be conducted in the English language. A member may use his own language if not fluent in English, and Congress shall provide translation.

Cross reference: The statutory provisions on Legislative are found in title 3 of this code.

Section 20. To become law, a bill must pass 2 readings on separate days. To pass first reading a 2/3 vote of all members is required. On final reading each state delegation shall cast one vote and a 2/3 vote of all the delegations is required. All votes shall be entered on the journal.

Section 21.

(a) The Congress may make no law except by statute and

FSM CONSTITUTION

may enact no statute except by bill. The enacting clause of a bill is "*BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA*:" A bill may embrace but one subject expressed in its title. A provision outside the subject expressed in the title is void.

(b) A law may not be amended or revised by reference to its title only. The law as revised or section as amended shall be published and re-enacted at full length.

Section 22. A bill passed by Congress shall be presented to the President for approval. If he disapproves of the bill, he shall return it with his objections to Congress within 10 days. If Congress has 10 or less days remaining in its session, or has adjourned, he shall return the bill within 30 days after presentation. If the President does not return a bill within the appropriate period, it becomes law as if approved.

Cross reference: The statutory provisions on the Legislative are found in title 3 of this code. The statutory provisions on the Executive are found in title 2 of this code.

Case annotations: The Constitution does not limit the grounds upon which the President can veto bills. The President can veto any bill for any reason he chooses. The Constitution requires the President to return to Congress, within ten days, a bill he has vetoed along with his objections. Congress then makes its own determination of whether those objections will stand by either overriding or sustaining the veto. Invalidation or nullification of a Presidential veto is textually committed by the Constitution to Congress because the power to override a Presidential veto is expressly delegated to Congress. Christian v.

FSM CONSTITUTION

Urusemal, 14 FSM Intrm. 291, 294 (App. 2006).

The President's reasons for vetoing a bill cannot be questioned in the judicial branch. The court has no jurisdiction to grant the relief of declaring the President's vetoes void regardless of what the President's objections were. Christian v. Urusemal, 14 FSM Intrm. 291, 294 (App. 2006).

When the Congress Speaker asks the court, before any enactment process has been completed, to advise the parties on exactly where in the process they stand, the Speaker asks the court for an advisory opinion, which it cannot give. The Constitution restricts the FSM Supreme Court's jurisdiction to actual cases and disputes. It does not sit to render advisory opinions. Christian v. Urusemal, 14 FSM Intrm. 291, 294 (App. 2006).

It is a basic principle of justiciability that a court will not render an advisory opinion. FSM v. Koshin 31, 16 FSM Intrm. 15, 21 (Pon. 2008).

ARTICLE X Executive

Section 1. The executive power of the national government is vested in the President of the Federated States of Micronesia. He is elected by Congress for a term of four years by a majority vote of all the members. He may not serve for more than 2 consecutive terms.

Cross reference: The statutory provisions on the Executive are found in title 2 of this code. The statutory provisions on the Legislative are found in title 3 of this code.

FSM CONSTITUTION

Section 2. The following powers are expressly delegated to the President:

- (a) to faithfully execute and implement the provisions of this Constitution and all national laws;
- (b) to receive all ambassadors and to conduct foreign affairs and the national defense in accordance with national law;
- (c) to grant pardons and reprieves, except that the chief executive of each state shall have this power concurrently with respect to persons convicted under state law; and

Case annotations: The only power given to the executive to modify a sentence is the power to grant pardons and reprieves. *FSM v. Finey*, 3 FSM Intrm. 82, 84 (Truk 1986).

No authority exists for the Court to grant home visits. *FSM v. Finey*, 3 FSM Intrm. 82, 84 (Truk 1986).

- (d) with the advice and consent of Congress, to appoint ambassadors; all judges of the Supreme Court and other courts prescribed by statute; the principal officers of executive departments in the national government; and such other officers as may be provided for by statute. Ambassadors and principal officers serve at the pleasure of the President.

Cross reference: The statutory provisions on the Executive are found in title 2 of this code. The statutory provisions on the Legislative are found in title 3 of this code.

FSM CONSTITUTION

Section 3. The President:

- (a) is head of state of the Federated States of Micronesia;
- (b) may make recommendations to Congress, and shall make an annual report to Congress on the state of the nation; and
- (c) shall perform such duties as may be provided by statute.

Section 4. A person is ineligible to become President unless he is a member of Congress for a 4-year term, a citizen of the Federated States of Micronesia by birth, and a resident of the Federated States of Micronesia for at least 15 years.

Section 5. After the election of the President, the Vice-President is elected in the same manner as the President, has the same qualifications, and serves for the same term of office. He may not be a resident of the same state. After the election of the President and the Vice-President, vacancies in Congress shall be declared.

Section 6. If the office of the President is vacant, or the President is unable to perform his duties, the Vice-President becomes President. The Congress shall provide by statute for the succession in the event both offices are vacant, or either or both officers are unable to discharge their duties.

Cross reference: The statutory provisions on the Executive are found in title 2 of this code. The statutory provisions on the Legislative are found in title 3 of this code.

Section 7. The compensation of the President or Vice-President may not be increased or reduced during his term. They may hold no other

FSM CONSTITUTION

office and may receive no other compensation from the Federated States of Micronesia or from a state.

Section 8. Executive departments shall be established by statute.

Section 9.

(a) If required to preserve public peace, health, or safety, at a time of extreme emergency caused by civil disturbance, natural disaster, or immediate threat of war, or insurrection, the President may declare a state of emergency and issue appropriate decrees.

(b) A civil right may be impaired only to the extent actually required for the preservation of peace, health, or safety. A declaration of emergency may not impair the power of the judiciary except that the declaration shall be free from judicial interference for 30 days after it is first issued.

(c) Within 30 days after the declaration of emergency, the Congress of the Federated States of Micronesia shall convene at the call of its presiding officer or the President to consider revocation, amendment, or extension of the declaration. Unless it expires by its own terms, is revoked, or extended, a declaration of emergency is effective for 30 days.

ARTICLE XI Judicial

Section 1. The judicial power of the national government is vested in a Supreme Court and inferior courts established by statute.

Cross reference: The statutory provisions on the Judiciary

FSM CONSTITUTION

of the FSM are found in title 4 of this code.

Case annotations: — Judicial Powers

The FSM Supreme Court is empowered to exercise authority in probate matters where there is an independent basis for jurisdiction under the Constitution. *Inre Nahnsen*, 1 FSM Intrm. 97, 104 (Pon. 1982).

There is no statutory limitation on the FSM Supreme Court's jurisdiction; the Judiciary Act of 1979 plainly contemplates that the FSM Supreme Court will exercise all the jurisdiction available to it under the Constitution. 4 FSMC 201-08. *In re Nahnsen*, 1 FSM Intrm. 97, 106 (Pon. 1982).

The FSM Supreme Court has inherent constitutional power to issue all writs; this includes the traditional common law writ of *mandamus*. 4 FSMC 117. *Nixv. Ehmes*, 1 FSM Intrm. 114, 118 (Pon. 1982).

The Constitution unmistakably places upon the judicial branch ultimate responsibility for interpretation of the Constitution. *Suldan v. FSM (II)*, 1 FSM Intrm. 339, 343 (Pon. 1983).

Where petitioners raise serious and substantial constitutional claims supported by authorities and reasoning of legal substance, the case falls within the jurisdiction of the FSM Supreme Court under art. XI, § 6(b) of the Constitution. *Ponape Chamber of Commerce v. Nett*, 1 FSM Intrm. 389, 391 (Pon. 1984).

The power to issue declaratory judgments is within the

FSM CONSTITUTION

judicial power vested in the FSM Supreme Court by art. XI, § 1 of the Constitution and confirmed by the Judiciary Act of 1979. The FSM Supreme Court may exercise jurisdiction over an action seeking a declaratory judgment so long as there is a "case" within the meaning of art. XI, § 6(b). Ponape Chamber ofCommerce v. Nett, 1 FSM Intrm. 389, 400 (Pon. 1984).

An attorney's professional activities are individually subject to regulation by the judiciary, not by the administrators of the Foreign Investment Act. Michelsen v. FSM, 3 FSM Intrm. 416, 427 (Pon. 1988).

The Constitution places control over admission of attorneys to practice before the nat'l courts, and regulation of the professional conduct of the attorneys, in the Chief Justice, as the chief administrator of the nat'l judiciary. Carlos v. FSM, 4 FSM Intrm. 17, 27 (App. 1989).

The FSM Constitution provides no authority for any courts to act within the FSM, other than the FSM Supreme Court, inferior courts to be established by statute, and state or local courts. United Church ofChrist v. Hamo, 4 FSM Intrm. 95, 105 (App. 1989).

The provisions of the FSM Constitution spelling out jurisdiction and vesting the entire judicial power of the nat'l gov't in the FSM Supreme Court are self-executing, and the judicial power of the FSM Supreme Court is not dependent upon congressional action. United Church of Christ v. Hamo, 4 FSM Intrm. 95, 105-06 (App. 1989).

The Supreme Court of the FSM has the constitutional power

FSM CONSTITUTION

and obligation to review legislative enactments of Congress and to set aside nat'l statutes to the extent they violate the Constitution. Constitutional Convention 1990 v. President, 4 FSM Intrm. 320, 324 (App. 1990).

It is the duty of the FSM Supreme Court to review any nat'l law, including a treaty such as the Compact of Free Association, in response to a claim that the law or treaty violates constitutional rights, and if any provision of the Compact is contrary to the constitution, which is the supreme law of the land, then that provision must be set aside as without effect. Samuel v. Pryor, 5 FSM Intrm. 91, 98 (Pon. 1991).

Where there is in the Constitution a textually demonstrable commitment of the issue to a coordinate branch of gov't, such as Congress being the sole judge of the elections of its members, it is a nonjusticiable political question not to be decided by the court because of the separation of powers provided for in the Constitution. Aten v. National Election Comm'r (III), 6 FSM Intrm. 143, 145 (App. 1993).

Section 2. The Supreme Court is a court of record and the highest court in the nation. It consists of the Chief Justice and not more than 5 associate justices. Each justice is a member of both the trial division and the appellate division, except that sessions of the trial division may be held by one justice. No justice may sit with the appellate division in a case heard by him in the trial division. At least 3 justices shall hear and decide appeals. Decision is by a majority of those sitting.

Cross reference: The statutory provisions on the Judiciary of the FSM are found in title 4 of this code.

FSM CONSTITUTION

Section 3. The Chief Justice and associate justices of the Supreme Court are appointed by the President with the approval of 2/3 of Congress. Justices serve during good behavior.

Section 4. If the Chief Justice is unable to perform his duties he shall appoint an associate justice to act in his stead. If the office is vacant, or the Chief Justice fails to make the appointment, the President shall appoint an associate justice to act as Chief Justice until the vacancy is filled or the Chief Justice resumes his duties.

Case annotations: The Chief Justice may appoint an acting chief justice if he is unable to perform his duties. "Unable to perform his duties" refers to a physical or mental disability of some duration, not to the legal inability to act on one particular case. *Jano v. King*, 5 FSM Intrm. 326, 331 (App. 1992).

Section 5. The qualifications and compensation of justices and other judges may be prescribed by statute. Compensation of judges may not be diminished during their terms of office unless all salaries prescribed by statute are reduced by a uniform percentage.

Cross reference: The statutory provisions on the Judiciary of the FSM are found in title 4 of this code.

Section 6.

Case annotations: Parties cannot confer or divest a court of jurisdiction by stipulation or by assumption. *Luzama v. Pohnpei Enterprises Co.*, 7 FSM Intrm. 40, 45 (App. 1995).

When it appears that the court lacks subject matter

FSM CONSTITUTION

jurisdiction the case will be dismissed. Trance v. Penta Constr. Co., 7 FSM Intrm. 147, 148 (Chk. 1995).

An attorney disciplinary proceeding in state court for violations of state disciplinary rules may not be removed to the FSM Supreme Court. Berman v. Santos, 7 FSM Intrm. 231, 241 (Pon. 1995).

(a) The trial division of the Supreme Court has original and exclusive jurisdiction in cases affecting officials of foreign governments, disputes between states, admiralty or maritime cases, and in cases in which the national government is a party except where an interest in land is at issue.

Case annotations: Art. XI, § 6(a) of the Constitution places jurisdiction in the FSM Supreme Court over cases in which the nat'l gov't is a party. Panuelo v. Pohnpei, 2 FSM Intrm. 150, 153 (Pon. 1986).

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

The Seaman's Protection Act, originally enacted for the entire Trust Territory by the Congress of Micronesia, relates to matters that now fall within the legislative powers of the nat'l gov't under art. IX, § 2 of the Constitution, and has therefore become a nat'l law of the FSM under art. XV. That being so, a claim asserting rights under the Act falls within the jurisdiction of the FSM Supreme Court under art. XI, § 6(b) of the Constitution as a case arising under nat'l law. 19

FSM CONSTITUTION

FSMC 401-437. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 72 (Kos. 1982).

Activities and organizations created and controlled by the nat'l gov't should remain subject to FSM Const. art. XI, § 6(a), but organizations merely authorized or licensed by the nat'l gov't which operate for private purposes, with little governmental involvement or control, should not be treated as a part of the nat'l gov't. FSM Dev. Bank v. Estate of Nanpei, 2 FSM Intrm. 217, 219-20 (Pon. 1986).

The FSM Development Bank is an instrumentality of the nat'l gov't and part of the nat'l gov't for the purposes of FSM Const. art. XI, § 6(a), giving the trial division of the Supreme Court exclusive jurisdiction over cases in which the nat'l gov't is a party. FSM Dev. Bank v. Estate of Nanpei, 2 FSM Intrm. 217, 221 (Pon. 1986).

In an action on a delinquent promissory note brought by an instrumentality of the nat'l gov't which seeks to foreclose the mortgage securing the payment of the note, prior to the filing of an answer no interest in land is at issue, and therefore, the motion to dismiss on the ground that the court lacked jurisdiction is denied. FSM Dev. Bank v. Mori, 2 FSM Intrm. 242, 244 (Truk 1987).

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

FSM CONSTITUTION

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

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

The enforcement of ships' mortgages does not come within the admiralty jurisdiction of the FSM Supreme Court. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM Intrm. 57, 60 (Truk 1989).

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

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

The question of the enforceability of ship mortgages is a

FSM CONSTITUTION

matter that falls within the maritime jurisdiction of the FSM Supreme Court under art. XI, § 6(a) of the Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM Intrm. 367, 376 (App. 1990).

Where a claim is against the nat'l gov't and an interest in land is not placed at issue the claim is within the exclusive jurisdiction of the FSM Supreme Court and it cannot abstain on the claim. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 67A, 67E (Pon. 1991).

The framers of the Constitution made clear that the term "exclusive" in art. XI, § 6(a) of the FSM Constitution means that for the types of cases listed in that section, the trial division of the FSM Supreme Court is the only court of jurisdiction. Faw v. FSM, 6 FSM Intrm. 33, 35 (Yap 1993).

Because the FSM Supreme Court is the only court of jurisdiction in cases arising under art. XI, § 6(a) of the FSM Constitution, the court has no discretion to abstain in such cases. Faw v. FSM, 6 FSM Intrm. 33, 36 (Yap 1993).

A state law cannot divest the FSM Supreme Court of exclusive jurisdiction in cases arising under art. XI, § 6(a) of the FSM Constitution. Faw v. FSM, 6 FSM Intrm. 33, 36-37 (Yap 1993).

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

FSM CONSTITUTION

The FSM Supreme Court has exclusive jurisdiction in actions by the nat'l gov't to enforce the terms of fishing agreements and permits to which it is a party. FSM v. Hai Hsiang No. 63, 7 FSM Intrm. 114, 116 (Chk. 1995).

(b) The national courts, including the trial division of the Supreme Court, have concurrent original jurisdiction in cases arising under this Constitution; national law or treaties; and in disputes between a state and a citizen of another state, between citizens of different states, and between a state or a citizen thereof, and a foreign state, citizen, or subject.

Case annotations: — National Law

The Nat'l Criminal Code places in the FSM Supreme Court exclusive jurisdiction over allegations of violations of the Code. No exception to that jurisdiction is provided for juveniles, so charges of crimes leveled against juveniles are governed by the Nat'l Criminal Code. FSM v. Albert, 1 FSM Intrm. 14, 15 (Pon. 1981).

The repealer clause of the Nat'l Criminal Code repealed those provisions of Title 11 of the Trust Territory Code above the monetary minimum of \$1,000 set for major crimes. Where the value is below \$1,000, § 2 does not apply because it is not within the nat'l court jurisdiction. FSM v. Hartman, 1 FSM Intrm. 43, 46 (Truk 1981).

Title 11 of the Trust Territory Code, prior to the effective date of the Nat'l Criminal Code, is not a nat'l law because its criminal jurisdiction was not expressly delegated to the nat'l gov't, nor is the power it confers of indisputably nat'l

FSM CONSTITUTION

character; therefore, it is not within the jurisdiction of the FSM Supreme Court. Truk v. Otokichy (I), 1 FSM Intrm. 127, 130 (Truk 1982).

The FSM Supreme Court has jurisdiction to try Title 11 Trust Territory Code cases if they arise under a nat'l law. Title 11 of the Trust Territory Code is not a nat'l law. It was not adopted by Congress as a nat'l law and it did not become nat'l law by virtue of the transition article. Truk v. Hartman, 1 FSM Intrm. 174, 178 (Truk 1982).

Exclusive nat'l gov't jurisdiction over major crimes is not mandated by the Constitution; such jurisdiction would be exclusive in any event only if criminal jurisdiction was a power of indisputably nat'l character. Truk v. Hartman, 1 FSM Intrm. 174, 181 (Truk 1982).

The Nat'l Government has exclusive jurisdiction over crimes arising under nat'l law. 11 FSMC 901. Truk v. Hartman, 1 FSM Intrm. 174, 181 (Truk 1982).

Sections of Title 11 of the Trust Territory Code covering matters within the jurisdiction of Congress owe their continuing vitality to § 102 of the Nat'l Criminal Code. Thus, the criminal prosecutions thereunder are a nat'l matter and fall within the FSM Supreme Court's constitutional jurisdiction. 11 FSMC 102. In re Otokichy, 1 FSM Intrm. 183, 185 (App. 1982).

§ 102(2), the savings clause of the Nat'l Criminal Code, authorizes prosecutions of Title 11 Trust Territory Code offenses occurring prior to the enactment of the Nat'l Criminal Code. Therefore, these prosecutions fall within the

FSM CONSTITUTION

FSM Supreme Court's constitutional jurisdiction. 11 FSMC 102(2). In re Otokichy, 1 FSM Intrm. 183, 190 (App. 1982).

Presumably, Congress inserted no specific jurisdictional provision in § 102 of the Nat'l Criminal Code because Congress recognized that the FSM Supreme Court would have jurisdiction over all cases arising under nat'l law by virtue of art. XI, § 6(b) of the Constitution. 11 FSMC 102. In re Otokichy, 1 FSM Intrm. 183, 193 (App. 1982).

The Trust Territory Weapons Control Act is not inconsistent with any provision of the Constitution. It therefore continued in effect. When the Nat'l Criminal Code was enacted, and major crimes were defined, the Trust Territory Weapons Control Act became nat'l law and trials for violations thereof were within the jurisdiction of the FSM Supreme Court. 11 FSMC 1201-1231. FSM v. Nota, 1 FSM Intrm. 299, 302-03 (Truk 1983).

Where petitioners raise serious and substantial constitutional claims supported by authorities and reasoning of legal substance, the case falls within the jurisdiction of the FSM Supreme Court under art. XI, § 6(b) of the Constitution. Ponape Chamber of Commerce v. Nett, 1 FSM Intrm. 389, 391 (Pon. 1984).

Nat'l civil rights claims under 11 FSMC 701 furnish a jurisdictional basis for the case to be heard by the FSM Supreme Court. Panuelo v. Pohnpei (I), 2 FSM Intrm. 150, 153 (Pon. 1986).

The FSM Supreme Court trial division is required to decide all nat'l law issues presented to it. Certification to state court

FSM CONSTITUTION

is only proper for state or local law issues. Edwards v. Pohnpei, 3 FSM Intrm. 350, 354 (Pon. 1988).

In the absence of any special limitation, issues that arise under any state or nat'l law within the particular state may fall within the jurisdiction of the state and local courts of that state through state constitutional and statutory provisions which place the "judicial power of the state" within those courts. Gimnang v. Yap, 5 FSM Intrm. 13, 17 (App. 1991).

Art. XI, §§ 6(b) and 8 of the FSM Constitution places primary responsibility in the nat'l courts for the kind of cases arising under the constitution or requiring interpretation of the Constitution, nat'l law or treaties; and in disputes between a state and a citizen of another state, between state, citizen, of different states, and between a state or a citizen, a foreign state, citizen, or subject but they do not prohibit state court jurisdiction over issues of nat'l law or cases which arise under nat'l law. Gimnang v. Yap, 5 FSM Intrm. 13, 18 (App. 1991).

Issues that arise under any state or nat'l law within the particular state may fall within the jurisdiction of the state and local courts of that state through state constitutional and statutory provisions which place the "judicial power of the state" within those courts, subject to the possibility that state or local courts may sometimes be barred from exercising jurisdiction in some such cases by the action of Congress, of this court, or of the state legislature. Gimnang v. Yap, 5 FSM Intrm. 13, 18 (App. 1991).

Art. XI, § 8 of the FSM constitution does not bar state courts from exercising jurisdiction over cases which arise under

FSM CONSTITUTION

nat'l law within the meaning of art. XI, § 6(b). Gimnang v. Yap, 5 FSM Intrm. 13, 18 (App. 1991).

Full abstention is not appropriate where claims are not essentially state law claims, and are made against another nation, thus falling within the nat'l court's primary jurisdiction. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 67A, 67E (Pon. 1991).

Abstention may be appropriate for causes of action that raise issues of state law only, but may not be where substantive issues of nat'l law are raised. A nat'l court may not abstain from deciding a nat'l constitutional claim. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 67A, 67E (Pon. 1991).

The intent of the Constitutional Convention is that major crimes, as defined by Congress and committed prior to voter ratification, fall within the jurisdiction of the nat'l gov't and may be prosecuted pursuant to the nat'l law after the effective date of the amendment. In re Ress, 5 FSM Intrm. 273, 276 (Chk. 1992).

Where the crimes charged are no longer those expressly delegated to Congress to define, or are not indisputedly of a nat'l character the FSM Supreme Court has no subject matter jurisdiction. FSM v. Jano, 6 FSM Intrm. 9, 11 (Pon. 1993).

The term "concurrent" in art. XI, § 6(c) of the FSM Constitution has the same meaning as in § 6(b); i.e., that jurisdiction is concurrent as between the FSM Supreme Court and any other nat'l courts that may be established by statute. It would be illogical and contrary to norms of constitutional interpretation to assume a different meaning

FSM CONSTITUTION

for "concurrent" in § 6(c) than in § 6(b), since it is quite clear that the two sections are to be read together. Faw v. FSM, 6 FSM Intrm. 33, 35 (Yap 1993).

— Abstention and Certification

Nat'l courts are not required to certify to state courts state law issues of first impression. Whether to certify a question to state court is left to the sound discretion of the trial court on a case by case basis. Youngstrom v. Youngstrom, 7 FSM Intrm. 34, 36 (App. 1995).

A most important issue in determining whether to certify an issue to state court is whether it will result in undue delay and whether that delay will prejudice a party. Youngstrom v. Youngstrom, 7 FSM Intrm. 34, 36 (App. 1995).

The decision whether the FSM Supreme Court will exercise its inherent power to abstain from a case is left to the sound discretion of the trial division which must exercise it carefully and sparingly. Conrad v. Kolonia Town, 7 FSM Intrm. 97, 99 (Pon. 1995).

Counseling against the unfettered use of abstention is the FSM Supreme Court's solemn obligation to consider the interests and protect the rights of those who wish to invoke its constitutional jurisdiction. Conrad v. Kolonia Town, 7 FSM Intrm. 97, 99 (Pon. 1995).

Where a case involves several substantive FSM constitutional claims the FSM Supreme Court will not and most likely cannot exercise its discretion to abstain. Conrad v. Kolonia Town, 7 FSM Intrm. 97, 101 (Pon. 1995).

FSM CONSTITUTION

Extension of the presumption of abstention in certain cases to municipalities is inappropriate. Conrad v. Kolonia Town, 7 FSM Intrm. 97, 101 (Pon. 1995).

— Diversity

The Supreme Court of the FSM is specifically given jurisdiction over disputes between citizens of a state and foreign citizens. FSM Const. art. XI, § 6(b). The jurisdiction is based upon the citizenship of the parties, not on the subject matter of the dispute. In re Nahnsen, 1 FSM Intrm. 97, 101 (Pon. 1982).

The Constitution places diversity jurisdiction in the Supreme Court, despite the fact that the issues involve matters within state or local, rather than nat'l, legislative powers. FSM Const. art. XI, § 6(b). In re Nahnsen, 1 FSM Intrm. 97, 102 (Pon. 1982).

A primary purpose of diversity jurisdiction is to minimize any belief of the parties that a more local tribunal might favor local parties in disputes with "outsiders." In re Nahnsen, 1 FSM Intrm. 97, 102 (Pon. 1982).

A requirement for complete diversity among all parties has no constitutional support as a prerequisite to FSM Supreme Court jurisdiction. In re Nahnsen, 1 FSM Intrm. 97, 105-06 (Pon. 1982).

