

**RULES OF APPELLATE PROCEDURE**  
for the  
**STATE OF CHUUK**  
**APPELLATE DIVISION**  
**STATE COURT**

**Rule 1.**

**SCOPE OF RULES.**

(a) Scope of Rules. These rules govern procedure in appeals to the Appellate Division of the state court of the State of Chuuk from the State Court Trial Division for review and enforcement of orders of administrative agencies, boards, commissions, and officers of the State of Chuuk and in applications for writs or other relief which the State Court Appellate Division or a justice thereof is competent to give. When these rules provide for the making of a motion or application in the State Court Trial Division the procedure for making such motion or application shall be in accordance with the practice of the State Court Trial Division.

(b) Rules Not To Affect Jurisdiction. These rules shall not be construed to extend or limit the jurisdiction of the State Court Trial Division as established by law.

**Rule 2.**

**SUSPENSION OF RULES.**

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

**Rule 3.**

**APPEAL AS OF RIGHT—HOW TAKEN.**

(a) Filing The Notice of Appeal. An appeal permitted by law as of right shall be taken by filing a notice of appeal with a clerk of the Court appealed from within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the State Court Appellate Division deems appropriate, which may include dismissal of the appeal.

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

(c) Content of the Notice of Appeal. The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and shall name the court to which the Appeal is taken. An appeal shall not be dismissed for informality of

form or title of the notice of appeal.

(d) Service of the Notice of Appeal. The clerk of the court appealed from shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, or, if a party is not represented by counsel, to the party at his last known address; and the clerk shall transmit forthwith a copy of the notice of appeal and of the docket entries to the clerk of the State Court Appellate Division named in the notice. When an appeal is taken by a defendant in a criminal case, the clerk shall also serve a copy of the notice of appeal upon him, either by personal service or by mail addressed to him. The clerk shall note in the docket the names of the parties to whom he mails copies, with the date of mailing.

(e) Payment of Fees. Upon the filing of any separate or joint notice of appeal, the appellant shall pay to the clerk of the court appealed from such fees as may be established by statute or by court rule.

#### **Rule 4.**

#### **APPEAL AS OF RIGHT — WHEN TAKEN.**

(a) Appeals in Civil Cases.

(1) In a civil case in which an appeal is permitted by law as of right the notice of appeal required by Rule 3 shall be filed with the clerk of the State Court Trial Division within 30 days after the date of the entry of the judgment or order appealed from. If a notice of appeal is mistakenly filed in the State Court Appellate Division, the clerk of the State Court Appellate Division shall note thereon the date on which it was received and transmit it to the clerk of the State Court Trial Division and it shall be deemed filed in the State Court Trial Division on the date so noted.

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

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

(4) If a timely motion under the Rules of Civil Procedure is filed in the State Court Trial Division by any party: (i) Reserved; (ii) under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (iii) under Rule 59 to alter or amend the judgment, or (iv) under Rule 59 for a new trial or for any equivalent relief under comparable rules, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above. No additional fees shall be required for such filing.

(5) The State Court Trial Division, upon a showing of excusable reason or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by this Rule 4(a). Any such motion which is filed before expiration of the prescribed time may be ex parte unless the court otherwise requires. Notice of any such

motion which is filed after expiration of the prescribed time shall be given to the other parties immediately by the Clerk of the State Court Trial Division. No such extension shall exceed 30 days past such prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

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

(b) Appeals in Criminal Cases. In a criminal case the notice of appeal by a defendant shall be filed in the court appealed from within 30 days after the entry of the Judgment or order appealed from. A notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment or order shall be treated as filed after such entry and on the day thereof. If a timely motion in arrest of judgment or for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within 30 days after the entry of an order denying the motion. A motion for a new trial based on the ground of newly discovered evidence will similarly extend the time for appeal from a judgment of conviction if the motion is made before or within 30 days after the entry of the judgment. When an appeal by the State is authorized by statute, the notice of appeal shall be filed in the court appealed from within the 30 days after the entry of the judgment or order appealed from. A judgment or order is entered within the meaning of this subdivision when it is entered in the criminal docket. Upon a showing of excusable reason or good cause the court appealed from may before or after the time has expired, with or without motion and notice, extend the time for filing a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this subdivision.