Where jurisdiction exists by virtue of diversity of the parties, the FSM Supreme Court may resolve the dispute despite the fact that matters squarely within the legislative powers of

FSM CONSTITUTION

states (e.g., probate, inheritance and land issues) may be involved. Ponape Chamber of Commerce v. Nett, 1 FSM Intrm. 389, 392 (Pon. 1984).

Under art. XI, § 6(b) of the FSM Constitution, it is proper to employ the rule of pendent jurisdiction over cases involving interpretations of the Constitution or nat'l law, so that the court may resolve state or local issues involved in the same case. Ponape Chamber of Commerce v. Nett, 1 FSM Intrm. 389, 396 (Pon. 1984).

Diversity of citizenship is determined as of commencement of the action. Where diversity existed between the parties at the date and time the suit commenced, diversity will not be defeated by later developments. Etpison v. Perman, 1 FSM Intrm. 405, 414 (Pon. 1984).

For purposes of diversity jurisdiction under art. XI, § 6(b) of the Constitution, a corporation is considered a foreign citizen when any of its shareholders are not citizens of the FSM. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM Intrm. 256, 260 (Pon. 1987).

Although the FSM Supreme Court has often decided matters of tort law without stating explicitly that state rather than nat'l law controls, there has been acknowledgment that state law controls in the resolution of contract and tort issues. When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. Edwards v. Pohnpei, 3 FSM Intrm. 350, 360 n.22 (Pon. 1989).

Only nat'l courts are given jurisdiction by art. XI, § 6(b) of

FSM CONSTITUTION

the Constitution and the concurrent jurisdiction referred to there is between the trial division of the FSM Supreme Court, and any other nat'l courts which may be established in the future. Bank of Guam v. Semes, 3 FSM Intrm. 370, 377 (Pon. 1988).

Lack of mention of state and local courts in FSM Constitution art. XI, § 6(b) reveals that nat'l courts are to play the primary role in handling the kinds of cases, identified in that section, but nothing in art. XI, § 6(b) may be read as absolutely preventing state courts from exercising jurisdiction over those kinds of cases. Bank of Guam v. Semes, 3 FSM Intrm. 370, 379 (Pon. 1988).

Parties to a dispute in which there is diversity have a constitutional right to invoke the jurisdiction of a nat'l court, but if all parties agree, and if state law permits, a state court may hear and decide the kinds of cases described in art. XI, § 6(b) of the Constitution. Bank of Guam v. Semes, 3 FSM Intrm. 370, 379 (Pon. 1988).

Failure to mention nat'l courts in § 25 of the Pohnpei State Real Property Mortgage Act should not be read as an attempt to deprive litigants of access to the FSM Supreme Court's trial division. Bank of Guam v. Semes, 3 FSM Intrm. 370, 380 (Pon. 1988).

The Constitution requires only that one plaintiff has citizenship different from one defendant for there to be diversity jurisdiction. U Corp. v. Salik, 3 FSM Intrm. 389, 392 (Pon. 1988).

The nat'l Constitution does not prohibit state courts from

FSM CONSTITUTION

hearing cases described in art. XI, § 6(b) if all parties accept state court jurisdiction, but parties to a dispute within scope of art. XI, § 6(b) have a constitutional rights to invoke jurisdiction of FSM Supreme Court trial division. U Corp. v. Salik, 3 FSM Intrm. 389, 392 (Pon. 1988).

State courts are not prohibited by art. XI, § 6(b) of the FSM Constitution from hearing and determining cases where the defendants are from FSM states other than the prosecuting state. Jurisdiction over criminal matters between the nat'l and state governments is determined by the severity of the crime; not diversity of citizenship. Pohnpei v. Hawk, 3 FSM Intrm. 543, 554 (Pon. S. Ct. App. 1988).

"Concurrent jurisdiction" as used in art. XI, § 6(b) of the FSM Constitution means concurrent jurisdiction between nat'l courts, including the trial divisions of the FSM Supreme Court and of the four state courts. Pohnpeiv. Hawk, 3 FSM Intrm. 543, 554-55 (Pon. S. Ct. App. 1988).

When all of the parties are citizens of foreign states there is no diversity of citizenship subject matter jurisdiction under art. XI, § 6(b). International Trading Co. v. Hitec Corp., 4 FSM Intrm. 1, 2 (Truk 1989).

A joint venture, without the powers to sue or be sued in the name of the association and without limited liability of the individual members of the association, is not a citizen of Truk State for diversity purposes even though its principal place of business is in Truk State. International Trading Corp. v. Hitec Corp., 4 FSM Intrm. 1, 2 (Truk 1989).

A cautious, reasoned use of the doctrine of abstention is not

FSM CONSTITUTION

a violation of the FSM Supreme Court's duty to exercise diversity jurisdiction, or of the litigants' constitutional rights, under art. XI, § 6(b) of the FSM Constitution. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM Intrm. 37, 39 (Pon. 1989).

While the FSM Constitution provides initial access to the FSM Supreme Court for any party in art. XI, § 6(b) litigation, the court may, having familiarized itself with the issues, invoke the doctrine of abstention and permit the case to proceed in a state court, since the power to grant abstention is inherent in the jurisdiction of the FSM Supreme Court, and nothing in the FSM Constitution precludes the court from abstaining in cases which fall within its jurisdiction under art. XI, § 6(b). Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM Intrm. 37, 42-43 (Pon. 1989).

No jurisdiction is conferred on state courts by art. XI, § 6(b) of the FSM Constitution, but neither does the diversity jurisdiction of § 6(b) preclude state courts from acting under state law, unless or until a party to the litigation invokes nat'l court jurisdiction. Hawk v. Pohnpei, 4 FSM Intrm. 85, 89 (App. 1989).

It is consistent with the broad plan of the framers of the FSM Constitution that the Constitution would not require that diversity jurisdiction be available in criminal proceedings. Hawk v. Pohnpei, 4 FSM Intrm. 85, 94 (App. 1989).

Although the purpose of diversity jurisdiction is to provide parties who are not citizens of the state where a matter arises with a nat'l forum for which the federation of states is

FSM CONSTITUTION

responsible, the need to safeguard the legitimate rights of a noncitizen in a state forum must be balanced against the understandable concern of the society of that state to control standards of behavior in accordance with its own set of values. Hawk v. Pohnpei, 4 FSM Intrm. 85, 94 (App. 1989).

Jurisdiction based upon diversity of citizenship between the parties is concurrent in the Supreme Court and the nat'l courts, and therefore a party to state court litigation where diversity exists has a constitutional right to invoke the jurisdiction of the nat'l court. In re Estate of Hartman, 4 FSM Intrm. 386, 387 (Chk. 1989).

Issues concerning land usually fall into state court jurisdiction, but if there are diverse parties having bona fide interests in the case or dispute, the Constitution places jurisdiction in the nat'l courts even if interests in land are at issue. Etscheit v. Adams, 5 FSM Intrm. 243, 246 (Pon. 1991).

When an estate is a party it is the citizenship of the estate representative that is to be considered for diversity purposes. Etscheit v. Adams, 5 FSM Intrm. 243, 246 (Pon. 1991).

Where, for six and a half years after the nat'l court had come into existence the noncitizen petitioners made no attempt to invoke the nat'l court's jurisdiction, the noncitizen petitioners affirmatively indicated their willingness to have the case resolved in court proceedings, first in the Trust Territory High Court and later in Pohnpei state court, and thus have waived their right to diversity jurisdiction in the nat'l courts. Etscheit v. Adams, 5 FSM Intrm. 243, 247-48 (Pon. 1991).

FSM CONSTITUTION

Nat'l courts can exercise jurisdiction over divorce cases where there is diversity of citizenship although domestic relations are primarily the subject of state law. Youngstrom v. Youngstrom, 5 FSM Intrm. 335, 336 (Pon. 1992).

In a diversity of citizenship case the FSM Supreme Court will normally apply state law. Youngstrom v. Youngstrom, 5 FSM Intrm. 335, 337 (Pon. 1992).

For purposes of diversity jurisdiction a corporation is considered a foreign citizen when any of its shareholders are not FSM citizens. Luzama v. Pohnpei Enterprises Co., 7 FSM Intrm. 40, 44 (App. 1995).

For purposes of diversity jurisdiction a joint venture is considered a foreign citizen when the parties to it are not FSM citizens. Luzama v. Pohnpei Enterprises Co., 7 FSM Intrm. 40, 44 (App. 1995).

Where the constitutional language itself, following FSM precedents on constitutional interpretation, only requires minimal diversity for the nat'l courts to have jurisdiction, and the constitutional journals do not reveal any intent to depart from the plain meaning of the constitutional language, there are no sound reasons why twelve years of FSM jurisprudence requiring only minimal diversity should be overturned. Luzama v. Pohnpei Enterprises Co., 7 FSM Intrm. 40, 48 (App. 1995).

The FSM Supreme Court has diversity jurisdiction only in disputes between a state and a citizen of another state, between citizens of different states, and between a state or a

FSM CONSTITUTION

citizen thereof, and a foreign state, citizen, or subject. Diversity jurisdiction thus does not exist when all the parties are foreign citizens, even though they may be citizens of different foreign nations. In such cases, the court's subject matter jurisdiction must be based on some other ground. Trance v. Penta Constr. Co., 7 FSM Intrm. 147, 148 (Chk. 1995).

— Pendent

Where the FSM Supreme Court has jurisdiction over a violation of the Nat'l Criminal Code, it cannot then take jurisdiction over a non-major crime, which arose out of the same transaction and formed part of the same plan, under the theory of ancillary jurisdiction. FSM v. Hartman, 1 FSM Intrm. 43, 44-46 (Truk 1981).

Under art. XI, § 6(b) of the FSM Constitution, it is proper to employ the rule of pendent jurisdiction over cases involving interpretations of the Constitution or nat'l law, so that the court may resolve state or local issues involved in the same case. Ponape Chamber of Commerce v. Nett, 1 FSM Intrm. 389, 396 (Pon. 1984).

Where a substantial constitutional issue is involved in a case, the nat'l court may exercise pendent jurisdiction over state or local claims which derives from the same nucleus of operative fact and are such that the plaintiff would ordinarily be expected to try them all in one judicial proceeding. Ponape Chamber of Commerce v. Nett, 1 FSM Intrm. 389, 396 (Pon. 1984).

Even though the requirements for pendent jurisdiction are

FSM CONSTITUTION

met in a case, a nat'l court has discretion to decline to exercise jurisdiction over state claims. This determination should turn on considerations of judicial economy, convenience and fairness to litigants and should be instructed by a desire of the federal or nat'l court to avoid needless decisions of state law. Ponape Chamber of Commerce v. Nett, 1 FSM Intrm. 389, 397 (Pon. 1984).

A nat'l court may exercise pendent jurisdiction over state law claims included in a plaintiff's cause of action if they arise out of a common nucleus of operative fact and are such that they ordinarily would be expected to be tried in one judicial proceeding, but its exercise of pendent jurisdiction will be limited so as to avoid heedless decisions of state laws. Ponape Constr. Co. v. Pohnpei, 6 FSM Intrm. 114, 116 (Pon. 1993).

(c) When jurisdiction is concurrent, the proper court may be prescribed by statute.

Cross reference: The statutory provisions on the Judiciary of the FSM are found in title 4 of this code.

Case annotations: — Case or Dispute

A case must be one appropriate for judicial determination, that is, a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. In re Sproat, 2 FSM Intrm. 1, 5 (Pon. 1985).

FSM CONSTITUTION

One reason the judicial power is limited to cases or disputes is to prevent the Judiciary from intruding into areas committed to other branches of gov't. In re Sproat, 2 FSM Intrm. 1, 7 (Pon. 1985).

The principal objectives of the case and dispute requirement are to enhance the ability of the courts to make fair and intelligent decisions, and to keep the judicial power within its proper role. Innocenti v. Wainit, 2 FSM Intrm. 173, 178-79 (App. 1986).

A concrete case or dispute clearly exists where a state legislature contends that an act of the legislature requires payment of a tax on imports and others insist that the act is null and void, and, depending on the outcome of the controversy, money may or may not be collected, and penalties may or may not be imposed. Innocenti v. Wainit, 2 FSM Intrm. 173, 179 (App. 1986).

Art. XI, § 6(c) of the Constitution places authority to prescribe jurisdiction only in the nat'l Congress, and not in state legislatures. Bank of Guam v. Semes, 3 FSM Intrm. 370, 379 (Pon. 1988).

The term "concurrent" in art. XI, § 6(c) of the FSM Constitution has the same meaning as in § 6(b); i.e., that jurisdiction is concurrent as between the FSM Supreme Court and any other nat'l courts that may be established by statute. It would be illogical and contrary to norms of constitutional interpretation to assume a different meaning for "concurrent" in § 6(c) than in § 6(b), since it is quite clear that the two sections are to be read together. Faw v. FSM, 6 FSM Intrm. 33, 35 (Yap 1993).

FSM CONSTITUTION

Where there is in the Constitution a textually demonstrable commitment of the issue to a coordinate branch of gov't, such as Congress being the sole judge of the elections of its members, it is a nonjusticiable political question not to be decided by the court because of the separation of powers provided for in the Constitution. Aten v. National Election Comm'r (III), 6 FSM Intrm. 143, 145 (App. 1993).

While the court has statutory authority to hear appeals regarding the conduct of elections, its power to grant relief is limited to ordering a recount or a revote. Only Congress can decide who is to be seated and once it has seated a member unconditionally the matter is nonjusticiable. Aten v. National Election Comm'r(III), 6 FSM Intrm. 143, 145 & n.1 (App. 1993).

— Case or Dispute — Mootness

A claim becomes moot when the parties lack a legally cognizable interest in the outcome. If an appellant court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Berman v. FSM Supreme Court (II), 7 FSM Intrm. 11, 16 (App. 1995).

— Case or Dispute — Ripeness

When a party has been specifically warned by the attorney general that he is required to obtain a foreign investment permit under nat'l statute which imposes criminal sanctions for failure to comply, the question of whether a permit is required is sufficiently ripe to support a suit seeking declaratory judgment. Michelsen v. FSM, 3 FSM Intrm. 416,

FSM CONSTITUTION

419 (Pon. 1988).

A dispute becomes moot when the parties lack a legally cognizable interest in the outcome and if any relief it could grant would be ineffectual. FSM v. Udot Municipality, 12 FSM Intrm. 29, 42 (App. 2003).

When even if the issue of mootness had been raised, the case still fell within the exception to the mootness doctrine that it may have a continuing effect on future events, including future litigation and may be capable of repetition, yet evading review, the court will address the issue. FSM v. Udot Municipality, 12 FSM Intrm. 29, 49 (App. 2003).

An interlocutory appeal may be considered moot when the trial court has issued a final judgment in the case below and the appellant has since filed a notice of appeal on the same issues. FSM Dev. Bank v. Adams, 12 FSM Intrm. 456, 460 (App. 2004).

Under an exception to the mootness doctrine, when the court's rulings will have a continuing effect on future events and future litigation and will offer guidance to future litigants, which should have the positive effect of eliminating or lessening unwarranted attempts at interlocutory appeals, thus conserving judicial resources, the court will review the matter. FSM Dev. Bank v. Adams, 12 FSM Intrm. 456, 460 (App. 2004).

— Case or Dispute — Standing

The jurisdictional language in the FSM Constitution is patterned upon the U.S. Constitution. In re Sproat, 2 FSM

FSM CONSTITUTION

Intrm. 1, 4 n.2 (Pon. 1985).

It is thought that the judicial power to declare the law will more likely be exercised in enlightened fashion if it is employed only where the Court is exposed to the differing points of view of adversaries. Thus judicial decision-making power is typically exercised by a court which has heard competing contentions of adversaries having sufficient interests in the outcome to thoroughly consider, research and argue the points at issue. Even then, a court's declarations of law should be limited to rulings necessary to resolve the dispute before it. *In re Sproat*, 2 FSM Intrm. 1, 4 (Pon. 1985).

Though the words used in art. XI, § 6 of the FSM Constitution, including the case or dispute requirements, are based on the similar case and controversy provisions set out in art. III of the U.S. Constitution, courts within the F.S.M. are not to consider themselves bound by the details and minute points of decisions of U.S. courts attempting to ferret out the precise meaning of art. III. *Aisek v. FSM Foreign Investment Board*, 2 FSM Intrm. 95, 98 (Pon. 1985).

Standing to sue was an unsettled area of U.S. law when the FSM Constitution was ratified and the issue of standing to sue within the FSM is one that calls for independent analysis rather than rigid adherence to the decisions of U.S. courts construing that Constitution. *Aisek v. FSM Foreign Investment Bd.*, 2 FSM Intrm. 95, 98-99 (Pon. 1985).

In deciding who may litigate in the FSM Supreme Court, the goal is to develop principles consistent with the language of

FSM CONSTITUTION

the Constitution and calculated to meet the needs of the people and institutions within the FSM. Aisek v. FSM Foreign Investment Bd., 2 FSM Intrm. 95, 100 (Pon. 1985).

Where dive shop operators allege actual or threatened economic injury as a result of increased competition flowing from business activities of a pleasure cruise ship providing diving opportunities in the same geographical area where the plaintiffs operate, and where they have placed before the court information sufficient to establish the reasonableness of their fear of economic injury, their law suit challenging the legality of the issuance of a foreign investment permit to a cruise ship may not be dismissed for lack of standing. Aisek v. FSM Foreign Investment Bd., 2 FSM Intrm. 95, 100 (Pon. 1985).

Where plaintiffs seek to challenge issuance to a third party of a permit which plaintiffs reasonably allege will cause them harm, and where they allege that the actions of a nat'l senator were crucial to issuance of the permit, those plaintiffs have standing to be heard on the question of whether the senator's membership on the board is violative of the "incompatibility clause," art. IX, § 13 of the FSM Constitution. Aisek v. FSM Foreign Investment Bd., 2 FSM Intrm. 95, 101 (Pon. 1985).

There is in the FSM no separate requirement that there be a nexus, that is, a logical connection between persons threatened by injury from the actions of an administrative agency and the statutory provisions under which the agency is operating. Aisek v. FSM Foreign Investment Bd., 2 FSM Intrm. 95, 102 (Pon. 1985).

FSM CONSTITUTION

The principal objectives of the case and dispute requirement are to enhance the ability of the courts to make fair and intelligent decisions, and to keep the judicial power within its proper role. Innocenti v. Wainit, 2 FSM Intrm. 173, 178-79 (App. 1986).

The issue of standing to sue, because it was a particularly unsettled area in U.S. law when the FSM Constitution was drafted and ratified, is an area especially calling for independent analysis rather than adherence to decisions construing similar provisions in the U.S. Constitution. Innocenti v. Wainit, 2 FSM Intrm. 173, 178-79 (App. 1986).

A concrete case or dispute clearly exists where a state legislature contends that an act of the legislature requires payment of a tax on imports and others insist that the act is null and void, and, depending on the outcome of the controversy, money may or may not be collected, and penalties may or may not be imposed. Innocenti v. Wainit, 2 FSM Intrm. 173, 179 (App. 1986).

The standing requirement is not expressly stated in the Constitution but implied as an antecedent to the constitutional case or dispute requirement, and should be interpreted so as to implement the objectives of that requirement. Innocenti v. Wainit, 2 FSM Intrm. 173, 179 (App. 1986).

Business people have standing to challenge the constitutionality of an excise tax based on imports where the addition of the tax increases the cost that business people must pay for goods intended for resale to consumers. Innocenti v. Wainit, 2 FSM Intrm. 173, 180 (App. 1986).

FSM CONSTITUTION

Plaintiff's possessory interest in land is sufficient to maintain standing to bring action for damages wrought when a road was built across the land. Benjamin v. Kosrae, 3 FSM Intrm. 508, 511 (Kos. S. Ct. Tr. 1988).

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

A leasehold interest in land is a sufficient possessory interest to give a party standing to maintain an action for trespass. In re Parcel No. 046-A-01, 6 FSM Intrm. 149, 154 (Pon. 1993).

Private individuals lack standing to assert claims on behalf of the public. When the state gov't has certified ownership of land, and the traditional leaders' suit to have that land declared public land failed, private individuals cannot raise the same claim. In re Parcel No. 046-A-01, 6 FSM Intrm. 149, 157 (Pon. 1993).

The standing issue is addressed first as it is a threshold issue going to a court's subject matter jurisdiction. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 496 (Kos. 2003).

The standing requirement is not expressly stated in the FSM Constitution, but is implied as an antecedent to the Article XI, Section 6 "case or dispute" requirement and should be interpreted so as to implement that requirement's objectives. The issue of standing to sue is an area which calls for the

FSM CONSTITUTION

FSM Supreme Court's independent analysis rather than adherence to decisions construing similar provisions in the U.S. Constitution. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 496 (Kos. 2003).

A party has standing to sue when that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain judicial resolution of that controversy. The implied requirement that a party have standing should be interpreted so as to implement the objectives of the constitutional requirement that a case or dispute exist. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 496 (Kos. 2003).

This court is mandated by Article XI, Section 11 of the Constitution to first consult and apply sources from within the FSM. The overall goal is to develop principles of standing which are consistent with the Constitution's language and designed to meet the needs of the nation's people and institutions. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 496-97 (Kos. 2003).

Two factors are central to the determination of whether a party has standing. First, the party must allege a sufficient stake in the outcome of the controversy and it must have suffered some threatened or actual injury resulting from the allegedly illegal action. Second, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. While not constitutionally based, three additional factors or prudential principles need to be considered before the

FSM CONSTITUTION

standing question can be resolved. First, generalized grievances shared by substantially the whole population do not normally warrant standing. Second, even when an injury sufficient to satisfy the constitutional requirement is alleged, the petitioner generally must assert its own legal rights and interests, and cannot rest its claim to relief on the legal rights or interests of third parties. Third, the petitioner's complaint must fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 497 (Kos. 2003).

The first standing factor to be addressed is whether the plaintiff has alleged a sufficient stake in the controversy's outcome and whether it has suffered some threatened or actual injury resulting from the defendant's allegedly illegal action. The injury must be an invasion of a legally protected interest which is concrete and particularized, and actual or imminent. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 497 (Kos. 2003).

The second standing factor is that there must be a causal connection between the injury and the conduct complained of. The injury must be fairly traceable to the defendant's challenged action and not the result of the independent action of some third party not before the court. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 497 (Kos. 2003).

The Kosrae Legislature's alleged injury of not having its policy decisions abided by or infringed upon, cannot be fairly traced to the Development Bank's challenged actions under the Investment Development Act because while the

FSM CONSTITUTION

bank has the responsibility to evaluate and comment upon a project's commercial feasibility and public infrastructure need, the FDA, not the bank has the loan's final approval. Therefore, the alleged injury cannot be traced to the bank's allegedly faulty or incomplete reports that may or may not have led to the loan's approval when the loan's approval was the result of independent action of the FDA which is not a party before the court. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 497-98 (Kos. 2003).

Another standing factor to be addressed is redressability. Will the relief requested make any legal difference that will redress the petitioner's injury? Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 498 (Kos. 2003).

When the statutory language states only that a state government shall submit a project and when no evidence was offered that the Kosrae Legislature had any formal role in the submittal process, either by way of formal approval or the ability to disapprove a project, the court can find no legally delineated role for the Kosrae Legislature in the submittal process and therefore no injury to it from the governor's submittal. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 499 (Kos. 2003).

Noncitizen plaintiffs have standing to sue for trespass if they have a leasehold interest in the land. Ponape Enterprises Co. v. Soumei, 6 FSM Intrm. 341, 343 (Pon. 1994).

Section 7. The appellate division of the Supreme Court may review cases heard in the national courts, and cases heard in state or local courts if they require interpretation of this Constitution, national law, or a treaty. If a state constitution permits, the appellate division

FSM CONSTITUTION

of the Supreme Court may review other cases on appeal from the highest state court in which a decision may be had.

Cross reference: The statutory provisions on the Judiciary of the FSM are found in title 4 of this code.

Case annotations: — APPEAL AND CERTIORARI

An appeal at the early stage of development of FSM judicial systems is a significant event calling for relatively large expenditure of judiciary resources. In order to preserve and uphold the legitimate right of parties to appropriate appeals, the FSM Supreme Court must be vigilant and exercise its inherent powers to avoid unnecessary expenditure of resources for premature or unauthorized appeals. *FSM v. Yal'Mad*, 1 FSM Intrm. 196, 197-98 (App. 1982).

FSM Appellate Rule 9's purpose is to permit a defendant held in custody, or subjected to conditions of release, to receive expedited review of that restriction of his freedom. There is no suggestion in the rule nor in any other authority indicating that the gov't is entitled to appeal from the pretrial release of a defendant. *FSM v. Yal'Mad*, 1 FSM Intrm. 196, 198 (App. 1982).

Tardiness of the appellant in filing his brief, with no explanation offered in response to a motion for dismissal or when the brief is submitted, constitutes a ground for dismissal of an appeal. FSM App. R. 31(a) & (c). *Alaphonso v. FSM*, 1 FSM Intrm. 209, 229-30 (App. 1982).

In absence of express appellate division permission to appear without supervision of an attorney, the court will

FSM CONSTITUTION

require all appellate level briefs and other documents to be signed by an attorney authorized to practice before the FSM Supreme Court. Any appellate submissions not so signed will be rejected. Alaphonso v. FSM, 1 FSM Intrm. 209, 230 n.13 (App. 1982).

A trial court may in its discretion permit a case involving separate charges based upon the same act to proceed to trial. However, the court should render a decision and enter a conviction only on the more major of the crimes proven beyond a reasonable doubt. After appeal, if any, has been completed, and the greater charge is reversed on appeal, the trial court may then find it necessary to enter a judgment on the lesser charge. Laion v. FSM, 1 FSM Intrm. 503, 529 (App. 1984).