## **Rule 5.**

### **APPEALS BY PERMISSION.**

(a) Petition for Permission to Appeal. An appeal from an interlocutory order may be sought by filing a petition for permission to appeal with the clerk of the State Court Appellate Division within 10 days after the entry of such order with proof of service on all other parties to the action in the court from which appeal is being taken. An order may be amended to include the prescribed statement at any time, and permission to appeal may be sought within 10 day after entry of the order as amended.

(b) Content of the Petition, Answer. The petition shall contain a statement of the facts necessary to an understanding of the controlling question of law determined by the order of the State Court Trial Division; a statement of the question itself; and a statement of the reasons why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation. The petition shall include or have annexed thereto a copy of the order from which appeal is sought and of any findings of fact, conclusion of law, and opinion relating thereto. Within 7 days after service of the petition an adverse party may file an answer in opposition. The application and answer shall be submitted without oral argument unless otherwise ordered.

(c) Form of Papers, Number of Copies. All papers may be typewritten. Three copies shall be filed with the original, but the court may require that additional copies be furnished.

(d) Grant of Permission, Cost Bond, Filing of Record. Within 10 days after the entry of an order

granting permission to appeal the appellant shall (1) pay to the clerk of the State Court Trial Division the fees established by these rules and (2) file a bond for costs if required pursuant to Rule 7. The clerk of the State Court Trial Division shall notify the clerk of State Court Appellate Division of the payment of the fees. Upon receipt of such notice the clerk of the State Court Appellate Division shall enter the appeal upon the docket. The record shall be transmitted and filed in accordance with Rules 11 and 12(b). A notice of appeal need not be filed.

### **Rule 6.**

Reserved.

### **Rule 7.**

#### **BOND FOR COSTS ON APPEAL IN CIVIL CASES.**

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

### **Rule 8.**

#### **STAY OR INJUNCTION PENDING APPEAL.**

(a) Stay Must Ordinarily be Sought in the First Instance in the Court Appealed From; Motion for Stay in the State Court Appellate Division. Application for a stay of the judgment or order of the court appealed from pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the State Court Trial Division. A motion for such relief may be made to the State Court Appellate Division or to a justice thereof, but the motion shall show that application to the court appealed from for the relief sought is not practicable, or that the court appealed from has denied the application, or has failed to afford the relief which the applicant requested, with any reasons given by the court appealed from for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the clerk and normally will be considered by a panel or division of the court, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single justice of the Supreme Court.

(b) Stay May Be Conditioned Upon Giving of Bond, Proceedings Against Sureties. Relief available in the State Court Appellate Division under this rule may be conditioned upon the filing of a bond or other appropriate security in the court appealed from. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the court appealed from and irrevocably appoints the clerk of court appealed from as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion in the court appealed from without the necessity of an independent action. The motion and such notice of the motion as the court appealed from prescribes may be served on the clerk of that court who shall forthwith mail copies to the sureties if their addresses are known.

(c) Stays in Criminal Cases. Stays in criminal cases shall be had in accordance with the

provisions of Rule 38(a) of the Rules of Criminal Procedure.

## **Rule 9.**

### **RELEASE IN CRIMINAL CASES.**

(a) Appeals From Orders Respecting Release Entered Prior to a Judgment of Conviction. An appeal authorized by law from an order refusing or imposing conditions of release shall be determined promptly. Upon entry of an order refusing or imposing conditions of release, the court appealed from shall state in writing the reasons for the action taken. The appeal shall be heard without the necessity of briefs after reasonable notice to the appellee upon such papers, affidavits, and portions of the record as the parties shall submit.

(b) Release Pending Appeal From a Judgment of Conviction. Application for release after a judgment of conviction shall be made in the first instance in the court appealed from. If the court appealed from refuses release pending appeal, or imposes conditions of release, that court shall state in writing the reasons for the action taken. Thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending review may be made to the State Court Appellate Division or to a justice thereof. The motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present and after reasonable notice to the appellee. The State Court Appellate Division or a justice thereof may order the release of the appellant pending disposition of the motion.

(c) Criteria For Release. The decision as to release pending appeal shall be made in accordance with the applicable statute. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

## **Rule 10.**

### **RECORD ON APPEAL.**

(a) Composition of the Record of Appeal. The original papers and exhibits filed in the State Court Trial Division, the transcript of proceedings if any, and a certified copy of the docket entries prepared by the clerk of the State Court Trial Division shall constitute the record on appeal in all cases.

(b) The Transcript of Proceedings; Proceedings; Duty of Appellant to Order; Notice to Appellee if Partial Transcript is Ordered.

(1) Within 10 days after filing the notice of appeal the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as he deems necessary. The order shall be in writing and within the same period a copy shall be filed with the clerk of the State Court Trial Division. If no such parts of the proceedings are to be ordered, within the same period the appellant shall file a certificate to that effect.

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

(3) Unless the entire transcript is to be included, the appellant shall, within the 10 days time provide in (b)(1) of this Rule 10, file a statement of the issues he intends to present on the appeal

and shall serve on the appellee a copy of the order or certificate and of the statement. If the appellee deems a transcript of other parts of the proceedings to be necessary, he shall, within 10 days after the service of the order or certificate and the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. Unless within 10 days after service of such designation the appellant has ordered such parts, and has so notified the appellee, the appellee may within the following 10 days either order the parts or move in the court appealed from for an order requiring the appellant to do so.

(4) At the time of ordering, a party must make satisfactory arrangements with the reporter for payment of the cost of the transcript.

(c) Statement of the Evidence or Proceedings when No Report Was Made or When the Transcript is Unavailable. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement shall be served on the appellee, who may serve objections or propose amendments thereto within 10 days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the court appealed from for settlement approval and as settled and approved shall be included by the clerk of the court appealed from in the record on appeal.

(d) Agreed Statement as the Record On Appeal. In lieu of the record on appeal as defined in subdivision (a) of this rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the court appealed from and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it together with such additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the court appealed from and shall then be certified to the State Court Appellate Division as the record on appeal and transmitted thereto by the clerk of the court appealed from within the time provided by Rule 11.

(e) Correction or Modification of record. If any difference arises as to whether the record truly discloses what occurred in the court appealed from, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the court appealed from either before or after the record is transmitted to the State Court Appellate Division, or the State Court Appellate Division, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the State Court Appellate Division.

## **Rule 11.**

### **TRANSMISSION OF THE RECORD.**

(a) Duty of the Appellant. After filing the notice of appeal the appellant, or in the event that more than one appeal is taken, each appellant, shall comply with the provisions of Rule 10(b) and shall take any other action necessary to enable the clerk to assemble and transmit the record. A single record shall be transmitted.

(b) Duty of Reporter to Prepare and File Transcript: Notice to the State Court Appellate Division, Duty of Clerk to Transmit the Record. Upon receipt of an order for a transcript, the reporter shall acknowledge at the foot of the order the fact that he has received it and the date on which he expects to have the transcript completed and shall transmit the order, so endorsed, to the clerk of the State Court Appellate Division. If the transcript cannot be completed within 30 days of receipt of the order the reporter shall request an extension of time from the clerk of the State Court Appellate Division and the action of the clerk of the State Court Appellate Division shall be entered on the docket and the parties notified. In the event of the failure of the reporter to file the transcript within the time allowed, the clerk of the State Court Appellate Division shall notify the State Court Trial Division Justice and take such other steps as may be directed by the State Court Appellate Division. Upon completion of the transcript the reporter shall file it with the clerk of the court appealed from and shall notify the clerk of the State Court Appellate Division that he has done so.