Upon showing of excusable neglect or good cause, Rule 4(a)(5) permits extension of time for filing notice of appeal, upon motion made within 30 days after expiration of the 42 days prescribed in Rule 4(a)(1). Jonas v. Mobil OilMicronesia, Inc., 2 FSM Intrm. 164, 166 (App. 1986).

Rule 26(b) provides for enlargement of time for doing most acts but explicitly excludes enlargement of time to file notice of appeal. A court can grant no relief under Rule 26 for late filing of a notice of appeal. Jonas v. Mobil OilMicronesia, Inc., 2 FSM Intrm. 164, 166 (App. 1986).

The interest protected by having exact time limits is in preserving finality of judgments. Jonas v. Mobil Oil Micronesia, Inc., 2 FSM Intrm. 164, 166 (App. 1986).

A court has no authority to grant enlargement of time to file

FSM CONSTITUTION

notice of appeal pursuant to motion filed after the maximum period of 72 days. Jonas v. MobilOil Micronesia, Inc., 2 FSM Intrm. 164, 166 (App. 1986).

Where a party on appeal challenges the intervention in the appeal of another party, and the issue on the merits is decided in favor of the challenging party, no harm is visited on the challenging party by allowing the intervention, and the court is not required to rule on the propriety of that intervention. Innocenti v. Wainit, 2 FSM Intrm. 173, 180 (App. 1986).

In a new nation in which the courts have not yet established a comprehensive jurisprudence, where an issue is one of first impression and of fundamental importance to the new nation, the court should not lightly impose sanctions upon an official who pushes such an issue to a final court decision, and should make some allowance for wishful optimism in an appeal. Innocenti v. Wainit, 2 FSM Intrm. 173, 188 (App. 1986).

A delay of only two days in filing the appellate brief does not warrant dismissal of the appeal when there is no showing of prejudice. Kephas v. Kosrae, 3 FSM Intrm. 248, 253 (App. 1987).

Unexcused and extended delay in service of appellant's brief after certification of the record warrants dismissal of the appeal. Kephas v. Kosrae, 3 FSM Intrm. 248, 254 (App. 1987).

Failure of the appellant to include a transcript in the record on an appeal based upon a claim of insufficiency of evidence

FSM CONSTITUTION

warrants dismissal of the appeal. Kephas v. Kosrae, 3 FSM Intrm. 248, 254 (App. 1987).

That fee arrangements had not been made is not good cause in support of a motion to enlarge time for filing appellees brief when the motion is filed well after the brief was due and after oral argument was held. Paul v. Celestine, 3 FSM Intrm. 572, 574 (App. 1987).

The appellate court, for good cause shown, may upon motion enlarge the time prescribed by the appellate rules or by its order for doing any act, or may permit an act to be done after the expiration of such time. Kimoul v. FSM, 4 FSM Intrm. 344, 345 (App. 1990).

FSM Appellate Rule 26(b) gives the appellate court broad discretion to enlarge time upon a showing of good cause. Kimoul v. FSM, 4 FSM Intrm. 344, 346 (App. 1990).

Under the FSM Appellate Rule 4(a)(1), a notice of appeal must be filed within 42 days after entry of the judgment. Kimoul v. FSM, 4 FSM Intrm. 344, 346 (App. 1990).

Where the delay was only ten days, no prejudice to the appellant has been suggested, the appellant has not opposed the motion for extension of time and the court finds a substantial public interest in having the position of the gov't considered in the criminal appeal, the court may appropriately enlarge the time and permit late filing of the government's brief. Kimoul v. FSM, 4 FSM Intrm. 344, 346 (App. 1990).

The date of notice from the clerk that the record is ready, not

FSM CONSTITUTION

the filing of the Certification of Record, triggers the running of the due date of an appellant's brief. Federated Shipping Co. v. Ponape Transfer & Storage, 5 FSM Intrm. 89, 91 (App. 1989).

Where an appellate court has held that a trial judge is under a clear and non-discretionary duty to step aside from presiding over a case and the petitioner has a constitutional right to obtain compliance with that duty, all documents issued after the date of the appellate decision are null and void and shall be expunged from the record and the judge shall be enjoined from taking any further action as a judge in the case. Etscheit v. Santos, 5 FSM Intrm. 111, 113 (App. 1991).

Conducting trials *de novo* and making findings of fact is normally the province of the trial court and not of the appellate division, which is generally unsuited for such inquiries. Moroni v. Secretary of Resources & Dev., 6 FSM Intrm. 137, 138 (App. 1993).

It is within the court's discretion to dismiss an appeal where the appellant has failed to file a brief within the time prescribed when the appellee has moved for dismissal. In deciding a motion to dismiss an appeal under FSM Appellate Rule 31(c), the court may consider, among other things, the length of delay in filing briefs; nature of the reason for any filing delay; evidence of prejudice to the opposing party; and extent of the delaying party's efforts to correct procedural defects. Nakamura v. Bank of Guam (I), 6 FSM Intrm. 224, 227 (App. 1993).

Prejudice to an appellee may be shown by failure of an appellant to file a notice of issues presented and contents of

FSM CONSTITUTION

the appendix as required under FSM Appellate Rule 30(b). Nakamura v. Bank of Guam (I), 6 FSM Intrm. 224, 227 (App. 1993).

The service on opposing counsel of a signed and dated copy of a brief filed with the appellate division, although not explicitly stated in FSM Appellate Rule 31(d), is a procedural requirement of the FSM Supreme Court. Nakamura v. Bank of Guam (I), 6 FSM Intrm. 224, 228 (App. 1993).

The requirement under FSM Appellate Rule 30(a) of an appendix is only waived at the court's discretion and by court order. Nakamura v. Bank of Guam (I), 6 FSM Intrm. 224, 228 (App. 1993).

Parties to an appeal must reference properly and clearly in their briefs the parts of the record containing material in support of their arguments, and unless the court has waived an appendix under Appellate Rule 30(f), references should be to the appropriate pages of the appendix. Nakamura v. Bank of Guam (I), 6 FSM Intrm. 224, 228 (App. 1993).

Facts asserted to excuse the filing of an appellate brief within the time prescribed must be proved. Nakamura v. Bank of Guam (I), 6 FSM Intrm. 224, 228 (App. 1993).

FSM Appellate Rule 28(a) requires, among other things, that arguments in an appellant's brief be supported by citations to authority; failure to provide such support will be deemed a waiver by appellant of the claims being argued. McCaffrey v. FSM Supreme Court, 6 FSM Intrm. 279, 283 (App. 1993).

FSM CONSTITUTION

The proper procedure, in accordance with Kosrae State law and the FSM appellate rules, in filing a notice of appeal from a decision of the Kosrae State Court is to file notice in both Kosrae State Court and the FSM Supreme Court, either with the trial division in Kosrae or directly with the appellate division. Tafunsak v. Kosrae, 6 FSM Intrm. 467, 468 (App. 1994).

A properly filed notice of appeal transfers jurisdiction from the trial court to the appellate court. Election Commissioner v. Petewon, 6 FSM Intrm. 491, 498 (Chk. S. Ct. App. 1994).

An appellate court cannot hold a party in contempt for violating a trial court's orders because his actions were not a violation of the appellate court's orders or done in the appellate court's presence. Onopwi v. Aizawa, 6 FSM Intrm. 537, 539 (Chk. S. Ct. App. 1994).

For good cause shown, an appellate court may grant an enlargement of time for any act, except notice of appeal or times set by statute in administrative appeals, including a petition for rehearing. Nena v. Kosrae (III), 6 FSM Intrm. 564, 567 (App. 1994).

— Decisions Reviewable

For an interlocutory appeal, FSM Appellate Rule 5 must be read as requiring a prescribed statement from the trial court. Lonno v. Trust Territory (II), 1 FSM Intrm. 75, 77 (Kos. 1982).

The court will not issue a writ of certiorari to review the trial court's suppression of defendant's confession in a case in

FSM CONSTITUTION

which no assignments of error are furnished to the court, although such decision effectively terminates the case because the gov't cannot continue its prosecution without the confession, and although no appeal is available to the gov't. In re Edward, 3 FSM Intrm. 285, 286-87 (App. 1987).

A petition for certiorari will not be granted unless it delineates the act or acts alleged to be in error with sufficient particularity to demonstrate material, harmful error. In re Edward, 3 FSM Intrm. 285, 288 (App. 1987).

There are no FSM statutory or constitutional provisions that expand or establish the grounds for a writ of certiorari beyond its customary scope. In re Edward, 3 FSM Intrm. 285, 289 (App. 1987).

Generally, an appeal from a ruling of a trial judge is to be taken only after completion of all trial proceedings, upon issuance of a final judgment. In re Main, 4 FSM Intrm. 255, 257 (App. 1990).

The appellate division of the Supreme Court of the FSM may accept direct filing of a case and an expedited briefing schedule may be established where there is limited time available and prompt resolution of the issues in the case is decidedly in the nat'l interest. Constitutional Convention 1990 v. President, 4 FSM Intrm. 320, 324 (App. 1990).

Although the FSM Supreme Court has the constitutional power to use its discretion to review a case from a state trial court, generally, proper respect for the state court requires that state appeal rights be exhausted before the FSM Supreme Court would grant appellate review especially

FSM CONSTITUTION

when important state interests are involved. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 322, 324 (App. 1992).

Generally only final judgments or orders can be appealed, but the appellate division may, at its discretion, permit an appeal of an interlocutory order. The court, in exercising its discretion should weigh the advantages and disadvantages of an immediate appeal and consider the appellant's likelihood of success before granting permission. Jano v. King, 5 FSM Intrm. 326, 329 (App. 1992).

Where a court order takes no action concerning an existing injunction and states that it may modify the injunction depending on the happening of certain events, that order does not come within the provision of the rule allowing interlocutory appeals of orders granting, continuing, modifying, or dissolving, or refusing to dissolve or modify an injunction. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 332, 334 (App. 1992).

The right to appeal an interlocutory order which affects an injunction is an exception to the general rule that permits appeals only from final decisions. The exception reflects the importance of prompt action when injunctions are involved since the threat of irreparable harm is a prerequisite to injunctive relief. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 332, 334 (App. 1992).

The well established general rule is that only final judgment decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. In re Extradition of Jano, 6 FSM Intrm. 23, 24 (App. 1993).

FSM CONSTITUTION

Certifications of extraditability are not final decisions of the trial court since the final decision-making authority rests with the Secretary of External Affairs. Therefore they are not appealable. *In re Extradition of Jano*, 6 FSM Intrm. 23, 25 App. 1993).

Judicial review of a certification of extraditability, although not appealable, is available to an accused in custody by seeking a writ of *habeas corpus*. *In re Extradition of Jano*, 6 FSM Intrm. 23, 25 (App. 1993).

An appeals court has no jurisdiction over a motion for an injunction filed after final dismissal of the appeal case. *Damarlane v. Pohnpei Transp. Auth. (II)*, 6 FSM Intrm. 167, 168 (App. 1993).

In civil cases appeals may be taken from all final decisions of the Kosrae State Court. Finality should be given practical rather than technical construction, however, a summary judgment on the issue of liability, is not final or appealable until after the damage issue is resolved. Giving the word "final" its ordinary meaning, a decision that does not entirely dispose of one claim of a complaint containing four cannot be said to be final. *Kosrae v. Melander*, 6 FSM Intrm. 257, 259 (App. 1993).

Under the FSM Constitution the FSM Supreme Court may hear cases on appeal from the highest state court in which a decision may be had if that state's constitution permits it. The Chuuk State Constitution permits such appeals, which, in civil cases, Chuuk statute provides be made by certiorari. *Gustaf v. Mori*, 6 FSM Intrm. 284, 285 (App. 1993).

FSM CONSTITUTION

Because a decision of a single justice in the appellate division of the Chuuk State Supreme Court may be reviewed by an appellate panel of the same court it is not a final decision of the highest state court in which a decision may be had, which it must be in order for the FSM Supreme Court to hear it on appeal. Gustaf v. Mori, 6 FSM Intrm. 284, 285 (App. 1993).

Where summary judgment has been granted on the issue of liability, but the issue of damages is still pending, the right to appeal has not been lost even though 10 months have elapsed because no final judgment has been entered and the deadline for filing an appeal does not begin to run until a final judgment has been entered. Kihara Real Estate, Inc. v. Estate of Nanpei (II), 6 FSM Intrm. 354, 356 (Pon. 1994).

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

The general rule is that appellate review of a trial court is limited to final orders and judgments. However, certain interlocutory orders involving injunctions, receivers and receiverships, and interlocutory decrees determining rights and liabilities in admiralty cases, are reviewable in the appellate division. In exceptional cases, the extraordinary writs of mandamus or of prohibition may be issued to correct a trial court's decisions before final judgment. Appellate review may also be granted when the trial court has issued

FSM CONSTITUTION

an order pursuant to Appellate Rule 5(a). Etscheit v. Adams, 6 FSM Intrm. 608, 610 (App. 1994).

"Direct" appeals to the appellate division have been limited to entire cases appealed from administrative agencies decisions. Etscheit v. Adams, 6 FSM Intrm. 608, 610 (App. 1994).

Civil case appeals to the FSM Supreme Court may be taken from final decisions of the highest state courts in Yap and Pohnpei if the cases require interpretation of the nat'l constitution, nat'l law, or a treaty; and in other cases where appeals from final decisions of the highest state courts are permitted under the Constitution of that state. A final decision is one which leaves nothing open to further dispute and which ends the litigation on the merits leaving the trial court with no alternative but to execute judgment. Damarlane v. United States, 7 FSM Intrm. 202, 203-04 (App. 1995).

A state appellate court opinion in response to questions of state law certified to it by the FSM Supreme Court trial division is not a final decision and therefore not reviewable by the FSM Supreme Court appellate division. Damarlane v. United States, 7 FSM Intrm. 202, 204 (App. 1995).

— Standard of Review

A criminal sentence may be affirmed on appeal when a review of the record reveals that the sentence is appropriate. Malakai v. FSM, 1 FSM Intrm. 338, 338 (App. 1983).

In considering challenges that there was insufficient

FSM CONSTITUTION

evidence to justify the trial court's findings that the defendant aided and abetted, and is therefore criminally liable for the assaults with dangerous weapons, to the FSM Supreme Court recognizes the obligation of its appellate tribunal to review the evidence in the light most favorable to the trial court's factual determinations. The standard of review extends to inferences drawn from the evidence as well. Engichy v. FSM, 1 FSM Intrm. 532, 545 (App. 1984).

The standard of review is not whether the appellate court is convinced beyond a reasonable doubt but whether the court can conclude that the trier of fact could, acting reasonably, be convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. Engichy v. FSM, 1 FSM Intrm. 532, 546 (App. 1984).

An appellate court should not overrule or set aside a finding of fact of a trial court where there is credible evidence in the record to support that finding. Engichy v. FSM, 1 FSM Intrm. 532, 556 (App. 1984).

The trial court's findings will be upheld so long as they rationally reflect evidence which is reasonable and combines with other evidence to present a coherent, believable, overall picture. Engichy v. FSM, 1 FSM Intrm. 532, 557 (App. 1984).

The standard to be applied in reviewing a trial court's finding of intention to kill is not whether the appellate court is convinced that there was intention to kill but whether the appellate court believes that the evidence was sufficient to persuade a reasonable trier of fact beyond a reasonable doubt of the intention to kill. Loch v. FSM, 1 FSM Intrm.

FSM CONSTITUTION

566, 575-76 (App. 1984).

The trial court finding of recklessness is a finding of fact which may not be set aside on appeal unless it is clearly erroneous. FSM Civ. R. 52(a). Ray v. Electrical Contracting Corp., 2 FSM Intrm. 21, 25 (App. 1985).

An issue not presented to and ruled upon by the trial court cannot properly come before the appellate division for review. In the absence of an objection in the trial court the appellate division will refuse to consider the issue. Loney v. FSM, 3 FSM Intrm. 151, 154 (App. 1987).

The standard of review on appeal on the issue of the sufficiency of the evidence is very limited — only findings that are clearly erroneous can be set aside. Opet v. Mobil Oil Micronesia, Inc., 3 FSM Intrm. 159, 165 (App. 1987).

Standard to be applied in reviewing a claim of insufficiency of evidence in a criminal proceeding is whether the appellate court can conclude that the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. Runmar v. FSM, 3 FSM Intrm. 308, 315 (App. 1988).

The appellate court may notice error, even though not properly raised or preserved in the trial court, where the error affects the substantial rights of a minor under the particular circumstances of a case. In re Juvenile, 4 FSM Intrm. 161, 164 (App. 1989).

The general rule is that on appeal a party is bound by the theory advanced in the trial court, and cannot urge a ground

FSM CONSTITUTION

for relief which was not presented there, particularly where the party had ample opportunity to raise the issues in the trial court instead of presenting them for the first time on appeal. Paul v. Celestine, 4 FSM Intrm. 205, 210 (App. 1990).

In reviewing a sentencing decision of a trial court, an appellate court should follow the standards generally applied in criminal appeals, upholding findings of fact supported by credible evidence but overruling those legal rulings with which the appellate court disagrees. Tammed v. FSM, 4 FSM Intrm. 266, 274 (App. 1990).

For false evidence to lead to reversal of a conviction, there must be some reason to believe that the trier of fact may have been misled and that this may have contributed to the conviction. Bernardo v. FSM, 4 FSM Intrm. 310, 314 (App. 1990).

An appeal from the decision of the trial judge may be only on the grounds of abuse of discretion resulting from the justice exceeding constraints imposed by the parole statute, Pub. L. No. 5-24 (5th Cong., 1st Spec. Sess. 1987). Yalmad v. FSM, 5 FSM Intrm. 32, 34 (App. 1991).

A defendant that has failed to raise and preserve the issue has waived his right to object to the admission of evidence, but when a plain error that affects the constitutional rights of the defendant has occurred the court may notice the error. Moses v. FSM, 5 FSM Intrm. 156, 161 (App. 1991).

Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded. FSM Crim. R. 52(a). Otto v. Kosrae, 5 FSM Intrm. 218, 222 (App. 1991).

FSM CONSTITUTION

An issue raised in closing argument at trial can be properly brought before the appellate court. Otto v. Kosrae, 5 FSM Intrm. 218, 222 (App. 1991).

In reviewing the sufficiency of evidence to warrant conviction, the issue is whether the evidence, viewed in a light most favorable to the finding, would justify a finder of fact, acting reasonably, to conclude that guilt was established beyond a reasonable doubt. Welson v. FSM, 5 FSM Intrm. 281, 285 (App. 1992).

In reviewing a criminal conviction on appeal the appellate court need not go beyond the standard of review in Engichy v. FSM, 1 FSM Intrm. 532, to require that the test be whether the trier of fact could reasonably conclude that the evidence is inconsistent with every hypothesis of innocence. Jonah v. FSM, 5 FSM Intrm. 308, 310-11 (App. 1992).

The appellate court will not decide a constitutional issue if not raised below and because unnecessary constitutional adjudication is to be avoided. Jonah v. FSM, 5 FSM Intrm. 308, 313 (App. 1992).

In order to overturn the trial judge's denial of a motion to recuse, the appellant must show an abuse of discretion by the trial judge. The appellate court will not merely substitute its judgment for that of the trial judge. Jano v. King, 5 FSM Intrm. 326, 330 (App. 1992).

An abuse of discretion by the trial court occurs when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record

FSM CONSTITUTION

contains no evidence upon which the court could rationally have based its decision. Jano v. King, 5 FSM Intrm. 326, 330 (App. 1992).

The standard of review of a trial court's factual findings is whether those findings are clearly erroneous. The appeals court cannot substitute its judgment for that of the trial judge but in reviewing the findings it may examine all of the evidence in the record in determining whether the trial court's factual findings are clearly erroneous, and if it is left with the definite and firm conviction that a mistake has been committed with respect to the findings, it must reject the findings as clearly erroneous. Kapas v. Church of Latter Day Saints, 6 FSM Intrm. 56, 59 (App. 1992).

Clear error in key factual findings merits setting aside conclusions of law and is one factor indicating incorrect use of discretion. Kapas v. Church of Latter Day Saints, 6 FSM Intrm. 56, 60 (App. 1992).

Where no motion has been made to amend the complaint at the trial level and the issue was not tried with the express or implied consent of the parties the general rule is that one cannot raise on appeal an issue not presented in the trial court. Nena v. Kosrae (I), 6 FSM Intrm. 251, 253-54 (App. 1993).

Where the trial court found no negligence and the appeal court upon review of the record does not find the trial court's factual findings to be clearly erroneous the trial court's dismissal of the negligence claim will be affirmed. Nena v. Kosrae (I), 6 FSM Intrm. 251, 254 (App. 1993).

FSM CONSTITUTION

Where the trial court's finding that damages were not proven at trial is not clearly erroneous the appellate court will not remand to the trial court for further presentation of evidence on that issue. Wito Clan v. United Church of Christ, 6 FSM Intrm. 291, 292 (App. 1993).

Although, ordinarily, an issue must be raised at the trial level for it to be preserved for appeal, whether a court has subject matter jurisdiction is an issue that may be raised at any time. Hartman v. FSM, 6 FSM Intrm. 293, 296 (App. 1993).

In determining whether a trial court's findings are clearly erroneous, an appellate court must construe the evidence in the light most favorable to the appellee. A finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Kinere v. Kosrae, 6 FSM Intrm. 307, 309 (App. 1993).

The fashioning of remedies and sanctions for a party's failure to comply with discovery requirements is a matter within the trial court's discretion and should not be disturbed by an appellate court absent a showing that the trial court's action has unfairly resulted in substantial hardship and prejudice to a party. Nakamura v. Bank of Guam (II), 6 FSM Intrm. 345, 349 (App. 1994).

If a judge does not specifically rely on the objected to evidence, the appellate court must presume that he did not rely on that evidence and therefore that any error in admitting the evidence did not result in substantial hardship or prejudice to a party. Nakamura v. Bank of Guam (II), 6 FSM Intrm. 345, 349 (App. 1994).

FSM CONSTITUTION

An appellate court should not set aside a trial court's finding of fact where there is credible evidence in the record to support that finding. The trial court, unlike the appellate court, had the opportunity to view the witnesses and the manner of their testimony. Nakamura v. Bankof Guam (II), 6 FSM Intrm. 345, 349 (App. 1994).

A claim that a trial court's decision did not address all the issues raised is not a basis for remand as long as the trial judge made a finding of such essential facts as provide a basis for the decision. The test as to the adequacy of the findings is whether they are sufficiently comprehensive and pertinent to the issue to form a basis for the decision. Nakamura v. Bankof Guam (II), 6 FSM Intrm. 345, 349 (App. 1994).

It is not an abuse of the trial court's discretion for a trial court to admit testimony that is inconsistent with that witness's answer to an interrogatory. Admissions made in interrogatories are not binding and the answering party may introduce other evidence on the subject of the admissions at trial. Contradictions between a party's answers to interrogatories and court testimony go to the weight and credibility of the testimony, not to its admissibility. Conflicting testimony may be admitted, and it is the responsibility of the finder of fact to weigh all the answers and resolve the conflict. Nakamura v. Bank of Guam (II), 6 FSM Intrm. 345, 350 (App. 1994).

Where a party at trial claims surprise, and the judge offers that party a chance to cure any prejudice this might have caused and they make the tactical choice to decline the

FSM CONSTITUTION

opportunity it is a tactical choice the party must live with and is not a basis for reversal. Nakamura v. Bank of Guam (II), 6 FSM Intrm. 345, 351-52 (App. 1994).

Where there is no indication that the trial court relied on certain evidence the presumption is there was no such reliance, and any error in its admission is not prejudicial. Nakamura v. Bank of Guam (II), 6 FSM Intrm. 345, 351 (App. 1994).

The standard of review of a trial court's ruling on a motion for relief from judgment is whether the trial court has abused its discretion. Senda v. Mid-Pacific Constr. Co., 6 FSM Intrm. 440, 445 (App. 1994).

Whether the lower court erred by issuing a preliminary injunction that did not require the return of funds obtained in violation of a TRO involves a trial court's exercise of discretion and is reviewed using an abuse of discretion standard. Onopwi v. Aizawa, 6 FSM Intrm. 537, 539 (Chk. S. Ct. App. 1994).

The standard of review for an appeal from the trial division's determination of an administrative agency appeal is whether the finding of the trial division was justified by substantial evidence of record. FSM v. Moroni, 6 FSM Intrm. 575, 577 (App. 1994).

Factual determinations of a trial court, such as the appropriate size and period for an award of child support, will be overturned on appeal only if the findings of the trial court are clearly erroneous. Youngstrom v. Youngstrom, 7 FSM Intrm. 34, 36 (App. 1995).

FSM CONSTITUTION

A court must deny a motion for summary judgment unless the court, viewing the facts presented and the inferences made in the light most favorable to the non-moving party, finds there is no genuine issue as to any material fact. Thus if the appellants can show there was a genuine issue of material fact then the trial court's summary judgment must be reversed. Luzama v. Pohnpei Enterprises Co., 7 FSM Intrm. 40, 48 (App. 1995).

— Rehearing

Where the points of law and fact referred to in a petition for rehearing were not overlooked or misapprehended in the previous consideration of the appeal the petition will be denied. Carlos v. FSM, 4 FSM Intrm. 32, 33 (App. 1989).