When the record is complete for purposes of the appeal, the clerk of the court appealed from shall transmit it forthwith to the clerk of the State Court Appellate Division. The clerk of the court appealed from shall number the documents comprising the record with all documents arranged in chronological order by date of filing and shall transmit with the record a list of the documents correspondingly numbered and identified with reasonable definiteness. Documents of unusual bulk or weight, physical exhibits other than documents, and such other parts of the records as the State Court Appellate Division may designate, shall not be transmitted by the clerk unless he is directed to do so by a party or by the clerk of the State Court Appellate Division. Advance arrangements must be made with the clerks for transportation and receipt of exhibits of unusual bulk or weight.

(c) Temporary Retention of Record in the Court Appealed From for Use in Preparing Appellate Papers. Notwithstanding the provisions of (a) and (b) of this Rule 11, the parties may stipulate, or the court appealed from on motion of any party may order, that the clerk of the court appealed from shall temporarily retain the record for use by the parties in preparing appellate papers, In that event, the clerk of the court appealed from shall certify to the clerk of the State of the Court Appellate Division that the record, including the transcript or parts thereof designated for inclusion and all necessary exhibits, is complete for purposes of the appeal. Upon receipt of the brief of the appellee, or at such earlier time as the parties may agree or the court may order, the appellant shall request the clerk of the State Court Appellate Division to transmit the record.

(d) Reserved.

(e) Retention of the Record in The Court Appealed from by Order of Court. The State Court Appellate Division may provide by order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.

If the record or any part thereof is required in the court appealed from for use there pending the appeal, the court appealed from may make an order to that effect, and the clerk of the court appealed from shall retain the record or parts thereof subject to the request of the State Court Appellate Division, and shall transmit a copy of the record as the court appealed from shall allow and copies of such parts as the parties may designate.

(f) Stipulation of Parties that Parts of the Record be Retained in the Court Appealed From. The parties may agree by written stipulation filed in the court appealed from that designated parts of the record shall be retained in the court appealed from unless thereafter the State Court Appellate Division shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

(g) Record for Preliminary Hearing in the State Court Appellate Division. If prior to the time the record is transmitted a party desires to make in the State Court Appellate Division a motion for dismissal, for release, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the court appealed from at the request of any party shall transmit to the State Court Appellate Division such parts of the original record as any party shall designate.

## **Rule 12.**

### **DOCKETING THE APPEAL; FILING OF THE RECORD.**

(a) Docketing the Appeal. Upon receipt of the copy of the notice of appeal and of the docket entries, transmitted by the clerk of the State Court Trial Division pursuant to Rule 3(d), the clerk of the State Court Appellate Division shall thereupon enter the appeal upon the docket. An appeal shall be docketed under the title given to the action in the State Court Trial Division, with the appellant identified as such, but if such title does not contain the name of the appellant his name identified as appellant, shall be added to the title.

(b) Filing of the Record, Partial Record, or Certificate. Upon receipt of the record transmitted pursuant to Rule 11(b), or the partial record transmitted pursuant to Rule 11(e), (f), or the clerk's certificate under Rule 11(c), the clerk of the State Court Appellate Division shall file it and shall immediately give notice to all parties of the date on which it was filed.

(c) Distribution of the Record. Immediately upon receipt of the record, the clerk or the State Court Appellate Division shall number each page of the record. The clerk shall then duplicate the entire record and distribute one copy to each party for use in preparing their brief. Three additional copies shall be made for the justices. The cost of such duplication shall initially be paid by the appellant, unless the parties otherwise agree.

Rule 13 to 20. Reserved.

## **Rule 21.**

### **WRITS OF MANDAMUS AND PROHIBITION DIRECTED TO A JUSTICE AND OTHER EXTRAORDINARY WRITS.**

(a) Mandamus or Prohibition to a Justice; Petition for Writ: Service and Filing. Application for a writ of mandamus or of prohibition directed to a justice shall be made by filing a petition therefor with the clerk of the State Court Appellate Division with proof of service on the respondent justice and on all parties to the action in the trial court. The petition shall contain a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the issues presented and the relief sought; a statement of the reasons why the writ should issue; and copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition. Upon receipt of the prescribed docket fee, the clerk shall docket the petition and submit it to the court.