Where appellants request a rehearing on the grounds that it is no longer equitable that the judgment have prospective application, and neither the appellate order of dismissal nor the judgment in the state court had by their terms any prospective application the motion will be denied. Damarlane v. Pohnpei Transp. Auth. (I), 6 FSM Intrm. 166, 167 (App. 1993).

After an appellate court has issued its opinion it may grant a petition for a rehearing if it has overlooked or misapprehended points of law or fact. Ordinarily, such petitions are summarily denied. Nena v. Kosrae (II), 6 FSM Intrm. 437, 438 (App. 1994).

A motion for reconsideration of denial of rehearing will be considered as a second petition for rehearing, and as such it

FSM CONSTITUTION

cannot be granted it unless the court has overlooked or misapprehended points of law or fact. Nena v. Kosrae (III), 6 FSM Intrm. 564, 567 (App. 1994).

A court has the power to enlarge the time to petition for rehearing and to modify an erroneous decision although the time for rehearing has expired, and sometimes may consider petitions for rehearing filed even after rehearing has been denied. Nena v. Kosrae (III), 6 FSM Intrm. 564, 567-68 (App. 1994).

— Stay

A stay is normally granted only where the court is persuaded as to the probability of ultimate success of the movant. In re Raitoun, 1 FSM Intrm. 562, 563 (App. 1984).

In determining whether to grant a stay, a single appellate judge, acting alone, must consider whether it is more likely than not that the petitioner would be able to persuade a full appellate panel as to the soundness of his legal position and that there are such special circumstances that the trial court should be mandated to modify its conduct of the trial. In re Raitoun, 1 FSM Intrm. 561, 563 (App. 1984).

In weighing the possibility of success of an application for a writ of mandamus on grounds that one public defender's conflict should be imputed to all lawyers in the Public Defender's office, when the original disqualification is based upon a conflict of the attorney's loyalties because of his familial relationship with the victim, but no issue of confidentiality is raised, and only the issue of loyalty is present, but no showing is made that the other lawyers could

FSM CONSTITUTION

not give full loyalty to the client; there exists no substantial possibility of an appellate court granting the writ and a stay of proceedings pending consideration of the application should not be granted. Office of the Public Defender v. Trial Division, 4 FSM Intrm. 252, 254 (App. 1990).

Under FSM Appellate Rule 27(c) a motion for a stay of proceedings pending consideration of a motion for a writ of mandamus to require a trial court to appoint a lawyer other than the Public Defender is denied where there: 1) is no substantial possibility that a full panel would grant the writ, 2) is no showing of irreparable harm if the stay is denied, and 3) are no equities presented in favor a stay. Office of the Public Defender v. Trial Division, 4 FSM Intrm. 252, 255 (App. 1990).

Where the record fails to reflect that the functions of the judiciary have been prevented or substantially impaired by the financial management and fiscal powers exercised by the Secretary of Finance, the judiciary has not been deprived of its essential role and constitutional independence. Mackenzie v. Tuuth, 5 FSM Intrm. 78, 84 (Pon. 1991).

The Constitution mandates that the Chief Justice by rule may govern the admission to practice of attorneys, but a rule which differentiates between FSM citizens and noncitizens inherently relates to the regulation of immigration and foreign relations which are powers expressly delegated to the other two branches of gov't. Berman v. Pohnpei, 5 FSM Intrm. 303, 305 (Pon. 1992).

The Chief Justice has the constitutional authority to make rules for the appointment of special judges, and Congress

FSM CONSTITUTION

has the constitutional authority to amend them. Congress has provided the Chief Justice with the statutory authority to appoint temporary justices. Where Congress has acted pursuant to its constitutional authority to provide statutory authority to the court, the court need not have exercised its concurrent rule-making authority. Jano v. King, 5 FSM Intrm. 326, 331 (App. 1992).

Congress and the President respectively have the power to regulate immigration and conduct foreign affairs while the Chief Justice may make rules governing the admission of attorneys. Therefore a rule of admission that treats aliens unequally promulgated by the Chief Justice implicates powers expressly delegated to other branches. Berman v. FSM Supreme Court (I), 5 FSM Intrm. 364, 366 (Pon. 1992).

Without a rational valid basis for the rule limiting the number of times an alien may take the bar exam it will be held unconstitutional even if it would be constitutional if the regulation were made by Congress or the President. Berman v. FSM Supreme Court (I), 5 FSM Intrm. 364, 367 (Pon. 1992).

When an appellant has applied to the appellate division for a stay it normally will be considered by all justices of the appellate division, but in exceptional cases application may be made to and considered by a single justice. The power of the appellate division or a single justice thereof to stay proceedings during the pendency of an appeal is not limited by the Rules of Civil Procedure. Pohnpeiv. Ponape Constr. Co., 6 FSM Intrm. 221, 222 (App. 1993).

The purpose of requiring a supersedeas bond for a stay is to

FSM CONSTITUTION

protect the interests of the appellees. A bond protects the appellees by providing a fund out of which it may be paid if the money judgment is affirmed, and it meets the concerns of the appellee that the appellant might flee the jurisdiction or conceal or dissipate assets so as to render itself judgment-proof. The latter concerns are not present when the appellant is a state. Pohnpei v. Ponape Constr. Co., 6 FSM Intrm. 221, 223 (App. 1993).

A court may modify an injunction to preserve the status quo during the pendency of an appeal. Ponape Enterprises Co. v. Luzama, 6 FSM Intrm. 274, 276-77 (Pon. 1993).

While a supersedeas bond is a prerequisite to granting a stay from a money judgment, no such bond is required in order to obtain a modification of an injunction pending appeal. It may be granted upon such terms as to bond or otherwise as the court considers for the security of the adverse party's rights. Ponape Enterprises Co. v. Luzama, 6 FSM Intrm. 274, 277 (Pon. 1993).

The criteria for granting a stay pending appeal under Rule 62 are: 1) whether the appellant has shown that without the stay he will be irreparably harmed; 2) whether issuance of the stay would substantially harm other parties interested in the proceedings; 3) whether the public interest would be served by granting a stay; and 4) whether the appellant has made a strong showing that he is likely to prevail on the merits of the appeal. Ponape Enterprises Co. v. Luzama, 6 FSM Intrm. 274, 277-78 (Pon. 1993).

When summary judgment is granted enjoining trespassing farmers, removing the farmers from the land while their

FSM CONSTITUTION

appeal is pending might more substantially alter the status quo than a stay allowing them to remain on the land.

Ponape Enterprises Co. v. Luzama, 6 FSM Intrm. 276, 278 (Pon. 1993).

A stay on appeal may be granted even when the moving party has less than a 50% chance of success if the question is a difficult one, or an issue of first impression about which respectable minds might differ. Ponape Enterprises Co. v. Luzama, 6 FSM Intrm. 274, 279 (Pon. 1993).

The FSM Code provision authorizing the general powers of the Supreme Court gives the court the authority to grant a stay of proceedings in one case pending the outcome of another case which addresses the same or similar issues. Ponape Enterprises Co. v. Bergen, 6 FSM Intrm. 411, 414 (Pon. 1994).

Factors for a court to consider in determining it whether should exercise its discretion to grant a stay of proceedings in one case pending the outcome of another case which addresses the same or similar issues include whether judicial economy will be furthered by a stay because the cases on appeal may have claim or issue preclusive effect on the case to be stayed; the balance of the competing interests; the orderly administration of justice and whether the case is one of great public importance. Ponape Enterprises Co. v. Bergen, 6 FSM Intrm. 411, 414 (Pon. 1994).

A stay should be granted in one case pending the outcome of another case on appeal which addresses the same or similar issues, when it is in the interests of avoiding the waste of judicial resources, managing the court's calendar, sparing

FSM CONSTITUTION

the parties unnecessary litigation efforts, and avoiding inconsistent or confusing outcomes, especially if granting the stay will not adversely affect the parties opposing the stay to any substantial extent because they are also parties to the other case on appeal. Ponape Enterprises Co. v. Bergen, 6 FSM Intrm. 411, 415-16 (Pon. 1994).

Because speedy and final resolution of questions regarding the constitutional roles of the state and nat'l gov'ts will avoid unnecessary conflict and possible jurisdictional tension between the state and nat'l courts, it is proper to stay an order of abstention pending appeal in such cases. Pohnpei v. MV Hai Hsiang #36 (II), 6 FSM Intrm. 604, 605 (Pon. 1994).

The rule requiring a supersedeas bond to be posted before a stay may be granted pending appeal is applicable only to appeals from money judgments. Pohnpei v. MV Hai Hsiang #36 (II), 6 FSM Intrm. 604, 605 (Pon. 1994).

Section 8. When a case in a state or local court involves a substantial question requiring the interpretation of the Constitution, national law, or a treaty, on application of a party or on its own motion the court shall certify the question to the appellate division of the Supreme Court. The appellate division of the Supreme Court may decide the case or remand it for further proceedings.

Case annotations: — Certification of Issues

Pursuant to art. XI, § 8 of the FSM Constitution, a state court receiving a proper motion is required to certify any substantial constitutional question to the Appellate Division of the Supreme Court for proper disposition. Koike v. Ponape Rock Products Co., 1 FSM Intrm. 496, 501 (Pon.

FSM CONSTITUTION

1984).

Art. XI, § 8 of the Constitution, providing for state court certification of issues of nat'l law, gives the FSM Supreme Court appellate division another tool to oversee the development of nat'l law jurisprudence, but also provides the option of remand so that the state court may address issues of nat'l law. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM Intrm. 33, 35 (App. 1989).

Under normal circumstances, the decision as to whether to decide or remand a question certified under art. XI, § 8 of the Constitution will be made only by the constitutionally appointed justices of the FSM Supreme Court, without convening a third judge and without oral argument. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM Intrm. 33, 35 (App. 1989).

Unless definite articulable reasons to the contrary appear, questions certified under art. XI, § 8 of the Constitution normally will be remanded to the state court. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM Intrm. 33, 35 (App. 1989).

Where the issues certified to the FSM Supreme Court by a state court under art. XI, § 8 of the FSM Constitution are narrowly framed and not capable of varying solutions, and it appears that a greater service may be provided by simply answering the questions posed by the state court, the FSM Supreme Court will not remand the certified questions to the state court. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM Intrm. 33, 35 (App. 1989).

FSM CONSTITUTION

The Constitution provides that the FSM Supreme Court Appellate Division may decide questions certified from state and local courts, not from the FSM Supreme Court Trial Division. Etscheit v. Adams, 6 FSM Intrm. 608, 610 (App. 1994).

Certification is normally granted by the court that will be applying the guidance sought to its decision, not yet made, not by the court that is requested to hear the certified question. Etscheit v. Adams, 6 FSM Intrm. 608, 610 (App. 1994).

— Abstention and Certification

State courts, rather than nat'l courts, should normally resolve probate and inheritance issues especially where interests in land are at issue. In re Nahnsen, 1 FSM Intrm. 97, 97 (Pon. 1982).

The Ponape District Court, although not granted jurisdiction over land matters, may be given the opportunity to hear certified questions from the FSM Supreme Court on issues in a probate case involving land in order to further the intent of the framers that local decision-makers play a part in decisions of a local nature. In re Nahnsen, 1 FSM Intrm. 97, 110-12 (Pon. 1982).

Even though the requirements for pendent jurisdiction are met in a case, a nat'l court has discretion to decline to exercise jurisdiction over state claims. This determination should turn on considerations of judicial economy, convenience and fairness to litigants and should be instructed by a desire of the federal or nat'l court to avoid

FSM CONSTITUTION

needless decisions of state law. Ponape Chamber of Commerce v. Nett, 1 FSM Intrm. 389, 397 (Pon. 1984).

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

A reasoned request by a state that the FSM Supreme Court abstain from deciding a particular issue should be granted unless the opposing party establishes that the benefits of abstention in terms of federalism and judicial harmony, and respect for state sovereignty, would be substantially outweighed by delay, harm or injustice. Panuelo v. Pohnpei (I), 2 FSM Intrm. 150, 156 (Pon. 1986).

Where neither land, inheritance nor any other crucial interest of the state is involved; where the state has developed no extensive administrative apparatus or practical knowledge relating to the state issue with which a state court would be more familiar; where the state issue is not, strictly speaking, constitutional; and where the state has tendered the issue to the FSM Supreme Court and no party has requested abstention, the FSM Supreme Court should decide the issue rather than abstaining in favor of the state court. Panuelo v. Pohnpei (I), 2 FSM Intrm. 150, 157-59 (Pon. 1986).

Where litigation in which a state of the FSM is a defendant involves an issue concerning the meaning of a provision of the state Constitution, and the parties in that litigation

FSM CONSTITUTION

request that the issue of the meaning of the provision be certified to the supreme court of the state, it is an appropriate exercise of the inherent powers of the FSM Supreme Court to devise a procedure for tendering the issue to the state supreme court, so long as the state court approves. Panuelo v. Pohnpei (III), 2 FSM Intrm. 244, 246 (Pon. 1986).

Abstention in favor of state court jurisdiction is inappropriate in a case which concerns leasehold of a dock facility, raises issues of nat'l commercial import, and was filed almost two years ago during which time several opinions were rendered. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM Intrm. 256, 260-61 (Pon. 1987).

The factors to be considered in the decision about whether the FSM Supreme Court should certify an issue to the state supreme court include: possible harm to the party seeking relief; the likelihood of significant delay; and the objections raised by the opposing party. Hadley v. Kolonia Town, 3 FSM Intrm. 101, 103 (Pon. 1987).

Certification of appropriate issues to the Pohnpei Supreme Court appellate division by the FSM Supreme Court is consistent with the interaction between state and nat'l courts, as contemplated by the FSM Const. art. XI, §§ 7, 8, 10, and as interpreted in earlier case law. Hadley v. Kolonia Town, 3 FSM Intrm. 101, 103-04 (Pon. 1987).

The FSM Supreme Court has earlier explained that in the interests of judicial harmony and out of respect for state sovereignty, it is an appropriate exercise of the FSM Supreme Court's inherent powers to devise a procedure for

FSM CONSTITUTION

tendering state constitutional issues to the state courts, so long as the state court approves. Hadley v. Kolonia Town, 3 FSM Intrm. 101, 104 (Pon. 1987).

As a general rule the FSM Supreme Court trial division is obliged to exercise its jurisdiction and may not abstain simply because unsettled issues of state law are presented. Edwards v. Pohnpei, 3 FSM Intrm. 350, 360 (Pon. 1988).

The FSM Constitution, art. XI, § 8, as well as general principles of federalism and considerations of judicial harmony, give the FSM Supreme Court power to certify state law issues to state courts. Edwards v. Pohnpei, 3 FSM Intrm. 350, 361 (Pon. 1988).

Considerations of federalism and state sovereignty create a presumption in litigation when a state is defendant in an action for money damages that a request by the state defendant for certification to state court of unresolved and significant issues of state law will be granted. Edwards v. Pohnpei, 3 FSM Intrm. 350, 362 (Pon. 1988).

While the FSM Supreme Court may certify legal issues in a case before it to the highest state court, questions which require application of law to facts may not be certified. Edwards v. Pohnpei, 3 FSM Intrm. 350, 363 (Pon. 1988).

Certification of issues to other courts typically causes delay and increases the cost of litigation and therefore should be employed only for unsettled legal issues. Edwards v. Pohnpei, 3 FSM Intrm. 350, 363 (Pon. 1988).

FSM Supreme Court's trial division does not lose

FSM CONSTITUTION

jurisdiction over a case merely because land issues are involved, but if such issues are presented, certification procedures may be employed to avoid encroachment upon state decision-making prerogatives. Bank of Guam v. Semes, 3 FSM Intrm. 370, 381 (Pon. 1988).

Because the interest of developing a dynamic and well reasoned body of Micronesian jurisprudence, is best served when all courts have the benefit of one another's opinions to consider and question; when the litigants are private parties the FSM Supreme Court normally should attempt to resolve all issues presented, even when matters of state law are involved. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM Intrm. 3, 13 (Pon. 1989).

A cautious, reasoned use of the doctrine of abstention is not a violation of the FSM Supreme Court's duty to exercise diversity jurisdiction, or of the litigants' constitutional rights, under art. XI, § 6(b) of the FSM Constitution. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM Intrm. 37, 39 (Pon. 1989).

The FSM Supreme Court may and should abstain in a case where land use rights are at issue, where the state is attempting to develop a coherent policy concerning the disposition of public lands, where there is a similar litigation already pending in state court, where the state requests abstention as defendant in an action which may expose it to monetary damages, where Congress has not asserted any nat'l interests which may be affected by the outcome of the litigation, and where abstention will not result in delay or injustice to the parties. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM Intrm. 37, 39 (Pon. 1989).

FSM CONSTITUTION

While the FSM Constitution provides initial access to the FSM Supreme Court for any party in art. XI, § 6(b) litigation, the court may, having familiarized itself with the issues, invoke the doctrine of abstention and permit the case to proceed in a state court, since the power to grant abstention is inherent in the jurisdiction of the FSM Supreme Court, and nothing in the FSM Constitution precludes the court from abstaining in cases which fall within its jurisdiction under art. XI, § 6(b). Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM Intrm. 37, 42-43 (Pon. 1989).

Abstention by nat'l courts is desirable in a case affecting state efforts to establish a coherent policy concerning how private persons may obtain rights to use land currently held by the state gov't. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM Intrm. 37, 44 (Pon. 1989).

In a case brought before the FSM Supreme Court where similar litigating involving the same parties and issues is already pending before a state court, and a decision by the state court in the litigation would resolve all controversies among the parties, the risk of costly, duplicative litigation is one factor to be considered by the nat'l court in determining whether to abstain. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM Intrm. 37, 44 (Pon. 1989).

Although foreign and interstate commerce and shipping involve profound nat'l interests, where Congress has not seen fit to assert those interests and there is no nat'l regulation or law to enforce, the fact that a case affects interstate and foreign commerce and shipping is not

FSM CONSTITUTION

sufficient to deny abstention if other strong grounds for abstention exist. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM Intrm. 37, 47 (Pon. 1989).

There are no statutory or constitutional obligations which require the FSM Supreme Court to abstain or certify questions merely because unsettled matters of state law are at issue. Pryor v. Moses, 4 FSM Intrm. 138, 141 (Pon. 1989).

The list of areas in which the FSM Supreme Court will consider it appropriate to liberally defer to state courts must be open and flexible, responding to the particular state of legal and social development in Micronesia, and when issues important to Micronesians become the focus of concerted state efforts to establish a coherent body of law, the FSM Supreme Court will take those developments into account in evaluating requests for certification or abstention. Pryor v. Moses, 4 FSM Intrm. 138, 142 (Pon. 1989).

Requiring the FSM Supreme Court to abstain from deciding virtually all state law matters of first impression would not be in the interests of the efficient administration of justice, and would not be consistent with the jurisdictional provisions of the FSM Constitution. Pryor v. Moses, 4 FSM Intrm. 138, 143 (Pon. 1989).

In a case where there is no state party and no issues of land or other matters crucial to state interests for which the state is actively developing policy and law, the healthy and efficient administration of justice demands that the FSM Supreme Court fulfill its duty to exercise jurisdiction and refuse to abstain or certify issues. Pryor v. Moses, 4 FSM Intrm. 138, 145 (Pon. 1989).

FSM CONSTITUTION

The FSM Supreme Court will abstain from a claim for recovery of taxes where the defendant state requests abstention, the claim is for monetary relief, and the state has endeavored to develop a body of law in the areas of excise taxes and sovereign immunity. Gimnang v. Yap, 4 FSM Intrm. 212, 214 (Yap 1990).

On a claim for declaratory relief from an unconstitutional excise tax, the FSM Supreme Court trial division will not abstain, where the issue could later be certified to the FSM Supreme Court appellate division and result in delay, where the trial court has already retained the case longer than contemplated, where the issue is narrowly posed and not capable of varying resolutions, and where it appears that a greater service may be provided by deciding the issue. Gimnang v. Yap, 4 FSM Intrm. 212, 214 (Yap 1990).

The nat'l courts, in carrying out their judicial responsibilities, do have inherent power to certify issues, or to abstain partially or completely from exercising jurisdiction in a particular issue or to exercise jurisdiction over part or all of a case. Gimnang v. Yap, 5 FSM Intrm. 13, 19 (App. 1991).

A nat'l court ordinarily should refrain from deciding a case in which state action is challenged as violating the federal constitution, if unsettled questions of state law may be dispositive and obviate the need for the constitutional determination. Gimnang v. Yap, 5 FSM Intrm. 13, 21 (App. 1991).

In a case arising under nat'l law there is an especially strong

FSM CONSTITUTION

presumption against full abstention, and there is a serious question whether the trial division of a nat'l court may ever certify a question of nat'l law to a state court for decision unless it can reasonably be expected that the particular claim can be resolved entirely through the application of state law. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 67A, 67C (Pon. 1991).

When there are identifiable, particularly strong state interests, such as questions concerning the ownership of land or where there are monetary claims against the state or its agencies, the nat'l courts should exercise restraint, and look with sympathy upon a state request for abstention. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 67A, 67D (Pon. 1991).

Although it may be appropriate to defer to state courts the resolution of land related state law issues, abstention and certification of issues should not be allowed to thwart the more fundamental goal and obligation of the judicial system to render just decisions in a speedy fashion at a minimum of costs to litigants and society alike. Therefore a reasonable balance must be sought between responsiveness to state interests and the obligation of the nat'l courts to carry out their own jurisdictional responsibilities. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 67A, 67D (Pon. 1991).

Abstention may be appropriate for causes of action that raise issues of state law only, but may not be where substantive issues of nat'l law are raised. A nat'l court may not abstain from deciding a nat'l constitutional claim. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 67A, 67E (Pon. 1991).

FSM CONSTITUTION

Where a claim is against the nat'l gov't and an interest in land is not placed at issue the claim is within the exclusive jurisdiction of the FSM Supreme Court and it cannot abstain on the claim. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 67A, 67E (Pon. 1991).

Where a case requires decisions as to the rights of owners of land in Pohnpei, it is appropriate that these issues be certified for presentation to the Pohnpei Supreme Court if it can be done without undue expense to the litigants, or extended delay. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 67A, 67F (Pon. 1991).

If nat'l court jurisdiction exists the nat'l court should promptly grant the petition to remove. Thereafter the nat'l court can entertain a motion to abstain or to certify specific issues to the state court. Proceedings in the nat'l court do not have to stop while a certified issue is presented to a state court. Etscheit v. Adams, 5 FSM Intrm. 243, 246 (Pon. 1991).

The nat'l court should not abstain from deciding a criminal case where the crime took place before the effective date of the 1991 amendment removing federal jurisdiction over major crimes because of the firmly expressed intention by the Constitutional Convention delegates as to the manner of transition from nat'l jurisdiction to state jurisdiction. In re Ress, 5 FSM Intrm. 273, 276 (Chk. 1992).

It is appropriate for the state court to rule upon the non-constitutional grounds and upon the alleged violation of the Pohnpei Constitution. The plaintiff may raise at a later

FSM CONSTITUTION

time the allegation that the ordinance violates the FSM Constitution if that is still necessary after disposition by the state court. Bermanv. Pohnpei, 5 FSM Intrm. 303, 306-07 (Pon. 1992).

Where there is a long delay in moving for certification of an issue and it appears the motion's sole purpose is to cause further delay, the doctrine of laches may bar the granting of the motion. Youngstrom v. Youngstrom, 5 FSM Intrm. 335, 337-38 (Pon. 1992).

Because the FSM Supreme Court is the only court of jurisdiction in cases arising under art. XI, § 6(a) of the FSM Constitution, the court has no discretion to abstain in such cases. Faw v. FSM, 6 FSM Intrm. 33, 36 (Yap 1993).

A strong presumption exists under FSM law for deferring land matters to local land authorities. Kapas v. Church of Latter Day Saints, 6 FSM Intrm. 56, 60 (App. 1992).

Determination of property boundaries is the responsibility of the state land commissions, and the nat'l court should not intercede where the local agency has not completed its work. Kapas v. Church of Latter Day Saints, 6 FSM Intrm. 56, 60 (App. 1992).

The FSM Supreme Court has a constitutional duty to hear disputes wherein the parties are diverse, even if land issues are involved, although the court may abstain from exercising such jurisdiction on a case-by-case basis where other factors weighing in favor of abstention are present. Etscheit v. Mix, 6 FSM Intrm. 248, 250 (Pon. 1993).

FSM CONSTITUTION

Where a complaint arises from actions concerning the internal operations of municipal gov't, and the claims sound in tort, abstention in favor of state court adjudication is appropriate. Mendiola v. Berman (I), 6 FSM Intrm. 427, 429 (Pon. 1994).

That a defendant files a counterclaim alleging violation of constitutional rights does not in itself make abstention of the case as a whole inappropriate. Mendiola v. Berman (II), 6 FSM Intrm. 449, 450 (Pon. 1994).

Deference to state court jurisdiction is warranted in cases involving municipal gov't issues, given the greater familiarity with such issues at the state level and the greater importance to state interests. Mendiola v. Berman (II), 6 FSM Intrm. 449, 450-51 (Pon. 1994).

Even though the nat'l court has jurisdiction abstention may be warranted in civil forfeiture fishing case for fishing in state waters where defendants are also part of a companion criminal case in state court. Pohnpei v. M/V Zhong Yuan Yu #606, 6 FSM Intrm. 464, 465-66 (Pon. 1994).

The circumstance that decisions of the Appellate Division of the Chuuk State Supreme Court may be appealed to the Appellate Division of the FSM Supreme Court and the method chosen by the sovereign State of Chuuk to select members of their appellate panels will not foreclose the FSM Supreme Court trial division from certifying a question to the Chuuk State Supreme Court Appellate Division where there are other elements in favor of certification. Stinnett v. Weno, 6 FSM Intrm. 478, 479-80 (Chk. 1994).