(b) Denial; Order Directing Answer. If the court is of the opinion that the writ should not be granted; it shall deny the petition. Otherwise, it shall order that an answer be filed by the respondents within the time fixed by the order. The order shall be served by the clerk on the justice named respondent and on all other parties to the action in the trial court. All parties below other than the petitioner shall also be deemed respondents for all purposes. Two or more respondents may answer jointly. If the justice named respondent does not desire to appear in the proceeding, he may so advise the clerk and all parties by letter, but the petition shall not thereby be taken as admitted. The clerk shall advise the parties of the dates on which briefs are to be filed, if briefs are required, and of the date of oral argument. The proceeding shall be given preference over ordinary civil cases.

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

(d) Forms of Papers; Number of Copies. All papers may be typewritten. Three copies shall be filed with the original, but the court may direct that additional copies be furnished.

## **Rule 22.**

### **HABEAS CORPUS PROCEEDINGS.**

(a) Application For the Original Writ. An application for a writ of habeas corpus shall be made to the State Court Trial Division. If an application is made to or transferred to the State Court Trial Division and denied the proper remedy is by appeal to the State Court Appellate Division from the order of the State Court Trial Division denying the writ.

(b) Reserved.

## **Rule 23.**

### **CUSTODY OF PRISONERS IN HABEAS CORPUS PROCEEDINGS.**

(a) Transfer of Custody Pending Review. Pending review of a decision in a habeas corpus proceeding, a person having custody of the prisoner shall not transfer custody to another unless such transfer is directed by the State Court Appellate Division or a Justice thereof.

(b) Detention or Release or Prisoner Pending Review of Decisions Failing to Release. Pending review of a decision failing or refusing to release a prisoner in such a proceeding, the prisoner may be detained in the custody from which release is sought, or in other appropriate custody, or may be released upon his recognizance, with or without surety, as may appear fitting.

(c) Release of Prisoner Pending Review of Decision Ordering Release. Pending review of a decision ordering the release of a prisoner in such a proceeding, the prisoner shall be released upon his recognizance, with or without surety, unless the court rendering the decision shall otherwise order.

(d) Modification of Initial Order Respecting Custody. An initial order respecting the custody or

release of the prisoner and any recognizance or surety taken, shall govern review in the State Court Appellate Division unless for special reasons shown to a justice of the State Court Appellate Division, the order shall be modified, or an independent order respecting custody, release or surety shall be made.

## **Rule 24.**

### **PROCEEDINGS IN FORMA PAUPERIS.**

(a) Leave to Proceed on Appeal in Forma Pauperis. A party who desires to proceed on appeal in forma pauperis shall file in the court appealed from a motion for leave so to proceed, together with an affidavit showing his inability to pay fees and costs or to give security therefor, his belief that he is entitled to redress, and a statement of the issues which he intends to present on appeal. If the motion is granted, the party may proceed without further application to the State Court Appellate Division and without prepayment of fees or costs in either court or the giving of security therefor. If the motion is denied, the court appealed from shall state in writing the reasons for the denial.

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

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

(b) Reserved.

(c) Reserved.

## **Rule 25.**

### **FILING AND SERVICE.**

(a) Filing. Papers required or permitted to be filed in the State Court Appellate Division shall be filed with the clerk. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are received by the clerk within the time fixed for filing, except that, briefs and appendices shall be deemed filed on the day of mailing if the most expeditious form of delivery by mail, is utilized. If a motion requests relief which may be granted by a single judge, the judge may permit the motion to be filed with him, in which event he shall note thereon the date of filing and shall thereafter transmit to the clerk.

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

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

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

## **Rule 26.**

### **COMPUTATION AND EXTENSION OF TIME.**

(a) Computation of Time. In computing any period of time prescribed or allowed by these rules, by an order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Friday, Saturday, Sunday, or a legal holiday, in which event the period extends until the end of the next day which is not a Friday, Saturday, Sunday or a legal holiday.