FSM CONSTITUTION

Certification of questions to a state court is appropriate where the decision of the state court on state law may be dispositive, eliminating the need to address the FSM Constitutional issues and where important questions as to the source of authority of one of its political subdivisions to impose a tax and the nature of the exercise of municipal taxing authority are involved. Stinnett v. Weno, 6 FSM Intrm. 478, 480 (Chk. 1994).

Where the validity of a municipal tax ordinance is questioned under the state constitution and right of the taxpayer to a refund it is appropriate for the FSM Supreme Court to certify the question to the appellate division of the state court. Chuuk Chamber of Commerce v. Weno, 6 FSM Intrm. 480, 481 (Chk. 1994).

When a nat'l court abstains it simply says that it is not going to decide the issue and allows the parties to file in state or local court; it does not submit or transfer anything to another court. Gimnang v. Trial Division, 6 FSM Intrm. 482, 485 (App. 1994).

Unlike abstention, when a nat'l court certifies a state law issue it poses specific questions to the appellate division of the state court. Gimnang v. Trial Division, 6 FSM Intrm. 482, 485 (App. 1994).

Because speedy and final resolution of questions regarding the constitutional roles of the state and nat'l gov'ts will avoid unnecessary conflict and possible jurisdictional tension between the state and nat'l courts, it is proper to stay an order of abstention pending appeal in such cases. Pohnpei v. MV Hai Hsiang #36 (II), 6 FSM Intrm. 604, 605 (Pon. 1994).

FSM CONSTITUTION

Certification is normally granted by the court that will be applying the guidance sought to its decision, not yet made, not by the court that is requested to hear the certified question. *Etscheit v. Adams*, 6 FSM Intrm. 608, 610 (App. 1994).

Section 9. The Chief Justice is the chief administrator of the national judicial system and may appoint an administrative officer who is exempt from civil service. The Chief Justice shall make and publish and may amend rules governing national courts, and by rule may:

Case annotations: The legislative enactment of the Financial Management Act does not conflict with the constitutional provision stating the Chief Justice is the chief administrator of the nat'l judiciary. *Mackenzie v. Tuuth*, 5 FSM Intrm. 78, 80 (Pon. 1991).

The constitutional provision making the Chief Justice the chief administrator of the nat'l judiciary was not intended to establish a separate administration of funds allotted to the judiciary; it is not so specific as to overcome the presumption of the constitutionality of the Financial Management Act as it relates to the judiciary. *Mackenzie v. Tuuth*, 5 FSM Intrm. 78, 82-83 (Pon. 1991).

(a) divide the inferior national courts and the trial division of the Supreme Court into geographical or functional divisions;

(b) assign judges among the divisions of a court and give special assignments to retired Supreme Court justices and judges of state and other courts;

FSM CONSTITUTION

Case annotations: The Chief Justice has the constitutional authority to make rules for the appointment of special judges, and Congress has the constitutional authority to amend them. Congress has provided the Chief Justice with the statutory authority to appoint temporary justices. Where Congress has acted pursuant to its constitutional authority to provide statutory authority to the court, the court need not have exercised its concurrent rule-making authority. *Jano v. King*, 5 FSM Intrm. 326, 331 (App. 1992).

(c) establish rules of procedure and evidence;

Case annotations: Many of the following case annotations regard procedural rules promulgated by the Supreme Court pursuant to the preceding constitutional provision and do not directly interpret the preceding constitutional provision itself. They are nevertheless included here for reference.

— CIVIL PROCEDURE

Except in the most extraordinary circumstances, a court should not accept one party's unsupported representations that another party to the litigation has no further interest in the case. *In re Nahnsen*, 1 FSM Intrm. 97, 100 (Pon. 1982).

FSM Civil Rule 3 confirms that the filing of a complaint is the essential first step for instituting civil litigation. The Rules of Civil Procedure specify no other method for a party to obtain judicial action from the court in civil litigation. *Koike v. Ponape Rock Products Co.*, 1 FSM Intrm. 496, 500 (Pon. 1984).

FSM CONSTITUTION

The court must try to apply the Court Rules of Civil Procedure in a way that is consistent with local customary practice. Hadley v. Board of Trustees, 3 FSM Intrm. 14, 16 (Pon. S. Ct. Tr. 1985).

Procedural matters in litigation before the FSM Supreme Court are governed by the FSM Rules of Civil Procedure and nat'l statutes, rather than by state law. Salik v. U Corp., 4 FSM Intrm. 48, 49-50 (Pon. 1989).

Under Civil Rule 54(c) the court has full authority except in default judgments, to award the party granted judgment any relief to which it is entitled whether that party prayed for it or not. Billimon v. Chuuk, 5 FSM Intrm. 130, 137 (Chk. S. Ct. Tr. 1991).

Time requirements set by court rules are more subject to relaxation than are those established by statute. Charley v. Cornelius, 5 FSM Intrm. 316, 318 (Kos. S. Ct. Tr. 1992).

When a defendant cites certain defenses, but makes no argument as to how they apply and their application is not self-evident, the court may decline to speculate as to how they apply. Ponape Constr. Co. v. Pohnpei, 6 FSM Intrm. 114, 119 (Pon. 1993).

A court will not limit its review of the validity of a claim for relief to the arguments presented by the parties where the claim raises public policy concerns, and the defendant is a pro se litigant. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM Intrm. 430, 432 (Pon. 1994).

— Affidavits

FSM CONSTITUTION

An affidavit unsupported by factual detail is not sufficient to cast doubt on the proposition that a project manager of a joint venture, who is in charge of all activities of a corporate member of the joint venture within a state, is a managing or general agent of that corporation. Luda v. Maeda Road Constr. Co., 2 FSM Intrm. 107, 110 (Pon. 1985).

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

An affidavit which merely sets out conclusions or beliefs of the affiant, but shows no specific factual basis therefor, is inadequate. Ittu v. Charley, 3 FSM Intrm. 188, 193 (Kos. S. Ct. Tr. 1987).

— Consolidation

The moving party bears the burden of persuading the court that consolidation of cases is desirable. Etscheit v. Mix, 6 FSM Intrm. 248, 250 (Pon. 1993).

— Deposition

Where plaintiff initially appeared for deposition and thereafter missed several continued dates within a two week

FSM CONSTITUTION

time span because of funerals at which he was required to officiate, the failure to appear on the rescheduled dates was substantially justified so as to make sanctions under FSM Civil Rule 37(d) inappropriate. Nahnken of Nett v. United States (II), 6 FSM Intrm. 417, 419-20 (Pon. 1994).

Ordinarily the court will not grant motions for protective orders to substitute interrogatories for depositions in view of the recognized value and effectiveness of oral over written examinations. Nahnken of Nett v. United States (II), 6 FSM Intrm. 417, 422 (Pon. 1994).

A defendant is entitled to examine a plaintiff in the jurisdiction where the plaintiff has chosen to file the lawsuit. A court may grant an exception to the rule requiring plaintiffs to submit to depositions in the jurisdiction where the suit is pending when a plaintiff makes a good faith application based on hardship. McGillivray v. Bank of the FSM (II), 6 FSM Intrm. 486, 488 (Pon. 1994).

— Discovery

It is normally for the trial court to fashion remedies and sanctions for failure of a party to comply with discovery requirements. The exercise of the trial court's discretion should not be disturbed by an appellate court absent a showing that the trial court's action has unfairly resulted in substantial hardship and prejudice to a party. Engichy v. FSM, 1 FSM Intrm. 532, 558 (App. 1984).

The burden of showing whether exceptional circumstances exist within the meaning of FSM Criminal Rule 15 is upon the defendant. To obtain a court order for taking of a

FSM CONSTITUTION

deposition, the defendant must show that the witness is unavailable to attend the trial, that the testimony of the witness would be material and that such testimony would be in the interest of justice. Wolfe v. FSM, 2 FSM Intrm. 115, 122 (App. 1985).

Forced disclosure of arrangements for payment of attorney's fees intrudes, in some degree, upon the attorney-client relationship and can be an "annoyance" within the meaning of the FSM Civil Rule 26(c) provisions concerning protective orders. Mailo v. Twum-Barimah, 3 FSM Intrm. 179, 181 (Pon. 1987).

An attorney who fails to make timely requests for enlargement of time to complete discovery beyond the deadline set by court order; who has someone other than the client sign answers to interrogatories; and who fails to serve the answers properly on opposing counsel while filing a proof of service with the court is sanctionable on the court's own motion. Paul v. Hedson, 6 FSM Intrm. 146, 148 (Pon. 1993).

The fashioning of remedies and sanctions for a party's failure to comply with discovery requirements is a matter within the trial court's discretion and should not be disturbed by an appellate court absent a showing that the trial court's action has unfairly resulted in substantial hardship and prejudice to a party. Nakamura v. Bank of Guam (II), 6 FSM Intrm. 345, 349 (App. 1994).

While a defendant's motion to strike portions of a complaint as immaterial or impertinent is untimely if not filed before the defendant's answer a court, in its discretion, may still

FSM CONSTITUTION

consider it because the court may, on its own initiative at any time, order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. McGillivray v. Bank of the FSM (I), 6 FSM Intrm. 404, 406 (Pon. 1994).

Official duties or employment obligations do not of themselves constitute a valid basis for a party to obtain a blanket protective order against being deposed in a lawsuit. Nahnken of Nett v. United States (II), 6 FSM Intrm. 417, 422 (Pon. 1994).

A trial judge has considerable discretion on the question of relevancy of discovery materials and his order should not be disturbed unless there has been an abuse of discretion or unless the action taken is improvident and affects the substantial rights of the parties. McGillivray v. Bank of the FSM (II), 6 FSM Intrm. 486, 489 (Pon. 1994).

Under FSM Civil Rule 26 evidence may be discovered even if it would be inadmissible on relevancy grounds at trial, as long as the information sought appears reasonably calculated to lead to the discovery of admissible evidence. However, the discovery of material to be used for impeachment purposes is generally not permissible unless the impeaching material is also relevant or material to the issues in the case. McGillivray v. Bank of the FSM (II), 6 FSM Intrm. 486, 490 (Pon. 1994).

— Dismissal

Customary settlements do not require court dismissal of criminal proceedings if no exceptional circumstances are

FSM CONSTITUTION

shown. FSM v. Mudong, 1 FSM Intrm. 135, 140 (Pon. 1982).

After prosecution has been initiated, the court may dismiss litigation if there is no probable cause to believe that a crime has been committed. FSM v. Mudong, 1 FSM Intrm. 135, 140 (Pon. 1982).

The prosecutor does not have authority to dismiss an existing prosecution on the basis of customary law but the court does have power to respond to a prosecutorial suggestion for dismissal because of customary considerations. FSMv. Mudong, 1 FSM Intrm. 135, 141 (Pon. 1982).

At common law, repeal of a criminal statute abated all criminal prosecutions which had not reached final disposition in the highest court authorized to review them. In re Otokichy, 1 FSM Intrm. 183, 189-90 n.4 (App. 1982).

Where there are significant issues of fact in a civil action, a motion to dismiss must be denied. Lonno v. Trust Territory (III), 1 FSM Intrm. 279, 281 (Kos. 1983).

Civil proceedings typically can be concluded by the parties without court action or approval of any kind pursuant to Rule 41 of the FSM Supreme Court's Rules of Civil Procedure. FSM v. Ocean Pearl, 3 FSM Intrm. 87, 91 (Pon. 1987).

Although the prosecution has broad discretion in determining whether to initiate litigation, once that litigation is initiated in the FSM Supreme Court, the court also has

FSM CONSTITUTION

responsibility for assuring that actions thereafter taken are in the public interest. Thus, criminal litigation can be dismissed only by obtaining leave of court. FSM v. Ocean Pearl, 3 FSM Intrm. 87, 91 (Pon. 1987).

Dismissal of a claim for failure of the plaintiff to prosecute normally operates as an adjudication on the merits. Ittu v. Charley, 3 FSM Intrm. 188, 191 (Kos. S. Ct. Tr. 1987).

A motion to dismiss for failure to state a claim for which relief can be granted brought under FSM Civil Rule 12(b)(6) will be granted only if it appears to a certainty that no relief can be granted under any state of facts which could be proven in support of the claim. In making its determination the court is to assume the allegations in the complaint to be true and give the plaintiff the benefit of all reasonable inferences. Jano v. King, 5 FSM Intrm. 388, 390 (Pon. 1992).

Where a court has dismissed a criminal case for lack of jurisdiction over the crimes for which the defendant was charged, the dismissal does not act as a discharge so as to preclude extradition on the charge. "Discharge" requires both personal and subject matter jurisdiction. In re Extradition of Jano, 6 FSM Intrm. 93, 107-08 (App. 1993).

Dismissal of actions for attorney misconduct is generally disfavored in light of the judicial preference for adjudication on the merits whenever possible so as to allow parties a reasonable opportunity to present their claims and defenses. Paulv. Hedson, 6 FSM Intrm. 146, 147 (Pon. 1993).

The purpose of the rules addressing process and service of

FSM CONSTITUTION

process in civil cases is to assure that a defendant receives sufficient notice of all causes of action that are filed against him and thus has a fair and adequate opportunity to defend. Where a plaintiff fails to properly serve a defendant, the court does not have jurisdiction over that defendant, and the case may not proceed, but will be dismissed without prejudice. Berman v. Santos, 6 FSM Intrm. 532, 534 (Pon. 1994).

Under the common law the death of a criminal appellant pending appeal abates the proceedings *ab initio*—not only the appeal but all proceedings from the inception of the prosecution, thus requiring the appellate court to dismiss the appeal, and remand the case to the trial court to vacate the judgment and dismiss the information. Palik v. Kosrae, 6 FSM Intrm. 362, 364 (App. 1994).

When a criminal defendant dies while his conviction is on appeal and where there was no discrete victim and where there are no collateral matters impinging upon the case requiring further court proceedings it is appropriate under the facts of the case to abate the proceedings *ab initio* and vacate the conviction. Palik v. Kosrae, 6 FSM Intrm. 362, 364 (App. 1994).

— Filings

Telecommunication facsimiles are an unacceptable means of filing with the FSM Supreme Court. In re Marquez, 5 FSM Intrm. 381, 383 n.1 (Pon. 1992).

Fax transmissions cannot be received for filing. Maruwa Shokai Guam, Inc. v. Pyung Hwa 31, 6 FSM Intrm. 238, 240

FSM CONSTITUTION

(Pon. 1993).

Trial courts have considerable discretion in ruling on motions for extension of filing deadlines. A court which has already extended a filing deadline does not abuse its discretion by refusing to grant successive extensions.

McGillivray v. Bank of the FSM (II), 6 FSM Intrm. 486, 488 (Pon. 1994).

— Frivolous Actions

Although it is ultimately proved that plaintiff has no solid claim or theory against a defendant, plaintiff's action against that defendant is not vexatious or frivolous where 1) plaintiff reasonably believed at the outset of litigation that defendant might be liable, 2) a considerable amount of discovery was required to establish that defendant was not liable, 3) plaintiff did not stubbornly insist on defendant's liability in the face of defendant's motion for summary judgment, and 4) other defendants would presumably have named defendant in the case in any event, so that defendant would have incurred substantial attorney's fees regardless of plaintiff's actions. Semens v. Continental Air Lines, Inc. (II), 2 FSM Intrm. 200, 209 (Pon. 1986).

— Injunctions

A prerequisite for granting of injunctive relief is that the party seeking protection must be faced with the threat of irreparable harm before conclusion of the litigation unless the injunction is granted, and if money damages or other relief upon conclusion of the litigation will fully compensate for the threatened interim action, then the preliminary

FSM CONSTITUTION

injunction should be denied. Ponape Transfer & Storage v. Pohnpei State Public Lands Auth., 2 FSM Intrm. 272, 276 (Pon. 1986).

In considering motions for temporary restraining order or for preliminary injunction, courts weigh the possibility of irreparable injury to the plaintiff, the balance of possible injuries between the parties, the movant's possibility of success on the merits, and the impact of any requested action upon the public interest. Ponape Transfer & Storage v. Pohnpei State Public Lands Auth., 2 FSM Intrm. 272, 276-77 (Pon. 1986).

The fact that the party moving for preliminary injunction relief does not appear more likely than not to succeed on the merits is a factor weighing against granting of such relief but it is only one of four factors and is not necessarily determinative when the other factors point toward such relief. Ponape Transfer & Storage v. Pohnpei State Public Lands Auth., 2 FSM Intrm. 272, 278 (Pon. 1986).

The trial court is required to exercise broad discretion and weigh carefully the interests of both sides in order to arrive at a fair and equitable result. Ponape Transfer & Storage v. Federated Shipping Co., 3 FSM Intrm. 174, 177 (Pon. 1987).

It is not appropriate to abstain from deciding a claim for injunctive relief where it is undisputed that the court has jurisdiction and where the interests of time can be of pressing importance. Gimnang v. Yap, 4 FSM Intrm. 212, 214 (Yap 1990).

FSM CONSTITUTION

Right to appeal an interlocutory order which affects an injunction is an exception to general rule that permits appeals only from final decisions. The exception reflects the importance of prompt action when injunctions are involved since the threat of irreparable harm is a prerequisite to injunctive relief. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 332, 334 (App. 1992).

To obtain a temporary restraining order there must be a clear showing that immediate and irreparable injury or loss or damage would occur otherwise. An injury is not irreparable if there is an adequate alternative remedy. Kony v. Mori, 6 FSM Intrm. 28, 29 (Chk. 1993).

A court may modify an injunction to preserve the *status quo* during the pendency of an appeal. Ponape Enterprises Co. v. Luzama, 6 FSM Intrm. 274, 276-77 (Pon. 1993).

In exercising its broad discretion in considering whether to grant a preliminary injunction the court looks to four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the moving party, 3) the balance of possible injuries or inconvenience to the parties which would flow from granting or denying the relief, and 4) any impact on the public interest. The object of a preliminary injunction is to preserve the status quo pending the litigation on the merits. Ponape Enterprises Co. v. Bergen, 6 FSM Intrm. 286, 288 (Pon. 1993).

A court may grant a preliminary injunction even if the moving party is not more likely than not to prevail, as long as the movant's position appears sufficiently sound to raise

FSM CONSTITUTION

serious, nonfrivolous issues. Ponape Enterprises Co. v. Bergen, 6 FSM Intrm. 286, 289 (Pon. 1993).

Injunctive relief is an equitable remedy for which a court must use a balance-of-hardship test with a flexible interplay among four factors— the likelihood of irreparable harm to plaintiff without an injunction; likelihood of harm to defendant with an injunction; plaintiff's likelihood of success on the merits; and the public interest. Striking a fair balance between two more important factors, likelihood of harm to competing sides, is largely a matter of the facts of each situation and is thus a matter peculiarly for the discretion of the trial judge. Onopwi v. Aizawa, 6 FSM Intrm. 537, 539 (Chk. S. Ct. App. 1994).

— Intervention

Rules 19(a) and 24(a) of FSM Rules of Civil Procedure refer to similar "interests." Decisions under Rule 19(a) provide additional understanding of the meaning of "interest" in Rule 24(a). Wainit v. Truk (I), 2 FSM Intrm. 81, 84 (Truk 1985).

Under FSM Civil Rule 24(b), the interest needed for permissive intervention is not as great as that needed under FSM Civil Rule 24(a). Wainit v. Truk (I), 2 FSM Intrm. 81, 85 (Truk 1985).

Where the speaker of a legislature seeks to intervene in order to deny the plaintiff's claim that legislation enacted by the legislature is invalid, his proposed denial, with the complaint, presents a single or common question of law within the meaning of FSM Civil Rule 24(b), and the

FSM CONSTITUTION

intervention may be permitted so long it will not cause undue delay, or prejudice adjudication of the rights of the original parties. Wainit v. Truk (I), 2 FSM Intrm. 81, 85 (Truk 1985).

Where one seeking to intervene under FSM Civil Rule 24(b) would not raise new and difficult issues through a proposed answer but would do so through proposed cross-claims and counterclaims, the court may properly limit the participation of the intervenor to defense against the plaintiff's claims. Wainitv. Truk (I), 2 FSM Intrm. 81, 86 (Truk 1985).

Where a party on appeal challenges the intervention in the appeal of another party, and the issue on the merits is decided in favor of the challenging party, no harm is visited on the challenging party by allowing the intervention, and the court is not required to rule on the propriety of that intervention. Innocenti v. Wainit, 2 FSM Intrm. 173, 180 (App. 1986).

— Joinder

It is appropriate to proceed separately in cases involving multiple juvenile defendants. FSM v. Albert, 1 FSM Intrm. 14, 17 (Pon. 1981).

An FSM Rule of Civil Procedure motion for misjoinder should *not be granted* where the claims against the joined parties arose out of the same occurrence and there are common questions of law and fact. FSM Civ. R. 21. Manahane v. FSM, 1 FSM Intrm. 161, 164 (Pon. 1982).

If severance is denied, the defendants' out of court

FSM CONSTITUTION

statements ought to be redacted to eliminate in each references to other codefendants. Failure to do so may result in reversal of convictions in the interests of justice. After redaction, no prejudice will occur if the statements then give no reference to any codefendant. Redaction can normally be accomplished by the parties. Thus the court will not view the statement until after redaction. Hartman v. FSM, 6 FSM Intrm. 293, 301-02 & n.12 (App. 1993).

A motion for joinder under FSM Civil Rule 19 will be denied where it appears that complete relief between the existing parties could be granted without the joinder and where there is no showing that the party sought to be joined claims an interest relating to the subject of the action. Salik v. U Corp. (II), 3 FSM Intrm. 408, 410 (Pon. 1988).

Although there is a danger of prejudice in cases where a co-defendant's inculpatory statement is admitted into evidence, because the court is hesitant to limit the broad discretion afforded the trial judge by FSM Criminal Rule 14, and because many problems can be eliminated by redaction of the statement, the court will not adopt a *per se* rule of severance at this time. Hartman v. FSM, 5 FSM Intrm. 224, 230 (App. 1991).

In some cases failure to join an indispensable party may subject a judgment to collateral attack, but failure to join a necessary party will not. A necessary party is one who has an identifiable interest in the action and should normally be made a party to the lawsuit, but whose interests are separable from the rest of the parties or whose presence cannot be obtained; whereas an indispensable party is one to whom any judgment, if effective, would necessarily affect his

FSM CONSTITUTION

interest, or would, if his interest is eliminated, constitute unreasonable, inequitable, or impractical relief. Nahnken of Nett v. United States (III), 6 FSM Intrm. 508, 517 (Pon. 1994).

The burden of joining absent parties rests with the party asserting their indispensability. Nahnken of Nett v. United States (III), 6 FSM Intrm. 508, 518 (Pon. 1994).

— Juvenile

The Nat'l Criminal Code places in the FSM Supreme Court exclusive jurisdiction over allegations of violations of the Code. No exception to that jurisdiction is provided for juveniles, so charges of crimes leveled against juveniles are governed by the Nat'l Criminal Code. FSM v. Albert, 1 FSM Intrm. 14, 15 (Pon. 1981).

To dismiss litigation against juvenile defendants for lack of jurisdiction would be contrary to the Nat'l Criminal Code despite the fact that Code makes no reference to charges against juveniles or to the Juvenile Code. FSM v. Albert, 1 FSM Intrm. 14, 15 (Pon. 1981).

The section of the Juvenile Code mandating that courts adopt flexible procedures in juvenile cases remains in effect; neither the Nat'l Criminal Code nor any other provision of law enacted by the Congress is at odds with it. 12 FSMC 1101. FSM v. Albert, 1 FSM Intrm. 14, 17 (Pon. 1981).

It is appropriate to proceed separately in cases involving multiple juvenile defendants. FSM v. Albert, 1 FSM Intrm. 14, 17 (Pon. 1981).

FSM CONSTITUTION

In the absence of any explanation in the legislative history or from the gov't to justify a different interpretation, the only apparent reason for the deletion of the words "alleged to be found delinquent" from the Model Penal Code definition of official detention is that Congress wished to exclude detained juveniles from the nat'l prohibitions against escape. 11 FSMC 505(1). In re Cantero, 3 FSM Intrm. 481, 484 (Pon. 1988).

Juveniles alleged or found to be delinquent children are not under "official detention" within the meaning of 11 FSMC 505(1). In re Cantero, 3 FSM Intrm. 481, 484 (Pon. 1988).

— Motions

Failure to file a memorandum in opposition to a motion is deemed a consent to the motion. Actouka v. Etpison, 1 FSM Intrm. 275, 276 (Pon. 1983).

Failure to file a memorandum of points and authorities with a motion constitutes a waiver of the motion. Actouka v. Etpison, 1 FSM Intrm. 275, 277 (Pon. 1983).

The failure of the nonmoving party's memorandum to set forth points and authorities constitutes a consent to the granting of the motion. FSM Civ. R. 6(d). Enlet v. Truk, 3 FSM Intrm. 459, 461 (Truk 1988).

A memorandum of points and authorities filed by a party opposing a motion must set forth the law upon which the party relies and his theory as to the application of that law to the facts of the case. Enlet v. Truk, 3 FSM Intrm. 459, 462

FSM CONSTITUTION

(Truk 1988).

Although failure to oppose a motion operates as a consent by opposing party to the granting of the motion, the court is not bound to grant motion simply because it is unopposed. For a motion to be granted, even if unopposed, it must be well grounded in law and fact, and not interposed for delay. In re Parcel No. 046-A-01, 6 FSM Intrm. 149, 153 (Pon. 1993).