When the period of time prescribed or allowed is less than 7 days, intermediate Fridays, Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule "legal holiday" includes any day appointed as a holiday by the Governor or the Chuuk State Legislature, or by the President or the Congress of the Federated States of Micronesia.

(b) Enlargement of Time. The court for good cause shown may upon motion enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time; but the court may not enlarge the time for filing a notice of appeal, a petition for allowance, or a petition for permission to appeal. Nor may the court enlarge the time prescribed by law for filing a petition to enjoin, set aside, suspend, modify, enforce, or otherwise review, or a notice of appeal from, an order of an administrative agency, board, commission, or officer of the State of Chuuk except as specifically authorized by law.

(c) Additional Time After Service By Mail. Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him and the paper is served by mail, 6 days shall be added to the prescribed period.

## **Rule 27.**

### **MOTIONS.**

(a) Content of Motions; Response; Reply. Unless another form is elsewhere prescribed by these rules, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or

relief sought. If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order for which see subdivision (b) within 7 days after service of the motion, but motions authorized by Rules 8, 9 and 41 may be acted upon after reasonable notice, and the court may shorten or extend the time for responding to any motion.

(b) Determination of Motions for Procedural Orders. Notwithstanding the provisions of (a) of this Rule 27 as to motions generally, motions for procedural orders, including any motion under Rule 26(b) may be acted upon at any time, without awaiting a response thereto, and pursuant to rule or order of the court, motions for specified types of procedural orders may be disposed of by the clerk. Any party adversely affected by such action may by application to the court request reconsideration, vacation, or modification of such action.

(c) Power of a Single Justice to Entertain Motions. In addition to the authority expressly conferred by these rules or by law, a single justice of the State Court Appellate Division may entertain and may grant or deny any request for relief which under these rules may properly be sought by motion, except that a single Justice may not dismiss or otherwise determine an appeal or other proceeding, and except that the State Court Appellate division may provide by order or rule that any motion or class of motions must be acted upon by the court. The action of a single justice may be reviewed by the court.

(d) Form of Papers; Number of Copies. All papers relating to motions may be typewritten. Three copies shall be filed with the original, but the court may require that additional copies be furnished.

## **Rule 28.**

### **BRIEFS.**

(a) Brief of the Appellant. The brief of the appellant shall contain under appropriate headings and in the order here indicated:

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

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

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

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

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

(b) Brief of the Appellee. The brief of the appellee shall conform to the requirements of subdivision (a)(1)-(4), except that a statement of the issues or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

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

(d) References in Briefs to Parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee." It promotes clarity to use the designations used in the lower court or in the agency proceedings, or the actual names of parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," "the ship," "the stevedore," etc.

(e) References in Briefs to the Record. References in the briefs to parts of the record reproduced in the appendix filed with the brief of the appellant shall be to the pages of the record prepared by the clerk in accordance with the requirements of Appellate Rule 11(b). If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the transcript at which the evidence was identified, offered, and received or rejected.

(f) Reproduction of Statutes, Rules, Regulations, Etc. If determination of the issues presented requires the study of statutes, rules, regulations, etc., or relevant parts thereof, they shall be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form.

(g) Length of Briefs. Except by permission of the court principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, table of citations, and any addendum containing statutes, rules, regulations, etc.

(h) Briefs in Cases Involving Cross Appeals. If a cross appeal is filed, the plaintiff in the court below shall be deemed the appellant for the purposes of this rule and Rule 31, unless the parties otherwise agree or the court otherwise orders. The brief of the appellee shall contain the issues and argument involved in the his appeal as well as the answer to the brief of the appellant.

(i) Briefs in Cases Involving Multiple Appellants or Appellees. In cases involving more than one appellant or appellee, including cases consolidated for the purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

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

**Rule 29.****BRIEF ON AN AMICUS CURIAE.**

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

Rule 30. Reserved.