Under the Rules of Civil Procedure a party opposing a motion has ten days to file a response. Six days may be added if service was by mail. The time period does not commence running from date of notice for hearing on the motion, but from the date of the motion itself. Maruwa Shokai Guam, Inc. v. Pyung Hwa 31, 6 FSM Intrm. 238, 240 (Pon. 1993).

Where there is no timely opposition filed after the service of a motion, the opposing party is considered to have consented to the motion. Maruwa Shokai Guam, Inc. v. Pyung Hwa 31, 6 FSM Intrm. 238, 240 (Pon. 1993).

A movant's inaction is insufficient to notify the court (or other parties) that a motion has been dropped. Only a notice of withdrawal of motion will do that. Otherwise a motion may be decided without hearing and without further request. Setik v. FSM, 6 FSM Intrm. 446, 448 (Chk. 1994).

A filed stipulation to extend time to respond to a motion will be treated as a motion for an enlargement of time, but will be denied when filed after the time respond has expired and no excusable neglect has been shown. Elwise v. Bonneville Constr. Co., 6 FSM Intrm. 570, 572 (Pon. 1994).

FSM CONSTITUTION

A court may grant a motion *nunc pro tunc* to supply a record of an action previously done but omitted from the record through inadvertence or mistake, to have effect as of the former date. A motion *nunc pro tunc* cannot be used to supply an action omitted by the court. Western Sales Trading Co. v. Ponape Federation of Coop. Ass'ns, 6 FSM Intrm. 592, 593-94 (Pon. 1994).

— Pleadings

When issues which were not raised in the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Edwin v. Kosrae, 4 FSM Intrm. 292, 301 (Kos. S. Ct. Tr. 1990).

The pleading requirements of FSM Civil Rule 8(a) are to be interpreted liberally, and a complaint which states the grounds of jurisdiction and alleges facts sufficient to put the defendant on notice as to the nature and basis of the claim being made sufficiently complies with the rule. Faw v. FSM, 6 FSM Intrm. 33, 36-37 (Yap 1993).

Where a plaintiff files an amended complaint without leave of court and no motion for leave was ever filed the court may order the amended complaint stricken from the record. An entry of default based on such stricken amended complaint will be set aside. Berman v. FSM Supreme Court, 6 FSM Intrm. 109, 112-13 (Pon. 1993).

When an issue not raised in the pleadings is raised at trial without objection by either party and evidence is admitted

FSM CONSTITUTION

on the matter, the issue is to be considered tried by implied consent per FSM Civil Rule 15(b). Wito Clan v. United Church of Christ, 6 FSM Intrm. 129, 133 (App. 1993).

Rule 9(b) requires that in allegations of fraud that the circumstances constituting the fraud shall be stated with particularity. The extent of the particularity is guided by FSM Civil Rule 8(a) which requires a short and plain statement of the claim. Pohnpei v. Kailis, 6 FSM Intrm. 460, 462 (Pon. 1994).

The rules allow for notice pleading and require a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief to which he deems himself entitled. The pleadings must give the opposing party fair notice of the nature and grounds for the claim, and a general indication of the type of litigation involved. Apweteko v. Paneria, 6 FSM Intrm. 554, 557 (Chk. S. Ct. App. 1994).

When issues not raised by the pleading are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and any party may make a motion to amended the pleadings to conform to the evidence and issues tried by such consent. Apweteko v. Paneria, 6 FSM Intrm. 554, 557 (Chk. S. Ct. App. 1994).

If an unpled theory of recovery is fully tried by consent of the parties, the trial court may base its decision on that theory and may deem the pleadings amended accordingly, even though the theory was not set forth in the pleading or the pretrial order. Apweteko v. Paneria, 6 FSM Intrm. 554,

FSM CONSTITUTION

557 (Chk. S. Ct. App. 1994).

If no understanding by the parties appears in the record that evidence admitted at trial was aimed at an unpleaded issue, it is an abuse of discretion for a court to base its decision on issues not pled. An adverse party must have sufficient notice to properly prepare to oppose the claim. Apweteko v. Paneria, 6 FSM Intrm. 554, 557 (Chk. S. Ct. App. 1994).

A court commits reversible error by basing its decision on a theory of recovery that was not raised by the pleadings nor tried by consent or understanding of the parties. Apweteko v. Paneria, 6 FSM Intrm. 554, 558 (Chk. S. Ct. App. 1994).

— *Res Judicata* and Collateral Estoppel

Under *res judicata*, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Ittu v. Charley, 3 FSM Intrm. 188, 190 (Kos. S. Ct. Tr. 1987).

Under common law *res judicata* principles, an order of dismissal with prejudice bars reassertion of the dismissed claim at a later date. Ittu v. Charley, 3 FSM Intrm. 188, 191 (Kos. S. Ct. Tr. 1987).

A judgment of a court having jurisdiction of the parties and of the subject matter operates as *res judicata*, in the absence of fraud or collusion, even if obtained upon a default. Ittu v. Charley, 3 FSM Intrm. 188, 191 (Kos. S. Ct. Tr. 1987).

The need for finality of judgment, which is the inspiration of the *res judicata* doctrine, exists within the FSM. Ittu v.

FSM CONSTITUTION

Charley, 3 FSM Intrm. 188, 191 (Kos. S. Ct. Tr. 1987).

A FSM Supreme Court decision applying state law in a case before it is final and *res judicata*; but if in a subsequent case a state court decides the same issue differently, the state decision in that subsequent case is controlling precedent and the nat'l courts should apply the state court rule in future cases. Edwards v. Pohnpei, 3 FSM Intrm. 350, 360 n.22 (Pon. 1988).

Judgment entered pursuant to compromise and settlement is treated as a judgment on the merits barring any other action for the same cause. Truk v. Robi, 3 FSM Intrm. 556, 564 (Truk S. Ct. App. 1988).

A fundamental principle of the common law, traditionally referred to in common law jurisdictions as *res judicata*, is that once judgment has been issued and the appeal period has expired or the decision is affirmed on appeal, the parties are precluded from challenging that judgment or from litigating any issues that were or could have been raised in that action. United Church of Christ v. Hamo, 4 FSM Intrm. 95, 106 (App. 1989).

The determination of jurisdiction itself normally qualifies for protection under the common law principle of *res judicata*, requiring a second court to presume that the court which issued the judgment did properly exercise its own jurisdiction, but plain usurpation of power by a court which wrongfully extends its jurisdiction beyond the scope of its authority, is outside of the doctrine and does not qualify for *res judicata* protection. United Church of Christ v. Hamo, 4 FSM Intrm. 95, 107-08 (App. 1989).

FSM CONSTITUTION

The doctrine of merger holds that a plaintiff cannot maintain an action on a claim or part of a claim for which he has already recovered a valid final judgment since the original claim becomes merged in the judgment and thereafter plaintiff's rights are upon the judgment, not the original claim. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM Intrm. 180, 184 & n. 2 (Pon. 1993).

When an issue of fact or law is actually litigated and determined by a valid and final judgment, and determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or different claim under doctrine of collateral estoppel or issue preclusion, but in a judgment entered by confession, consent, or default none of the issues is actually litigated. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM Intrm. 180, 185 & n. 3 (Pon. 1993).

The doctrine of *res judicata* is recognized in the FSM. The primary reason for its value is repose. The general rule is that a final decision on the "merits" of a claim bars a subsequent action on that same claim or any part thereof, including issues which were not but could have been raised as part of the claim. A plaintiff must raise his entire "claim" in one proceeding. "Claim" is defined to cover all the claimant's rights against the particular defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose. Maruwa Shokai Guam, Inc. v. Pyung Hwa 31, 6 FSM Intrm. 238, 241 (Pon. 1993).

A claim for damages not proven at trial is not renewable at

FSM CONSTITUTION

some later point in a different proceeding since *res judicata* clearly applies to the failed claim. Wito Clan v. United Church of Christ, 6 FSM Intrm. 291, 292 (App. 1993).

A plaintiff who has previously litigated and lost his claim to a legal interest in a certain property is collaterally estopped from claiming damages as a result of loss of ownership or possession of land because under principle of collateral estoppel, a cause of action which could have been litigated in course of the original case between same parties is treated as litigated and decided with the former cause of action. Nahnken of Nett v. United States (III), 6 FSM Intrm. 508, 516 (Pon. 1994).

In some cases failure to join an indispensable party may subject a judgment to collateral attack, but failure to join a necessary party will not. A necessary party is one who has an identifiable interest in the action and should normally be made a party to the lawsuit, but whose interests are separable from the rest of the parties or whose presence cannot be obtained; whereas an indispensable party is one to whom any judgment, if effective, would necessarily affect his interest, or would, if his interest is eliminated, constitute unreasonable, inequitable, or impractical relief. Nahnken of Nett v. United States (III), 6 FSM Intrm. 508, 517 (Pon. 1994).

Only truly exceptional cases warrant an exception to normal presumption of *res judicata*, and such exceptions are to be confined within narrow limits. Where there is no evidence a TT High Court judgment was obtained unfairly or worked a serious injustice an FSM court cannot grant relief from it. Nahnken of Nett v. United States (III), 6 FSM Intrm. 508,

FSM CONSTITUTION

519 (Pon. 1994).

FSM courts are not bound to follow precedents or reasoning of TT High Court in deciding cases, but must respect resolution or outcome of a case as between parties and subject matter of particular action adjudicated absent constitutional defect or obvious injustice such as a plain usurpation of power. Nahnken of Nett v. United States (III), 6 FSM Intrm. 508, 519-20 (Pon. 1994).

For a matter to be considered adjudged so that doctrine of *res judicata* is applicable, there must be an existing, final judgment that has been decided on the merits without fraud or collusion by a court or tribunal of competent jurisdiction. The doctrine bars any further litigation of same issues between the same parties or anyone claiming under those parties. Ungeni v. Fredrick, 6 FSM Intrm. 529, 531 (Chk. S. Ct. App. 1994).

The decisions of the Land Commission are not final judgments for purposes of *res judicata* until after the time for appeal from a determination of ownership has expired without an appeal or after a properly taken appeal has been determined. Once the trial court granted a trial de novo on the question of ownership the Land Commission's determination of ownership ceased to exist for purposes of *res judicata*. Ungeni v. Fredrick, 6 FSM Intrm. 529, 531 (Chk. S. Ct. App. 1994).

— Service

Determination of whether an individual is a managing or general agent for purposes of FSM Civil Rule 4(d)(3) is

FSM CONSTITUTION

made on the basis of whether person served can fairly be expected to know what to do with the papers so that the organization will have notice of the filing of the action. A person of authority and responsibility in an organization's operation is a managing or general agent for purposes of the rule. Luda v. Maeda Road Constr. Co., 2 FSM Intrm. 107, 109 (Pon. 1985).

The acts of hand-delivering a subpoena to a deponent, reading its relevant portions in English and translating it into Pohnpeian, informing the deponent of the date time and location of his appearance, and stating that the order was signed by the court satisfy the requirement of Rule 45(c) of the FSM Rules of Civil Procedure that reasonable attempts be made to explain the subpoena to the person to be served. Alfons v. FSM, 5 FSM Intrm. 402, 405 (App. 1992).

The purpose of the rules addressing process and service of process in civil cases is to assure that a defendant receives sufficient notice of all causes of action that are filed against him and thus has a fair and adequate opportunity to defend. Where a plaintiff fails to properly serve a defendant, the court does not have jurisdiction over that defendant, and the case may not proceed, but will be dismissed without prejudice. Berman v. Santos, 6 FSM Intrm. 532, 534 (Pon. 1994).

Although the civil rules do not provide for a specific method of service upon a state officer in his official capacity, service upon a state officer in his official capacity requires that he receive notice of the suit. Berman v. Santos, 6 FSM Intrm. 532, 534-35 & nn. 3, 4 (Pon. 1994).

FSM CONSTITUTION

Proof of service should be made to the court promptly and in any event within the time during which the person served must respond to the process. Berman v. Santos, 6 FSM Intrm. 532, 535 (Pon. 1994).

— Summary Judgment

A motion for summary judgment under Rule 56 may be granted only if the moving party shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. Manahane v. FSM, 1 FSM Intrm. 161, 164 (Pon. 1982).

A party moving for summary judgment has the burden of clearly establishing the lack of any triable issue of fact. FSM v. Ponape Builders Constr. Inc., 2 FSM Intrm. 48, 52 (Pon. 1985).

Under Rule 56 of the FSM Rules of Civil Procedure, a summary judgment shall be rendered only if the pleadings, depositions, answers, interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to the material facts and that the moving party is entitled to a judgment as a matter of law. FSM v. Ponape Builders Constr. Inc., 2 FSM Intrm. 48, 52 (Pon. 1985).

In considering a motion for summary judgment under Rule 56 of the FSM Rules of Civil Procedure, the facts and inferences to be drawn therefrom, must be viewed by the court in the light most favorable to the party opposing the motion for summary judgment. FSM v. Ponape Builders Constr. Inc., 2 FSM Intrm. 48, 52 (Pon. 1985).

FSM CONSTITUTION

Where there is no genuine issue of any material fact and the plaintiffs are entitled to judgment as a matter of law, summary judgment may be granted. Wainit v. Truk (II), 2 FSM Intrm. 86, 87 (Truk 1985).

Where the nonmoving party admits allegations contained in the motion for summary judgment and there is nothing in the nonmoving party's answer or its response to the motion that suggests any factual issue in dispute, the moving party is entitled to summary judgment on those uncontested allegations. FSM Dev. Bank v. Rodriguez Corp., 2 FSM Intrm. 128, 130 (Pon. 1985).

When a party to a civil action seeks summary judgment on the question of liability, it must initiate the inquiry even as to affirmative defenses. The moving party has the burden of clearly establishing the lack of any triable issue of fact and this burden extends to affirmative defenses as well as to the moving party's own positive allegations. FSM Dev. Bank v. Rodriguez Corp., 2 FSM Intrm. 128, 130 (Pon. 1985).

Where the party moving for partial summary judgment has done nothing to show that a factual basis for the opposing party's affirmative defenses is lacking or that the defenses are insufficient as a matter of law, the defenses remain at issue and the moving party is not entitled to partial summary judgment. FSM Dev. Bank v. Rodriguez Corp., 2 FSM Intrm. 128, 131 (Pon. 1985).

Facts and inferences are to be viewed in the light most favorable to the party against whom summary judgment is sought and the motion may then be granted only if it is clear

FSM CONSTITUTION

that there is no genuine issue of material fact and the moving party must prevail as a matter of law. Bank of Guam v. Island Hardware, Inc., 2 FSM Intrm. 281, 284 (Pon. 1986).

Where the party moving for summary judgment makes out a *prima facie* case which, if uncontroverted at trial, would entitle it to a directed verdict on the issue, then the burden shifts to the nonmoving party to offer some competent evidence that could be admitted at trial showing that there is a genuine issue of material fact. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM Intrm. 3, 11 (Pon. 1989).

Where a defendant has not filed a response to a motion for summary judgment within the ten days provided by FSM Civil Rule 6(d), the defendant is deemed to have consented to the granting of the motion and the court may decline to hear oral argument. Actouka v. Kolonia Town, 5 FSM Intrm. 121, 123 (Pon. 1991).

In a motion for summary judgment the moving party has the initial burden of showing that there are no triable issues of fact. Once the moving party has done this the burden then shifts to the nonmoving party to show that there is a triable issue. The nonmoving party must show that there is enough evidence supporting his position to justify a decision upholding his claim by a reasonable trier of fact. Alik v. Kosrae Hotel Corp., 5 FSM Intrm. 294, 295 (Kos. 1992).

Without supporting affidavits the non-moving party cannot rely on inferences culled from the record to raise inferences as to the existence of genuine issues of material fact unless the non-movant has shown affidavits are unavailable.

FSM CONSTITUTION

Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM Intrm. 1, 4 (Pon. 1993).

Normally a Rule 12(c) motion for judgment on the pleadings is granted or denied upon the entire complaint, and the rule does not provide for partial judgment as in Rule 56(d) summary judgment, but where the briefing was exhaustive, full argument made, and such a judgment promotes an expeditious disposition of matters placed before the court, partial judgment may be granted. Damarlane v. United States, 6 FSM Intrm. 357, 359 (Pon. 1994).

A motion to dismiss is not to be granted unless it appears to a certainty that the non-moving party is entitled to no relief under any state of facts which could be proved in support of the claim, and if on the motion to dismiss matters outside the pleading are presented to and not excluded by the court, the motion shall then be treated as one for summary judgment. Etscheit v. Adams, 6 FSM Intrm. 365, 386 (Pon. 1994).

Where both the plaintiffs and defendant claim that the other party is liable and dispute the amounts, viewing the plaintiffs' motion for summary judgment in the light most favorable to the defendant, genuine issues of triable material fact remain precluding summary judgment. House of Travel v. Neth, 6 FSM Intrm. 402, 403 (Pon. 1994).

A defendant's mere denial that the calendar was used for advertising purposes does not "set forth specific facts to show that [this] is a genuine issue for trial" as an adverse party must do when faced with a motion for summary judgment. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM Intrm. 451, 459 (Chk. 1994).

FSM CONSTITUTION

Because conditions precedent are disfavored at law and require plain and unambiguous language to establish, when differing inferences create an issue of fact, summary judgment that a condition precedent exists is inappropriate. Adams v. Etscheit, 6 FSM Intrm. 580, 584 (App. 1994).

Whether a proposed boundary line on a map is insufficiently definite and certain to be located on the ground is a material fact genuinely at issue, precluding summary judgment. Adams v. Etscheit, 6 FSM Intrm. 580, 584 (App. 1994).

Where resolution of legal questions raised by a summary judgment motion will not perceptibly shorten trial, and a determination at trial of fact issues may eliminate need for deciding legal questions which the motion raises, a court may exercise its discretion to reserve judgment on the motion until after trial. This exercise of discretion is even more appropriate where legal issues raised involve constitutional adjudication because unnecessary constitutional adjudication is to be avoided. Pohnpei v. Kailis, 6 FSM Intrm. 619, 620 (Pon. 1994).

— Venue

In litigation brought by a mother seeking child support payments from the father, the court will not grant the defendant-father's motion to change the venue to the FSM state in which he now resides from the FSM state in which: 1) the mother initiated the litigation; 2) the couple was married and resided together; 3) their children were born and have always lived; and 4) the mother still resides. Pernet v. Aflague, 4 FSM Intrm. 222, 224 (Pon. 1990).

FSM CONSTITUTION

(d) govern the transfer of cases between state and national courts;

(e) govern the admission to practice and discipline of attorneys and the retirement of judges; and

Case annotations: Purpose of Rule 4.2 of Model Rules of Professional Conduct as it applies to organizations is not to pull a veil of partial confidentiality around facts, or even people who have knowledge of matter in litigation by virtue of their close relationship with a party, but to protect against intrusions by other attorneys upon an existing attorney-client relationship. *Panuelo v. Pohnpei (II)*, 2 FSM Intrm. 225, 232 (Pon. 1986).

Prohibition in Rule 4.2 of Model Rules of Professional Conduct against communications with a client organization represented by another attorney applies only to communications with an individual whose interests at the time of the proposed communication are so linked and aligned with the organization that one may be considered the alter ego of the other concerning the matter in representation. *Panuelo v. Pohnpei (II)*, 2 FSM Intrm. 225, 232 (Pon. 1986).

The comment to Rule 4.2 of the Model Rules of Professional Conduct was written with the understanding or assumption that it could only affect people who, at the time of the proposed communication, have a working relationship with the organization. *Panuelo v. Pohnpei (II)*, 2 FSM Intrm. 225, 233 (Pon. 1986).

FSM CONSTITUTION

An attorney's professional activities are individually subject to regulation by the judiciary, not by the administrators of the Foreign Investment Act. Michelsen v. FSM, 3 FSM Intrm. 416, 427 (Pon. 1988).

An attorney holding public office should avoid all conduct which might lead the layman to conclude that the attorney is utilizing his former public position to further his subsequent professional success in private practice. Nakayama v. Truk, 3 FSM Intrm. 565, 572 (Truk S. Ct. Tr. 1987).

By statute the practice of law is specifically included in businesses engaged in by noncitizens requiring a foreign investment permit. 32 FSMC 203. Michelsen v. FSM, 5 FSM Intrm. 249, 254 (App. 1991).

Constitution mandates that Chief Justice by rule may govern admission to practice of attorneys, but rule which differentiates between FSM citizens and noncitizens inherently relates to regulation of immigration and foreign relations which are powers expressly delegated to other two branches of gov't. Berman v. Pohnpei, 5 FSM Intrm. 303, 305 (Pon. 1992).

Without a rational valid basis for rule limiting number of times an alien may take the bar exam it will be held unconstitutional even if it would be constitutional if the regulation were made by Congress or the President. Berman v. FSM Supreme Court (I), 5 FSM Intrm. 364, 367 (Pon. 1992).

The parties, not their attorneys, have ultimate responsibility to determine the purposes to be served by legal

FSM CONSTITUTION

representation. Thus, clients always have the right, if acting in good faith, to agree to settle their own case, with or without the consultation or approval of counsel, even when their attorneys have failed to settle. Iriarte v. Micronesian Developers, Inc., 6 FSM Intrm. 332, 334 & n.1 (Pon. 1994).

A judge cannot adopt a procedure not provided for by the rules because the Constitution grants the Chief Justice, and Congress, the power to establish rules of procedure. FSM v. M.T. HL Achiever (II), 7 FSM Intrm. 256, 258 (Chk. 1995).

— Admission to Practice

In absence of express appellate division permission to appear without supervision of an attorney, the court will require all appellate level briefs and other documents to be signed by an attorney authorized to practice before the FSM Supreme Court. Any appellate submission not so signed will be rejected. Alaphonso v. FSM, 1 FSM Intrm. 209, 230 n.13 (App. 1982).

Only attorneys admitted to practice before the FSM Supreme Court or trial counselors supervised by an attorney admitted to practice may appear before the FSM Supreme Court on appeals from state court cases. Kephas v. Kosrae, 3 FSM Intrm. 248, 252 (App. 1987).

Admission to appear for a particular case, pursuant to Rule 4(A) of the Rules for Admission to Practice, is liberally granted. Truk Transp. Co. v. Trans Pacific Import Ltd., 3 FSM 440, 443 (Truk 1988).

In a nation constitutionally committed to attempt to provide

FSM CONSTITUTION

legal services for its citizens, the mere fact that an attorney had previously sued the state, without any suggestion that actions taken were frivolous, vexatious, or for purposes of harassment, cannot be viewed as reasonable grounds for denying the attorney the opportunity to practice law in that state. Carlos v. FSM, 4 FSM Intrm. 17, 24 (App. 1989).

The decision whether to permit an attorney, not licensed within the FSM, to practice before the FSM Supreme Court, in a particular case falls within the sound discretion of the trial judge. In re Chikamoto, 4 FSM Intrm. 245, 248 (Pon. 1990).

FSM Admission Rule IV(A) does not provide a means for a nonresident attorney, who has not been licensed to practice before the court and who has no reasonable prospect of being licensed in the near future, nonetheless to be permitted to practice before the court on a continuing basis. In re Chikamoto, 4 FSM Intrm. 245, 249 (Pon. 1990).

Congress and the President respectively have the power to regulate immigration and conduct foreign affairs while the Chief Justice may make rules governing the admission of attorneys. Therefore a rule of admission that treats aliens unequally, promulgated by the Chief Justice, implicates powers expressly delegated to other branches. Berman v. FSM Supreme Court (I), 5 FSM Intrm. 364, 366 (Pon. 1992).

FSM Admission Rule III presumes that an arrangement of reciprocity must already exist between the FSM Court and another jurisdiction, in order for the rule to apply. When no such arrangement exists, it must first be created before Rule III can be applied. In re McCaffrey, 6 FSM Intrm 20, 21

FSM CONSTITUTION

(Pon. 1993).

The fact that the Pohnpei Supreme Court admits attorneys of FSM Bar does not alone create a formal arrangement of reciprocity. The arrangement must be formal, neither implied nor constructive. In re McCaffrey, 6 FSM Intrm. 20, 22 (Pon. 1993).

Language of FSM Admission Rule III contemplates that formal arrangements between FSM Supreme Court and other jurisdictions must exist before an attorney from another jurisdiction may apply for admission to FSM Supreme Court on basis of reciprocity. McCaffrey v. FSM Supreme Court, 6 FSM Intrm. 279, 281-82 (App. 1993).

FSM Admission Rule III is directed at attorneys residing outside of FSM in other Pacific jurisdictions. McCaffrey v. FSM Supreme Court, 6 FSM Intrm. 279, 282 (App. 1993).

Motions to appear are not granted as a matter of course and each application must be carefully reviewed for compliance with the Rules of Admission. Pohnpei v. M/V Zhong Yuan Yu #606, 6 FSM Intrm. 464, 466 (Pon. 1994).

— Attorney Discipline and Sanctions

A counsel's decision to take steps which may cause him to be late for a scheduled court hearing, coupled with his failure to advise the court and opposing counsel of the possibility that he might be late to the hearing, may, when followed by failure to appear at the scheduled time, constitute an intentional obstruction of the administration of justice within the meaning of § 119(a) of the Judiciary Act, and may

FSM CONSTITUTION

be contempt of court. 4 FSMC 119(a). In re Robert, 1 FSM Intrm. 18, 20 (Pon. 1981).