**Rule 31.****FILING AND SERVICE OF BRIEFS.**

(a) Time for Serving and Filing Briefs. The appellant shall serve and file his brief within 40 days after the date on which the record is filed. The appellee shall serve and file a brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the appellee, but, except for good cause shown, a reply brief must be filed at least 3 days before argument. The State Court Appellate Division is prepared to consider cases on the merits promptly after briefs are filed, and may shorten the periods prescribed above for serving and filing briefs, either by rule for classes of cases, or by order for specific cases.

(b) Number of Copies to be Filed and Served. Six copies of each brief shall be filed with the clerk, unless the court by order in a particular case shall direct another number. One copy shall be served on counsel for each party separately represented.

(c) Consequence of Failure to File Briefs. If an appellant fails to file his brief within the time provided by this rule, or within the time as extended, an appellee may move for dismissal of the appeal. If an appellee fails to file his brief, he will not be heard at oral argument except by permission of the court.

**Rule 32.****FORM OF BRIEFS, THE APPENDIX AND OTHER PAPERS.**

(a) Form of Briefs. Briefs may be produced by standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper. Carbon copies of briefs and appendices may not be submitted without permission of the court, except in behalf of parties allowed to proceed in forma pauperis. All printed matter must appear in at least 11 point type on opaque, unglazed paper. All briefs and appendices produced by the standard typographic process shall be bound in volumes having pages 6 1/8 by 9 1/4 inches and type matter 4 1/6 by 7 1/6 inches. Those produced by any other process shall be bound in volumes having pages not exceeding 8 1/2 by 11 inches and type matter not exceeding 6 1/2 by 9 1/2 inches, with double spacing between each line of text.

If the covers to be described are available, the cover of the brief of the appellant should be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. The front covers of the briefs shall contain: (1) the name of the court and the Appellate Division number of the case; (2) the title of the case (see Rule 12(a)); (3) the nature of the proceeding in the court (e.g., Brief for Appellant); and, (5) the names and addresses or counsel representing the party on whose behalf the document is filed.

(b) Form of Other Papers. Petitions for rehearing shall be produced in a manner prescribed by subdivision (a). Motions and other papers may be produced in like manner, or they may be typewritten upon opaque, unglazed paper 8 by 11 inches in size. Lines of typewritten text shall be double spaced. Consecutive sheets shall be attached at the left margin. Carbon copies may be used for filing and service if they are legible.

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

### **Rule 33.**

#### **PREHEARING CONFERENCES.**

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

### **Rule 34.**

#### **ORAL ARGUMENT.**

(a) In General; Oral Argument Allowed. Oral argument shall be allowed in all cases unless the panel of three justices of the State Court Appellate Division, after examination of the briefs and record, shall be unanimously of the opinion that oral argument is not needed.

(b) Notice of Argument; Postponement. The clerk shall advise all parties whether oral argument is to be heard, and if so, of the time and place therefor, and the time to be allowed each side. A request for postponement of the argument or for allowance of additional time must be made by motion filed reasonably in advance of the date fixed for hearing.

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

(d) Cross and Separate Appeals. A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the court otherwise directs. If a case involves a cross-appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same

argument, care shall be taken to avoid duplication of argument.

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

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

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

Rule 35. Reserved.

### **Rule 36.**

#### **ENTRY OF JUDGMENT.**

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

### **Rule 37.**

#### **INTEREST ON JUDGMENTS.**

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

### **Rule 38.**

#### **DAMAGES FOR DELAY.**

If the State Court Appellate Division shall determine that an appeal frivolous, it may award just damages and single or double costs to the appellee.

### **Rule 39.**

#### **COSTS.**

(a) To Whom Allowed. Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a

judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the court.

(b) Costs For and Against the State of Chuuk. In cases involving the State of Chuuk or an agency or officer thereof, if an award of costs against the State of Chuuk is authorized by law, costs shall be awarded in accordance with the provisions of subdivision (a); otherwise, costs shall not be awarded for or against the State of Chuuk.