The summary contempt power may be invoked even after some delay if it was necessary for a transcript to be prepared to substantiate the contempt charge, or where the contemner is an attorney and immediate contempt proceedings may result in a mistrial. In re Iriarte (II), 1 FSM Intrm. 255, 261 (Pon. 1983).

In new nation in which courts have not yet established a comprehensive jurisprudence, where an issue is one of first impression and of fundamental importance to the new nation, the court should not lightly impose sanctions upon an official who pushes such an issue to a final court decision, and should make some allowance for wishful optimism in an appeal. Innocenti v. Wainit, 2 FSM Intrm. 173, 188 (App. 1986).

Under Rule 3.7 of Model Rules of Professional Conduct, when a party's counsel believes opposing party's attorney should be required to testify as to information which may be prejudicial to the opposing party, it is appropriate for counsel for the first party to move to disqualify opposing counsel from further representation of the opposing party, but this is not only procedure which may be followed and counsel who fails to file such a motion may not be sanctioned for his failure in absence of harm to the opposing party or a showing of bad faith. Bank of Guam v. Sets, 5 FSM Intrm. 29, 30 (Pon. 1991).

Where record lacked any identifiable order directing a particular counsel to appear before court, insofar as court's

FSM CONSTITUTION

expectation was that "somebody" from Office of the Public Defender appear, no affirmative duty to appear existed, nor did any intentional obstruction of administration of justice occur to support lower court's finding of contempt against counsel. In re Powell, 5 FSM Intrm. 114, 117 (App. 1991).

Where the information desired from another party's lawyer as a witness was material and necessary and unobtainable elsewhere and the party desiring it had not acted in bad faith in the late service of a subpoena, a motion for sanctions may be denied at the court's discretion. In re Island Hardware, Inc., 5 FSM Intrm. 170, 174-75 (App. 1991).

Dismissal of actions for attorney misconduct is generally disfavored in light of judicial preference for adjudication on merits whenever possible so as to allow parties a reasonable opportunity to present their claims and defenses. Paul v. Hedson, 6 FSM Intrm. 146, 147 (Pon. 1993).

Court may sanction an attorney by its inherent authority to enforce compliance with procedural rules whenever it is apparent that attorney has failed to abide by such rules without good cause. Paul v. Hedson, 6 FSM Intrm. 146, 148 (Pon. 1993).

An attorney shall be sanctioned under FSM Civil Rule 11 when it is apparent to the court that counsel had no arguable basis in fact or law in bringing a motion or pleading. Berman v. Kolonia Town, 6 FSM Intrm. 242, 245-46 (Pon. 1993).

A motion will be regarded as frivolous (and sanctionable) if at the time of filing it offered no reasonable possibility of relief. Berman v. Kolonia Town, 6 FSM Intrm. 242, 246

FSM CONSTITUTION

(Pon. 1993).

Although language of FSM Civil Rule 11 directs that the court shall impose sanctions on an attorney when a violation of the rule has been shown, the nature and amount of penalty is left to the court's discretion. Berman v. Kolonia Town, 6 FSM Intrm. 242, 247 (Pon. 1993).

Rule 11 mandates a reasonable inquiry by the attorney as to whether the pleading or motion is well grounded in fact and warranted either by current law, or, alternatively, by a good faith argument that that is what the law ought to be. A bad faith argument, although still sanctionable, is thus not the only action sanctionable under this provision. A purely frivolous, good faith argument is also sanctionable. Berman v. Kolonia Town, 6 FSM Intrm. 433, 435 (App. 1994).

The purpose of Rule 11 is to deter baseless filings. Berman v. Kolonia Town, 6 FSM Intrm. 433, 436 (App. 1994).

It is an abuse of discretion to deem a motion frivolous and sanctionable when it was a case of first impression in this jurisdiction, no contrary authority can be cited from another jurisdiction, and no authority was cited by the trial court, and where the appellant made a good faith argument for the extension of existing law. Berman v. Kolonia Town, 6 FSM Intrm. 433, 436-37 (App. 1994).

An argument, although plainly incorrect, may be insufficiently frivolous as to warrant sanctions under FSM Civil Rule 11. Berman v. Santos, 7 FSM Intrm. 231, 241 (Pon. 1995).

FSM CONSTITUTION

— Disqualification of Counsel

Where a member of the office of the public defender has a conflict of interest, based upon his familial relationship with the victim of the crime of which the defendant is accused, but where he is under no traditional obligation to cause harm to the defendant and has done nothing to make other members of the office feel that they are under any such obligation, and where there is no showing that the conflict would have any actual tendency to diminish the zeal of any other members of the office, the conflict of the first counsel is not imputed to the other members of the office. FSM v. Edgar, 4 FSM Intrm. 249, 251 (Pon. 1990).

Although trial court may grant a public defender's motion to withdraw as counsel pursuant to FSM Model Rule of Professional Conduct 1.7(b) because public defender adopted the son of the victim's nephew, the trial court may deny the same public defender's motion to relieve the entire staff of the Public Defender's Office pursuant to Model Rule 1.10(a) because public defender's conflict was personal and not imputed to Public Defender staff. Office of Public Defender v. Trial Division, 4 FSM Intrm. 252, 254 (App. 1990).

The imputed disqualification provision of Rule 1.10(a) of the FSM Model Rules of Professional Conduct is not a *per se* rule and where the other attorneys associated with the attorney who seeks disqualification are able to give full loyalty to the client it is proper for the court to find that the disqualifying condition is not imputed to others. Office of the Public Defender v. FSM Supreme Court, 4 FSM Intrm. 307, 309 (App. 1990).

FSM CONSTITUTION

Under Rule 3.7 of the Model Rules of Professional Conduct, when a party's counsel believes the opposing party's attorney should be required to testify as to information which may be prejudicial to the opposing party, it is appropriate for counsel for the first party to move to disqualify opposing counsel from further representation of the opposing party, but this is not the only procedure which may be followed and counsel who fails to file such a motion may not be sanctioned for his failure in absence of harm to the opposing party or a showing of bad faith. Bank of Guam v. Sets, 5 FSM Intrm. 29, 30 (Pon. 1991).

The FSM Attorney General's Office is not disqualified in an international extradition case where the accused is the plaintiff in a civil suit against one of its members because the Attorney General's office has no discretion in the matter. It did not initiate nor can it influence the course of the prosecution abroad, and the discretion of whether to extradite a citizen does not repose in the Attorney General's Office. In re Extradition of Jano, 6 FSM Intrm. 12, 13-14 (App. 1993).

The rules, MRPC 1.10, for vicarious disqualification of attorneys in the same law firm do not apply to gov't lawyers who are governed by MRPC 1.11(c). MRPC 1.11 does not impute the disqualification of one member of a gov't office to the other members. In re Extradition of Jano, 6 FSM Intrm. 26, 27 (App. 1993).

— Fees

There is no established market for legal services in Kosrae

FSM CONSTITUTION

which could be used to determine a reasonable hourly rate for attorneys in civil rights cases. Tolenoa v. Alokoa, 2 FSM Intrm. 247, 254 (Kos. 1986).

Because social and economic situation in FSM is radically different from that of U.S., rates for attorney's fees set by U.S. courts in connection with civil rights actions there are of little persuasive value for a court seeking to set an appropriate attorney's fee award in civil rights litigation within FSM. Tolenoa v. Alokoa, 2 FSM Intrm. 247, 255 (Kos. 1986).

Attorney's fee awards to prevailing parties in civil rights litigation should be sufficiently high at a minimum to avoid discouraging attorneys from taking such cases and should enable an attorney who believes that a civil rights violation has occurred to bring a civil rights case without great financial sacrifice. Tolenoa v. Alokoa, 2 FSM Intrm. 247, 255 (Kos. 1986).

Despite the fact that some of the arguments made by plaintiff in successful civil rights litigation were rejected by the court, time devoted by counsel to these issues may be included in the civil rights legislation attorney's fee award to the plaintiff where all of the plaintiff's claims in the case involved a common core of related legal theories. Tolenoa v. Alokoa, 2 FSM Intrm. 247, 259 (Kos. 1986).

In an action brought under 11 FSMC 701(1) forbidding any person from depriving another of his civil rights, where it is shown that the attorney for the prevailing party customarily charges attorney's fees of \$100.00 per hour for legal services in the community in which the case is brought, and when

FSM CONSTITUTION

this is at or near the hourly fee rate charged by other attorneys in the locality, the court may award the prevailing party an attorney's fee based upon the \$100.00 hourly rate. Tolenoa v. Kosrae, 3 FSM Intrm. 167, 173 (App. 1987).

Information concerning the source of funds for payment of attorney's fees of a particular party normally is not privileged information. Mailo v. Twum-Barimah, 3 FSM Intrm. 179, 181 (Pon. 1987).

As a general rule, attorney's fees will be awarded as an element of costs only if it is shown that such fees were traceable to unreasonable or vexatious actions of the opposing party, but where the basic litigation flows from a reasonable difference of interpretation of a lease, the court is disinclined to attempt to sort out or isolate particular aspects of one claim or another of the parties and to earmark attorney's fees awards for those specific aspects. Salik v. U Corp., 4 FSM Intrm. 48, 49-50 (Pon. 1989).

The clerk's office only has authority to grant default judgments for a sum certain or for a sum which can by computation be made certain. Any award of attorney's fees must be based upon a judicial finding and thus is not for a sum certain and cannot be granted by the clerk. Bank of the FSM v. Bartolome, 4 FSM Intrm. 182, 184 (Pon. 1990).

Any award of attorney's fees must be based upon a showing, and a judicial finding, that the amount of the fees is reasonable. Bank of the FSM v. Bartolome, 4 FSM Intrm. 182, 184 (Pon. 1990).

It is especially important for the court to scrutinize carefully

FSM CONSTITUTION

and strictly construe contractual provisions which relate to the payment of attorney's fees. Bank of the FSM v. Bartolome, 4 FSM Intrm. 182, 185 (Pon. 1990).

FSM Supreme Court will consider an unambiguous provision in a promissory note for payment of reasonable attorney's fees in debt collection cases as valid in FSM. Bank of Hawaii v. Jack, 4 FSM Intrm. 216, 219 (Pon. 1990).

Because agreements in promissory notes for payment of attorney's fees are essentially indemnity clauses, they will be given effect only to the extent that expenses and losses are actually incurred, as demonstrated by detailed supporting documentation showing the date, work done, and amount of time spent on each service for which a claim for compensation is made. Bank of Hawaii v. Jack, 4 FSM Intrm. 216, 219 (Pon. 1990).

Provisions in promissory notes for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. Bank of Hawaii v. Jack, 4 FSM Intrm. 216, 219 (Pon. 1990).

Except in unusual circumstances, amount awarded pursuant to a stipulation for payment of attorney's fees in debt collection cases in FSM will be limited to a reasonable amount not in excess of 15% of the outstanding principal and interest. Bank of Hawaii v. Jack, 4 FSM Intrm. 216, 221 (Pon. 1990).

The gov't does not pay twice when it violates someone's civil rights and then is forced to pay attorney's fees. It pays only once — as a violator of civil rights. Its role as a provider of

FSM CONSTITUTION

public services is distinct from its role as a defendant in a civil case. Thus an award of costs and reasonable attorney's fees should be made to a publicly funded legal services organization whose client prevailed in a civil rights action. Plais v. Panuelo, 5 FSM Intrm. 319, 321 (Pon. 1992).

11 FSMC 701(3) is comprehensive and contains no suggestion that publicly funded legal services are outside the clause or should be treated differently than other legal services. Plais v. Panuelo, 5 FSM Intrm. 319, 320-21 (Pon. 1992).

Where a debtor/account receivable to an insolvent corporation is liable to the corporation's creditors the debtor cannot challenge the arrangement for attorney's fees made between the creditors, counsel, and the court for collection of the insolvent corporation's accounts receivable. Creditors of Mid-Pac Constr. Co. v. Senda, 6 FSM Intrm. 140, 142 (Pon. 1993).

In collection cases, creditors must establish that attorney's fees to be charged are reasonable in relation to the amount of debt as well as to services rendered. Generally, plaintiff's attorney's fees in a debt collection case, barring bad faith on defendant's part, will be limited to a reasonable amount not to exceed 15% of outstanding principal and interest. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM Intrm. 430, 432 (Pon. 1994).

An FSM court may reduce the amount of attorney's fees provided for under a foreign judgment, where that judgment is unenforceable as against public policy to the extent that the attorney fees in excess of 15% of debt are repugnant to

FSM CONSTITUTION

fundamental notions of what is decent and just in the FSM. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM Intrm. 430, 432 (Pon. 1994).

In the absence of statutory authority there is a general presumption against attorney's fees awards, and they should not be awarded as standard practice. Bank of Guam v. Nukuto, 6 FSM Intrm. 615, 617 (Chk. 1994).

(f) otherwise provide for the administration of the national judiciary. Judicial rules may be amended by statute.

Case annotations: The FSM Supreme Court has broad rule-making powers under the Constitution. FSM Const., art. XI, § 9. FSM v. Albert, 1 FSM Intrm. 14, 17 (Pon. 1981).

In order for a Congressional statute to give the court valid authority in those areas which the Constitution grants the Chief Justice rule-making powers the Chief Justice does not first have to promulgate a rule before Congress may legislate on the same subject. Hartman v. FSM, 6 FSM Intrm. 293, 297 (App. 1993).

FSM Supreme Court is immune from an award of damages, pursuant to 11 FSMC 701(3), arising from performance by Chief Justice of his constitutionally granted rule-making powers. Berman v. FSM Supreme Court (II), 5 FSM Intrm. 371, 374 (Pon. 1992).

The Chief Justice, in making rules, is performing a legislative function and is immune from an action for damages. Berman v. FSM Supreme Court (II), 5 FSM Intrm. 371, 374 (Pon. 1992).

FSM CONSTITUTION

The grant of immunity to the Chief Justice while performing his rule-making authority is to protect the independence of one exercising a constitutionally granted legislative power. *Berman v. FSM Supreme Court (II)*, 5 FSM Intrm. 371, 374 (Pon. 1992).

A chief justice's actions in reviewing an attorney's application for admission is a judicial function that is entitled to absolute immunity from suit for damages. *Berman v. Santos*, 7 FSM Intrm. 231, 240 (Pon. 1995).

Section 10. The Congress shall contribute to the financial support of state judicial systems and may provide other assistance.

Section 11. Court decisions shall be consistent with this Constitution, Micronesian customs and traditions, and the social and geographical configuration of Micronesia. In rendering a decision, a court shall consult and apply sources of the Federated States of Micronesia.

Editor's note: Art. XI, § 11 was amended by Constitutional Convention Committee Proposal No. 90-19, SD1, CD1 which became effective on July 2, 1991. A copy of this amendment follows this Constitution.

The original language of art. XI, § 11 was as follows:

"Section 11. Court decisions shall be consistent with this Constitution, Micronesian customs and traditions, and the social and geographical configuration of Micronesia."

Case annotations prior to the effective date of the

FSM CONSTITUTION

constitutional amendment interpret art. XI, § 11 as originally worded.

Case annotations: FSM Supreme Court must remain sensitive to unique circumstances of the FSM and may not slavishly follow interpretations of similar language by United States, Trust Territory, or other tribunals in different contexts. *Lonno v. Trust Territory (I)*, 1 FSM Intrm. 53, 69 n.11 (Kos. 1982).

Because FSM Constitution has drawn upon numerous concepts established in U.S. Constitution, interpretations of U.S. Constitution, as of 1978 when Constitution was ratified by plebiscite, are pertinent to determining meaning of particular provisions in FSM Constitution. To the extent that the FSM clearly patterned upon the U.S. Constitution, the reasonable expectation of the framers would be that the words of the FSM Constitution would have substantially the effect those same words had been given in the U.S. Constitution as of the times that the convention was acting, or when the ratifying vote occurred. *Lonno v. Trust Territory (I)*, 1 FSM Intrm. 53, 69-70 (Kos. 1982).

Decisions of courts of the Trust Territory may be useful source of guidance in determining meaning of particular provisions within Constitution. The framers were working against background of legal concepts recognized and applied by TT High Court and may have been guided by those interpretations in selecting or rejecting certain provisions. *Lonno v. Trust Territory (I)*, 1 FSM Intrm. 53, 71 (Kos. 1982).

FSM Supreme Court may look to law of other nations,

FSM CONSTITUTION

especially other nations of Pacific community, to determine whether approaches employed there may prove useful in determining meaning of particular provisions within Constitution. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 71 (Kos. 1982).

Where words of a constitutional provision are not conclusive as to its meaning, next step in determining intent of framers is to review Journal of the Micronesian Con Con to locate any discussion in convention about the provision. FSM v. Tipen, 1 FSM Intrm. 79, 82 (Pon. 1982).

If doubt as to meaning of constitutional provision still remains after careful consideration of language and constitutional history, the court should proceed to other sources for assistance. These include interpretations of similar language in U.S. Constitution, decisions of TT High Court, generally held notions of basic justice within internat'l community, and consideration of law of other nations, especially others within the Pacific community. FSM v. Tipen, 1 FSM Intrm. 79, 83 (Pon. 1982).

FSM Constitution is supreme law and decisions of FSM Supreme Court must be consistent with it. Truk v. Hartman, 1 FSM Intrm. 174, 176-77 (Truk 1982).

Similarities of FSM and U.S. Constitutions mandate that FSM Supreme Court, in attempting to determine its role under FSM Constitution, will give serious consideration to U.S. constitutional analysis at time of Micronesian Con Con. Suldan v. FSM (II), 1 FSM Intrm. 339, 345 (Pon. 1983).

If the words of the Constitution are ambiguous or doubtful, it

FSM CONSTITUTION

is our duty to seek out the intention of the framers. Suldan v. FSM (II), 1 FSM Intrm. 339, 348 (Pon. 1983).

By using U.S. Constitution as blueprint, the framers created a presumption that they were adopting such a fundamental American Constitutional principle as judicial review, found to be inherent in the language and very idea of the U.S. Constitution. Suldan v. FSM (II), 1 FSM Intrm. 339, 348 (Pon. 1983).

United States constitutional law at time of Micronesian Con Con furnishes guidance as to intended scope of FSM Constitution's double jeopardy clause. Laion v. FSM, 1 FSM Intrm. 503, 523 (App. 1984).

1 FSMC 203, with its sweeping mandate that the Restatements and other common law rules as applied in U.S. be the "rules of decision," would lure the courts in a direction other than that illuminated by the Constitution's Judicial Guidance Provisions, FSM Const. art. XI, § 11, which identifies as the guiding star, not the Restatement or decisions of U.S. courts concerning common law, but the fundamental principle that decisions must be "consistent" with the "Constitution, Micronesian custom and tradition, and the social and geographical configuration of Micronesia." Rauzi v. FSM, 2 FSM Intrm. 8, 14 (Pon. 1985).

Under FSM Constitution's Judicial Guidance Provision, FSM Const. art. XI, § 11, FSM Supreme Court decisions are to be consistent with "social and geographical configuration of Micronesia." Ray v. Electrical Contracting Corp., 2 FSM Intrm. 21, 26 (App. 1985).

FSM CONSTITUTION

Interpretative efforts for a clause in the FSM Constitution which has no counterpart in the U.S. Constitution must begin with recognition that such a clause presumably reflects a conscious effort by framers to select a road other than that paved by the U.S. Constitution. The original focus must be on the language of the clause. If the language is inconclusive the tentative conclusion may be tested against the journals of the Micronesian Con Con and historical background against which the clause was adopted. Tammow v. FSM, 2 FSM Intrm. 53, 57 (App. 1985).

Interpretations of the FSM Constitution which strip constitutional clauses of substance and effect run against the norms of constitutional interpretation and are greatly disfavored. Tammow v. FSM, 2 FSM Intrm. 53, 57 (App. 1985).

Interpretations which strip clauses of substance and effect run against the norms of interpretation and are greatly disfavored. FSM v. George, 2 FSM Intrm. 88, 94 (Kos. 1985).

Though words used in art. XI, § 6 of FSM Constitution, including case or dispute requirements, are based on similar case and controversy provisions in art. III of U.S. Constitution, courts within FSM are not to consider themselves bound by details and minute points of decisions of U.S. courts attempting to ferret out the precise meaning of art. III. Aisek v. FSM Foreign Investment Bd., 2 FSM Intrm. 95, 98 (Pon. 1985).

Many provisions of this Constitution are derived from the U.S. Constitution and the framers intended that

FSM CONSTITUTION

interpretation of the words adopted would be influenced by U.S. decisions in existence when this Constitution was adopted in October 1975 and ratified on July 12, 1978. Yet the framers also surely intended that courts here would not place undue importance on decisions of U.S. courts but would employ words and concepts used in U.S. Constitution to develop jurisprudence appropriate and applicable to circumstances of FSM. Aisek v. FSM Foreign Investment Bd., 2 FSM Intrm. 95, 98 (Pon. 1985).

The Judicial Guidance Clause of FSM Constitution cautions against simply adopting previous interpretations of other jurisdictions without careful analysis of its application to circumstances of the FSM. Luda v. Maeda Road Construction Co, Ltd., 2 FSM Intrm. 107, 112 (Pon. 1985).

Common law decisions of United States are an appropriate source of guidance for this Court for contract and tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition within the FSM. Review of decisions of courts of U.S., and any other jurisdictions, must proceed however against background of "pertinent aspects of Micronesian society and culture." Semens v. Continental Air Lines, Inc.(I), 2 FSM Intrm. 131, 140 (Pon. 1985).

Where business activities which gave rise to the lawsuit are not of a local or traditional nature, and the work setting and the work itself are of a markedly nonlocal, international character, the Court need not conduct an intense search for applicable customary laws and traditional rules when none have been brought to its attention by the parties. Semens v. Continental Air Lines, Inc.(I), 2 FSM Intrm. 131, 140 (Pon. 1985).

FSM CONSTITUTION

Even where the parties have not asserted that any principle of custom or tradition applies, the Court has an obligation of its own to consider custom and tradition. Semens v. Continental Air Lines, Inc.(I), 2 FSM Intrm. 131, 140 (Pon. 1985).

A message of the Judicial Guidance Clause is that a court, when interpreting a contract, may not simply assume that reasonably intelligent Micronesians will perceive the same meaning as would reasonably intelligent Americans. Courts may not blind themselves to pertinent aspects of Micronesian society, such as less facility in the English language, less exposure to business concepts, and paucity of legal resources, which might cause a reasonably intelligent Micronesian to perceive a meaning differently than would a person from some other nation. Semens v. Continental Air Lines, Inc.(I), 2 FSM Intrm. 131, 149 (Pon. 1985).

Customary and traditional practices within a state should be considered in determining whether the people of that state would expect their state gov't to be immune from court action. Panuelo v. Pohnpei(I), 2 FSM Intrm. 150, 159 (Pon. 1986).

Whether interference with the efforts of a non-FSM citizen engaged in business within the FSM is an abuse of process is not an issue which may be resolved by reference to traditional or customary principles. Mailo v. Twum-Barimah, 2 FSM Intrm. 265, 268 (Pon. 1986).

Courts may look to Journals of the Micronesian Constitutional Convention for assistance in determining the

FSM CONSTITUTION

meaning of constitutional language that does not provide an unmistakable answer. The Journals provide no conclusion as to whether promises of leniency by police should be regarded as having compelled a defendant to give statements and other evidence but shows that art. IV, § 7 protection against self-incrimination was based upon fifth amendment to the U.S. Constitution. Therefore courts within the FSM may look to U.S. decisions to assist in determining meaning of art. IV, § 7. FSM v. Jonathan, 2 FSM Intrm. 189, 193-94 (Kos. 1986).

Differences in the language employed in parallel provisions of the FSM and U.S. Constitutions presumably reflect a conscious effort by the framers of the FSM Constitution to select a road other than that paved by the U.S. Constitution. FSM Dev. Bank v. Estate of Nanpei, 2 FSM Intrm. 217, 219 n. 1 (Pon. 1986).

The Court must try to apply the Court Rules of Civil Procedure in a way that is consistent with local customary practice. Hadley v. Board of Trustees, 3 FSM Intrm. 14, 16 (Pon. S. Ct. Tr. 1985).

Judicial decisions, including interpretations of rules of civil procedure, should be consistent with the Constitution and with the Pohnpeian concept of justice. Hadley v. Board of Trustees, 3 FSM Intrm. 14, 16 (Pon. S. Ct. Tr. 1985).

Common law decisions of the United States are an appropriate source of guidance for the FSM Supreme court for contract issues unresolved by statutes, decisions of constitutional courts or custom and tradition within the FSM. FSM v. Ocean Pearl, 3 FSM Intrm. 87, 90-91 (Pon.

FSM CONSTITUTION

1987).

In determining whether constitutional language is amenable to only one possible interpretation, courts should consider the words in the light of history and the accepted meaning of those words prior to and at the time the Constitution was written. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM Intrm. 256, 258 (Pon. 1987).

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

In interpreting the Constitution, each provision should be interpreted against the background of all other provisions in the Constitution, and an effort should be made to reconcile all provisions so that none is deprived of meaning. Bank of Guam v. Semes, 3 FSM Intrm. 370, 378 (Pon. 1988).

The judicial guidance clause, FSM Const. art. XI, § 11, is intended to insure, among other things, that this court will not simply accept decisions of the TT High Court without independent analysis. FSM v. Oliver, 3 FSM Intrm. 469, 478 (Pon. 1988).

Courts should interpret the nat'l Constitution in such a manner that each provision is given effect. Carlos v. FSM, 4 FSM Intrm. 17, 29 (App. 1989).

The judicial guidance clause prohibits a sentencing court

FSM CONSTITUTION

from giving special effect to customary beatings administered to the defendant, unless the court finds that such recognition would be consistent with the protections guaranteed to individuals the Declaration of Rights. Tammed v. FSM, 4 FSM Intrm. 266, 284 (App. 1990).

Consideration of the general plan of the Constitution and the institutions created thereunder may be helpful in determining the proper interpretation of specific language within the FSM Constitution. Constitutional Convention 1990 v. President, 4 FSM Intrm. 320, 326 (App. 1990).

The decisions of United States courts are not binding upon the FSM Supreme Court as to the meaning of the FSM Constitution even when the words of the FSM Constitution plainly are based upon comparable language in the U.S. Constitution, and the FSM Supreme Court will not accept a U.S. interpretation which 1) was shaped by historical factors not relevant to the FSM; 2) was widely and persuasively criticized by commentators in the U.S.; and 3) was not specifically recognized or even alluded to by the framers of the FSM Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM Intrm. 367, 371 (App. 1990).

The judicial guidance clause, art. XI, § 11 of the Constitution, requires that in searching for legal principles to serve the FSM, courts must first look to sources of law and circumstances here within the FSM rather than begin with a review of cases decided by other courts." Etscheit v. Santos, 5 FSM Intrm. 35, 38 (App. 1991).

The judicial guidance clause implies a requirement that courts consult the values of the people in finding principles

FSM CONSTITUTION

of law for this new nation, and the fact that all state legislatures in the FSM, and the Congress, have enacted Judiciary Acts adopting the Code of Judicial Conduct as the standard for judicial officials and authorizing departures from those standards only to impose tighter standards, suggests that courts should rely heavily on those standards in locating minimal due process protections against biased decision-making in judicial proceedings within the FSM. Etscheit v. Santos, 5 FSM Intrm. 35, 38-39 (App. 1991).

In interpreting the provision against cruel and unusual punishment in the FSM Constitution, the court should consider the values and realities of Micronesia, but against a background of the law concerning cruel and unusual punishment and internat'l standards concerning human rights. Plais v. Panuelo, 5 FSM Intrm. 179, 196-97 (Pon. 1991).

State and nat'l legislation may be useful as a means of ascertaining Micronesian values in rendering decisions pursuant to the judicial guidance clause, particularly when more than one legislative body in the FSM has independently adopted similar law. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM Intrm. 358, 361 (Kos. 1992).

Art. XI, § 11 of the FSM Constitution mandates that the court look first to Micronesian sources of law — which includes the FSM Code and rules of the court — in reaching decisions. Alfons v. FSM, 5 FSM Intrm. 402, 404-05 (App. 1992).

Extradition is founded upon treaties between sovereign nations involving mutual agreements and commitments.

FSM CONSTITUTION

There is no counterpart in Micronesia custom and tradition that is applicable. *In re Extradition of Jano*, 6 FSM Intrm. 23, 25 (App. 1993).

Determining the relevancy of custom in carrying out the mandate of art. XI, § 11 of the FSM Constitution must proceed on a case-by-case basis. *Wito Clan v. United Church of Christ*, 6 FSM Intrm. 129, 132 (App. 1993).

Where entitlement to customary relief has been proven and the means to execute such a remedy are within the trial court's authority and discretion, the trial court should as a matter of equity and constitutional duty grant the relief. *Wito Clan v. United Church of Christ*, 6 FSM Intrm. 129, 133 (App. 1993).

Some weight may be given as well to the early Congresses' understanding of constitutional provisions given the continuity of elected representation in the early Congresses. *Robert v. Mori*, 6 FSM Intrm. 394, 399 (App. 1994).

A litigant, in order to make arguments based on the legislative history of the constitutional provision, must first show the ambiguity in the constitutional provision. Only if the constitutional language is unclear or ambiguous can a court proceed to consult the constitutional convention journals and the historical background. *Nena v. Kosrae (III)*, 6 FSM Intrm. 564, 568 (App. 1994).

Where distinctions exist between the FSM Constitution and the U.S. Constitution or other foreign authorities, court must not hesitate to depart from foreign precedent and develop its own body of law. *Pohnpei v. MV Hai Hsiang #36 (I)*, 6 FSM

FSM CONSTITUTION

Intrm. 594, 600 (Pon. 1994).

A committee report that refers to language that is not in the Constitution and that accompanied a committee proposal that was killed by the Con Con cannot be relied upon to discover the real intent of the framers. At best it can only be used to show what was not their intent. Luzama v. Pohnpei Enterprises Co., 7 FSM Intrm. 40, 47 (App. 1995).

The court is bound by Article XI, Section 11, but when the respondent attorney has not pointed to any custom or tradition that either excuses his actions or provides the extraordinary circumstances necessary to prevent the court from suspending him and when he has been convicted of four felony violations of the Financial Management Act and an element of each of those crimes is that a government official act knowingly and willingly, there is conclusive evidence before the court (Disciplinary Rule 10(b) states that a final conviction is conclusive evidence of the crime) that the respondent attorney acted dishonestly and fraudulently since the legislature has decided that the actions taken by respondent attorney are bad, immoral, and unethical since they are crimes punishable by up to twenty years imprisonment. In re Fritz, 14 Intrm. 563, 565 (Pon. 2007).

The court will give no weight to a contention that there was no contingent fee agreement in place because the fee agreement states that the clients are the Municipalities of Rull and Gilman and the plaintiff class is composed of Rull and Gilman residents when neither municipality is a corporate body or has an established municipal government and these municipalities exist as social constructs and when

FSM CONSTITUTION

the court's decisions must conform to Micronesia's social configuration. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM Intrm. 53, 64 n.3 (Yap 2007).

Decisions of the FSM Supreme Court must be consistent with Micronesian customs and traditions. Narruhn v. Aisek, 16 FSM Intrm. 236, 242 (App. 2009).

ARTICLE XII

Finance

Section 1.

(a) Public money raised or received by the national government shall be deposited in a General Fund or special funds within the National Treasury. Money may not be withdrawn from the General Fund or special funds except by law.

(b) Foreign financial assistance received by the national government shall be deposited in a Foreign Assistance Fund. Except where a particular distribution is required by the terms or special nature of the assistance, each state shall receive a share equal to the share of the national government and to the share of every other state.

Section 2.

(a) The President shall submit an annual budget to Congress at a time prescribed by statute. The budget shall contain a complete plan of proposed expenditures, anticipated revenues, and other money available to the national government for the next fiscal year, together with additional

FSM CONSTITUTION

information that Congress may require. The Congress may alter the budget in any respect.

(b) No appropriation bills, except those recommended by the President for immediate passage, or to cover the operating expenses of Congress, may be passed on final reading until the bill appropriating money for the budget has been enacted.

(c) The President may item veto an appropriation in any bill passed by Congress, and the procedure in such case shall be the same as for disapproval of an entire bill by the President.

Section 3.

(a) The Public Auditor is appointed by the President with the advice and consent of Congress. He serves for a term of 4 years and until a successor is confirmed.

(b) The Public Auditor shall inspect and audit accounts in every branch, department, agency or statutory authority of the national government and in other public legal entities or nonprofit organizations receiving public funds from the national government. Additional duties may be prescribed by statute.

(c) The Public Auditor shall be independent of administrative control except that he shall report at least once a year to Congress. His salary may not be reduced during his term of office.

(d) The Congress may remove the Public Auditor from office for cause by 2/3 vote. In that event the Chief Justice

FSM CONSTITUTION

shall appoint an acting Public Auditor until a successor is confirmed.

ARTICLE XIII **General Provisions**

Section 1. The national government of the Federated States of Micronesia recognizes the right of the people to education, health care, and legal services and shall take every step reasonable and necessary to provide these services.

Case annotations: — Professional Services Clause

The Constitution vests the nat'l gov't with power to act concerning health care and may place some affirmative health care obligations on it. Manahane v. FSM, 1 FSM Intrm. 161, 172 (Pon. 1982).

Primary responsibility, perhaps even sole responsibility, for affirmative implementation of the Professional Services Clause, FSM Const. art. XIII, § 1, must lie with Congress. Carlos v. FSM, 4 FSM Intrm. 17, 29 (App. 1989).

The Professional Services Clause of the Constitution demands that when any part of the nat'l gov't contemplates action that may be anticipated to affect the availability of education, health care or legal services, the nat'l officials involved must consider the right of the people to such services and make a reasonable effort to take "every step reasonable and necessary" to avoid unnecessarily reducing the availability of the services. Carlos v. FSM, 4 FSM Intrm. 17, 30 (App. 1989).

FSM CONSTITUTION

Since Congress did not give any consideration to, or make any mention of, the services enumerated in art. XIII, § 1 of the FSM Constitution in enacting the Foreign Investment Act, 32 FSMC 201-232, the avoidance of potential conflict with the Constitution calls for the conclusion that Congress did not intend the Foreign Investment Act to apply to noncitizen attorneys or to any other persons who provide services of the kind described in art. XIII, § 1 of the Constitution. Carlos v. FSM, 4 FSM Intrm. 17, 30 (App. 1989).

Since the Constitution's Professional Services Clause is a promise that the nat'l gov't will take every step "reasonable and necessary" to provide health care to its citizens, a court should not lightly accept a contention that 6 FSMC 702(4), which creates a \$20,000 ceiling of governmental liability, shields the gov't against a claim that FSM gov't negligence prevented a person from receiving necessary health care. Leeruw v. FSM, 4 FSM Intrm. 350, 362 (Yap 1990).

When considering a foreign investment permit application the Secretary of Resources and Development must consider "the extent to which the activity will contribute to the constitutional policy of making education, health care, and legal services available to the people of the Federated States of Micronesia." 32 FSMC 210(8). Michelsen v. FSM, 5 FSM Intrm. 249, 254 (App. 1991).

Since the denial of the application resulted in a decrease in the availability of legal services in Yap and since the Secretary did not properly weigh the extent to which the application would contribute to the constitutional policy of making legal services available to the FSM, the denial of the

FSM CONSTITUTION

foreign investment permit to practice law in Yap was unwarranted by the facts in the record and therefore unlawful. Michelsen v. FSM, 5 FSM Intrm. 249, 256 (App. 1991).

Art. XIII, § 1 is a general provision that recognizes the right of the people to education, health care, and legal services. It does not act as an exclusive duty to ensure the availability of attorney services in the FSM, and it does not prohibit a state from administering its own bar. Berman v. Santos, 7 FSM Intrm. 231, 237 (Pon. 1995).

The Professional Services Clause provides that the FSM national government recognizes the people's right to education, health care, and legal services and shall take every step reasonable and necessary to provide these services. The term "the people" refers only to natural persons, and does not include juridical persons such as corporations. FSM v. Kansou, 13 FSM Intrm. 392, 394-95 (Chk. 2005).

The framers' intent in including the Professional Services Clause was to establish a national policy of providing the services when requested by individual citizens unable to provide for themselves, although these services would not necessarily be free. Thus the framers intended that these professional services were to be provided only to natural persons, not to artificial persons. Therefore neither the Office of the Public Defender's refusal to represent business entity defendants nor Public Defender Directive No. 19 barring such representation is unconstitutional. FSM v. Kansou, 13 FSM Intrm. 392, 395 (Chk. 2005).

FSM CONSTITUTION

Section 2. Radioactive, toxic chemical, or other harmful substances may not be tested, stored, used, or disposed of within the jurisdiction of the Federated States of Micronesia without the express approval of the national government of the Federated States of Micronesia.

Section 3. It is the solemn obligation of the national and state governments to uphold the provisions of this Constitution and to advance the principles of unity upon which this Constitution is founded.

Section 4. A noncitizen, or a corporation not wholly owned by citizens, may not acquire title to land or waters in Micronesia.

Citizenship may affect, among other legal interests, rights to own land, to engage in business or be employed, and even to reside within the Federated States of Micronesia. In re Sproat, 2 FSM Intrm. 1, 6 (Pon. 1985).

The Constitution specifically bars noncitizens from acquiring title to land or waters in Micronesia and includes within the prohibition any corporation not wholly owned by citizens. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM Intrm. 256, 259 (Pon. 1987).

Where a person is constitutionally prohibited from inheriting land that person's valid assignment of expectancy to a person who may acquire land will operate only to assign the non-land holdings in the expectancy. Etscheit v. Adams, 6 FSM Intrm. 365, 382-83 (Pon. 1994).

The FSM Constitution mandates that a noncitizen may not acquire title to land or waters in Micronesia, but the

FSM CONSTITUTION

Constitution does not prohibit a noncitizen from acquiring or holding some non-title interest in the land. Marcus v. Truk Trading Corp., 10 FSM Intrm. 387, 390 (Chk. 2001).

The Constitution does not divest noncitizens of their title to land if they had acquired title to land before the Constitution's effective date. Marcus v. Truk Trading Corp., 10 FSM Intrm. 387, 390 (Chk. 2001).

The Constitution does not prohibit a citizen landowner from becoming a citizen of another country and it does not strip a citizen landowner who does become a foreign citizen of title to land to which he acquired title when he was a citizen. Marcus v. Truk Trading Corp., 10 FSM Intrm. 387, 390 (Chk. 2001).

A foreign citizen, is barred from acquiring legal title to land anywhere in the FSM. In re Engichy, 12 FSM Intrm. 58, 68 (Chk. 2003).

Noncitizens cannot acquire title to land, but leasing land for 99 years does not constitute acquiring title to land. Church of the Latter Day Saints v. Esiron, 13 FSM Intrm. 99a, 99d (Chk. 2004).

That a citizen-buyer obtains the funds used to acquire title to land from a noncitizen does not affect the citizen-buyer's title to the land. To hold otherwise would throw all land sales, and land titles derived from them, into question because there is no way to determine from the land records the funds' source. Church of the Latter Day Saints v. Esiron, 13 FSM Intrm. 99a, 99d-99e (Chk. 2004).

FSM CONSTITUTION

Section 5. A lease agreement for the use of land for an indefinite term by a noncitizen, a corporation not wholly owned by citizens, or any government is prohibited.

Editor's note: Art. XIII, § 5 was amended by Constitutional Convention Committee Proposal No. 90-23, CD1, SD1 which became effective on July 2, 1991. A copy of this amendment follows this Constitution.

The original language of art. XIII, § 5 was as follows:

"**Section 5.** An agreement for the use of land for an indefinite term is prohibited. An existing agreement becomes void 5 years after the effective date of this Constitution. Within that time, a new agreement shall be concluded between the parties. When the national government is a party, it shall initiate negotiations."

Case annotations prior to the effective date of the constitutional amendment interpret art. XIII, § 5 as originally worded.

Case annotations: — Indefinite Land Use Agreements

Read in the light of its legislative history, art. XIII, § 5 of the FSM Constitution was intended to cover leases, not easements, and therefore an easement that is indefinite in term does not violate this constitutional section. Melander v. Kosrae, 3 FSM Intrm. 324, 330 (Kos. S. Ct. Tr. 1988).

Easements are not indefinite land use agreements prohibited by the Constitution because "indefinite land use agreement"

FSM CONSTITUTION

is a term of art referring to Trust Territory leases for an indefinite term. Nena v. Kosrae, 5 FSM Intrm. 417, 423 (Kos. S. Ct. Tr. 1990).

Land granted for "for so long as it is used for missionary purposes," is not a constitutionally prohibited indefinite land use agreement because the length of the term of the land use will continue, with all certainty, as long as a court determines that the land is still being used for missionary purposes. The term is definite, because its termination can be determined with certainty. Dobich v. Kapriel, 6 FSM Intrm. 199, 202 (Chk. S. Ct. Tr. 1993).

The Constitutional prohibition against indefinite land use agreements does not apply to an agreement where none of the parties are a non-citizen, a corporation not wholly owned by citizens, or a gov't. Dobich v. Kapriel, 6 FSM Intrm. 199, 202 (Chk. S. Ct. Tr. 1993).

An easement may be created for a permanent duration, or, as it is sometimes stated, in fee, which will ordinarily continue in operation and be enforceable forever. The grant of a permanent easement is for as definite a term as the grant of a fee simple estate. Both are permanent and not for a definite term. Nena v. Kosrae (II), 6 FSM Intrm. 437, 439 (App. 1994).

A grant of a permanent or perpetual easement is definite in the same sense that a grant of a fee simple estate is definite — it is a permanent transfer of an interest in land. Nena v. Kosrae (III), 6 FSM Intrm. 564, 568 (App. 1994).

All indefinite land use agreements are void after July 12,

FSM CONSTITUTION

1984, as being in violation of the FSM Constitution.
Hartman v. Chuuk, 9 FSM Intrm. 28, 33 (Chk. S. Ct. App. 1999).

Under the original version of Article XIII, section 5 of the FSM Constitution, FSM governments were barred from obtaining an agreement for the use of land for an indefinite term and that could have made a land purchase agreement unconstitutional because of a reversionary clause returning the land to the original land owner or successor at the end of an indefinite term of airport use, but, when that provision was amended in 1991 so that only land lease agreements for an indefinite term were prohibited, and that constitutional amendment was effective before the subject land purchase agreement was executed, Article XIII, section 5 does not prohibit the Land Purchase Agreement because it is not a lease. *Uehara v. Chuuk*, 14 FSM Intrm. 221, 226 (Chk. 2006).

When the Trust Territory leased Unupuku in 1956 and had indefinite land use rights under the lease, but did not claim to own Unupuku, but indefinite land use agreements were abolished by Article XIII, section 5 of the FSM Constitution and became void on July 12, 1984, five years after the FSM Constitution's effective date, and when the state executed a fifteen-year lease for Unupuku in 1984 and it did not claim to own Unupuku, in any suit claiming title to Unupuku, the state was not the party to sue since it did not claim title to Unupuku. Unupuku's titleholders were. *Ruben v. Hartman*, 15 FSM Intrm. 100, 111 (Chk. S. Ct. App. 2007).

Section 6. The national government of the Federated States of Micronesia shall seek renegotiation of any agreement for the use of

FSM CONSTITUTION

land to which the Government of the United States of America is a party.

Section 7. On assuming office, all public officials shall take an oath to uphold, promote, and support the laws and the Constitution as prescribed by statute.

ARTICLE XIV Amendments

Section 1. An amendment to this Constitution may be proposed by a constitutional convention, popular initiative, or Congress in a manner provided by law. A proposed amendment shall become a part of the Constitution when approved by $\frac{3}{4}$ of the votes cast on that amendment in each of $\frac{3}{4}$ of the states. If conflicting constitutional amendments submitted to the voters at the same election are approved, the amendment receiving the highest number of affirmative votes shall prevail to the extent of such conflict.

Case annotations: An amendment to the Constitution may be proposed by a constitutional convention, popular initiative, or Congress in a manner provided by law. A proposed amendment becomes part of the Constitution when approved by $\frac{3}{4}$ of the votes cast on that amendment in each of $\frac{3}{4}$ of the states. These are the only methods by which the Constitution may be amended. Gilmete v. Carlos Etscheit Soap Co., 13 FSM Intrm. 145, 149 (App. 2005).

Section 2. At least every 10 years, Congress shall submit to the voters the question: "Shall there be a convention to revise or amend the Constitution?". If a majority of ballots cast upon the question is in the affirmative, delegates to the convention shall be chosen no later than the next regular election, unless Congress provides for the

FSM CONSTITUTION

selection of delegates earlier at a special election.

Case annotations: The Nat'l Constitutional Convention is given broad authority to revise the very foundation of gov't, and every institution and office of gov't may come within its reach. *Constitutional Convention 1990 v. President*, 4 FSM Intrm. 320, 326 (App. 1990).

The nature of a constitutional convention as authorized by the FSM Constitution, with direct control of people over the identity of convention delegates, and ultimate acceptance of the products of the convention's efforts, and the fact that the framers view a constitutional convention as a standard and preferred amendment mechanism, preclude congressional control over the convention's decision-making.

Constitutional Convention 1990 v. President, 4 FSM Intrm. 320, 327 (App. 1990).

Congress has no power to specify voting requirements for Constitutional Convention and therefore any attempt to exercise this power so as to uphold tradition is also outside the powers of Congress under art. V, § 2 of the Constitution, which is not an independent source of congressional power but which merely confirms the power of Congress, in exercising nat'l legislative powers, to make special provisions for Micronesian tradition. *Constitutional Convention 1990 v. President*, 4 FSM Intrm. 320, 328 (App. 1990).

ARTICLE XV Transition

Section 1. A statute of the Trust Territory continues in effect except

FSM CONSTITUTION

to the extent it is inconsistent with this Constitution, or is amended or repealed. A writ, action, suit, proceeding, civil or criminal liability, prosecution, judgment, sentence, order, decree, appeal, cause of action, defense, contract, claim, demand, title, or right continues unaffected except as modified in accordance with the provisions of this Constitution.

Case annotations: Under art. XV, § 1 of the Constitution, a provision of the TT Code is repealed by a subsequent statutory provision enacted by the Congress only if the statutory provisions in question are inconsistent or in conflict. Even if certain provisions are repealed, other provisions of that same statute may remain intact if the statute, without the deleted provision, is self-sustaining and capable of separate enforcement. *FSM v. Boaz (II)*, 1 FSM Intrm. 28, 29 (Pon. 1981).

Transition Clause of FSM Constitution effectively adopts statutes of the TT, including the Weapons Control Act, and serves as the original enactment of a body of law, criminal as well as civil, for the new constitutional gov't. Further action by FSM Congress is not necessary to establish that violations of the Weapons Control Act are prohibited within the FSM. *Joker v. FSM*, 2 FSM Intrm. 38, 43 (App. 1985).

Trust Territory statutes applicable to the states became part of the state's laws, regardless of whether they were published in the FSM Code. Such holdover TT laws become laws of the states until superseded. *Pohnpei v. Mack*, 3 FSM Intrm. 45, 55 (Pon. S. Ct. Tr. 1987).

All Trust Territory statutes that were applicable to the State of Pohnpei prior to Pub. L. No. 2-48 and immediately before

FSM CONSTITUTION

November 8, 1984, the effective date of the Pohnpei State Constitution, and which have not been amended, superseded, or repealed, are laws of the State of Pohnpei. § 3 of S.L. 3L-33-84 made those TT statutes into laws of the State of Pohnpei, and that includes Title 15 of the TT Code. Pohnpei v. Mack, 3 FSM Intrm. 45, 55 (Pon. S. Ct. Tr. 1987).

The fact that Congress included a particular law in the FSM Code does not indicate conclusively whether the law is to be applied by this court as part of nat'l law, for some parts of the Code were intended to apply only to the TT High Court in its transitional role until state courts were established. Edwards v. Pohnpei, 3 FSM Intrm. 350, 356 (Pon. 1988).

Section 2. A right, obligation, liability, or contract of the Government of the Trust Territory is assumed by the Federated States of Micronesia except to the extent it directly affects or benefits a government of a District not ratifying this Constitution.

Section 3. An interest in property held by the Government of the Trust Territory is transferred to the Federated States of Micronesia for retention or distribution in accordance with this Constitution.

Section 4. A local government and its agencies may continue to exist even though its charter or powers are inconsistent with this Constitution. To promote an orderly transition to the provisions of this Constitution, and until state governments are established, Congress shall provide for the resolution of inconsistencies between local government charters and powers, and this Constitution. This provision ceases to be effective 5 years after the effective date of this Constitution.

FSM CONSTITUTION

Section 5. The Congress may provide for a smooth and orderly transition to government under this Constitution.

Case annotations: Former exclusive jurisdiction of TT High Court over lawsuits against the TT gov't has been delegated to the constitutional gov'ts covered by Secretarial Order 3039. Within the FSM, the allocation of this former exclusive High Court jurisdiction between the FSM Supreme Court and the various state courts will be determined on the basis of jurisdictional provisions within the Constitution and laws of the FSM and its respective states. *Lonno v. Trust Territory (I)*, 1 FSM Intrm. 53, 68 (Kos. 1982).

Section 6. In the first congressional election, congressional districts are apportioned among the states as follows: Kusaie - 1; Marianas - 2; Marshalls - 4; Palau - 2; Ponape - 3; Truk - 5; Yap - 1. If Kusaie is not a state at the time of the first election, 4 members shall be elected on the basis of population in Ponape.

ARTICLE XVI Effective Date

Section 1. This Constitution takes effect 1 year after ratification unless the Congress of Micronesia by joint resolution specifies an earlier date. If a provision of this Constitution is held to be in fundamental conflict with the United Nations Charter or the Trusteeship Agreement between the United States of America and the United Nations, the provision does not become effective until the date of termination of the Trusteeship Agreement.

Editor's note: Resolution No. 32 of the Micronesian Constitutional Convention, adopted October 24, 1975,

FSM CONSTITUTION

states:

"WHEREAS, in establishing the government for the new Federated States of Micronesia, and making provision for the governing of the various states, the question has arisen over whether this affects the traditional leaders of Micronesia. It is not the intention of the Delegates to the Micronesian Constitutional Convention to affect adversely any of the relationships which prevail between the traditional leaders and the people of Micronesia, nor to diminish in any way the full honor and respect to which they are entitled; now, therefore,

BE IT RESOLVED by the Micronesian Constitutional Convention of 1975 that it is the consensus of this Convention that all due honor and respect continue to be accorded the traditional leaders of Micronesia, and nothing in the Constitution of the Federated States of Micronesia is intended to in any way detract from the role and function of traditional leaders in Micronesia or to deny them the full honor and respect which is rightfully theirs; and

BE IT FURTHER RESOLVED that upon the signing of the Constitution, this Resolution be included with all duplications of the Constitution so that the intent of the Delegates may be evident to all who read the Constitution of the Federated States of Micronesia."