(c) Costs of Briefs and Copies of Records. The cost of printing or otherwise producing necessary copies of briefs, or copies of records shall be taxable in the State Court Appellate Division at rates not higher than those generally charged for such work in the area where the clerk's office is located.

(d) Bill of Costs; Objections; Costs to be Inserted In Mandate or Added Later. A party who desires such costs to be taxed shall state them in an itemized and verified bill of costs which he shall file with the clerk, with proof of service, within 14 days after the entry of judgment. Objections to the bill of costs must be filed within 10 days of service on the party against whom costs are to be taxed unless the time is extended by the court. The clerk shall prepare and certify an itemized statement of costs taxed in the State Court Appellate Division for insertion in the mandate, but the issuance of the mandate shall not be delayed for taxation of costs and if the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate upon request by the clerk of the State Court Appellate Division to the clerk of the State Court Trial Division.

(e) Costs on Appeal Taxable in the State Court Trial Division. Costs incurred in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of the supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing the notice of appeal shall be taxed in the State Court Trial Division as costs of the appeal in favor of the party entitled to costs under this rule.

## **Rule 40.**

### **PETITION FOR REHEARING.**

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

(b) Form of Petition; Length. The petition shall be in a form prescribed by Rule 39(a), and copies shall be served and filed as prescribed by Rule 31(b) for the service and filing of briefs. Except by permission of the court a petition for rehearing shall not exceed 15 pages.

**Rule 41.****ISSUANCE OF MANDATE: STAY OF MANDATE.**

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

(b) Reserved.

**Rule 42.****VOLUNTARY DISMISSAL.**

(a) Dismissal in the State Court Trial Division. If an appeal has not been docketed, the appeal may be dismissed by the State Court Trial Division upon the filing in that court of a stipulation for dismissal signed by all the parties, or upon motion and notice by the appellant.

(b) Dismissal in the State Court Appellate Division. If the parties to an appeal or other proceeding shall sign and file with the clerk of the State Court Appellate Division an agreement that the proceeding be dismissed specifying the terms as to payment of costs, and shall pay whatever fees are due, the clerk shall enter the case dismissed, but no mandate or other process shall issue without an order of the court. An appeal may be dismissed on motion of the appellant upon such terms as may be agreed upon by the parties or fixed by the court.

**Rule 43.****SUBSTITUTION OF PARTIES.**

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

(b) Substitution for Other Cases. If substitution of a party in the State Court Appellate Division is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subdivision (a).

(c) Public Officers; Death or Separation From Office.

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

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

**Rule 44.**

**CASES INVOLVING CONSTITUTIONAL QUESTIONS  
WHERE THE STATE OF CHUUK IS NOT A PARTY.**

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

**Rule 45.**

**DUTIES OF THE CLERKS.**

(a) General Provisions. Neither the clerk nor any deputy clerk shall practice as an attorney or as counselor in any court while he continues in office. The State Court Appellate Division shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process and of making motions and orders. The office of the clerk with the clerk or a deputy in attendance shall be open during business hours on all days except Fridays, Saturdays, Sundays and legal holidays.

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

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

The clerk shall keep such other books and records as may be required from time to time by the Chief Justice.

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

(d) Custody of Records and Papers. The clerk shall have custody of the records and papers of the court. He shall not permit any original record or paper to be taken from his custody except as authorized by the orders or instructions of the court. Original papers transmitted as the record on appeal or review shall upon disposition of the case be returned to the court from which they were received. The clerk shall preserve copies of briefs and appendices and other printed papers filed.

### **Rule 46.** **ATTORNEYS.**

(a) Reserved.

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

(c) Disciplinary Power of the Court Over Attorneys. The Chuuk State Court Appellate Division may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action against any attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with these rules or any rule of the court.

### **Rule 47.** **Reserved.**

### **Rule 48.** **TITLE.**

These rules may be known and cited as the Chuuk State Rules of Appellate Procedure.