RULES OF CRIMINAL PROCEDURE
FOR THE TRIAL DIVISION OF THE CHUUK STATE SUPREME COURT STATE OF CHUUK

I. SCOPE, PURPOSE AND CONSTRUCTION

Rule 1.
Scope.

These rules govern the procedure in all criminal proceedings in the Trial Division of the Chuuk State Supreme Court.

Rule 2.
Purpose and Construction.

These rules are intended to provide for the just determination of criminal proceedings. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay with due recognition to the traditions and customs of the People of the State of Chuuk.

II. PRELIMINARY PROCEEDINGS

Rule 3.
The Complaint.

The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a judicial officer or a clerk of this court.

Rule 4.
ARREST WARRANT OR SUMMONS UPON COMPLAINT.

(a) Issuance. If it appears from the complaint, or from affidavit or affidavit filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. Upon the request of the attorney for the government, a summons instead of a warrant shall issue.

More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) Probable Cause. The finding of probable cause may be based upon hearsay evidence in whole or in part.

(c) Form.

(1) Warrant. The warrant shall be signed by a judicial officer and shall contain the name of

the defendant or, if his name is unknown, any name or description by which the defendant can be identified with reasonable certainty. It shall describe the offense charged in the complaint. It shall command that the defendant be arrested and brought before a judicial officer.

(2) Summons. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a judicial officer at a stated time and place.

(d) Execution or Service; and Return.

(1) By Whom. The warrant shall be executed by a policeman or by some other officer authorized by law or, when the judicial officer issuing the warrant has found exceptional circumstances requiring execution of the warrant by some other person, by another person specifically authorized in the warrant. The summons may be served by any person authorized to serve a summons in a civil action.

(2) Territorial Limits. The warrant may be executed or the summons may be served at any place within the jurisdiction of the State of Chuuk.

(3) Manner. The warrant shall be executed by the arrest of the defendant. The warrant need not be in the officer's possession at the time of the arrest, but upon request he shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon the defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's dwelling house or usual place of abode or of business with some person of suitable age and discretion then residing or employed there. Reasonable attempts shall also be made to assure that the person served understands the meaning of the summons and what the person served is required to do.

(4) Return. The officer executing a warrant shall make return thereof to the judicial officer before whom the defendant is brought pursuant to Rule 5. At the request of the attorney for the State any unexecuted warrant shall be returned to the judicial officer by whom it was issued and shall be cancelled by him. On or before the return day the person to whom a summons was delivered for service shall make return thereof to the judicial officer before whom the summons is returnable. At the request of the attorney for the state made at any time while the complaint is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the judicial officer to a policeman or other authorized person for execution or service.

Rule 5.
INITIAL APPEARANCE.

(a) In General. An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available justice of the Chuuk State Supreme Court. If a person arrested without a warrant is brought before a Justice of the Chuuk State Supreme Court, a complaint shall be filed forthwith which shall comply with the requirements of Rule 4(a) with respect to the showing of probable cause. When a person, arrested with or without a warrant or given a summons, appears initially before a Justice of the Chuuk State Supreme Court, the Justice shall proceed in accordance wit the applicable subdivisions of this rule.

(b) Notification of Rights. The defendant shall not be called upon to plead. The Justice shall inform the defendant of the complaint against him and of any affidavit filed therewith, of his right to retain counsel, of is right to request the assignment of counsel if he is unable to obtain counsel, and of the general circumstances under which he may secure pretrial release. He shall inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. He shall allow the defendant reasonable time and opportunity to consult counsel and shall admit that defendant to bail as provided by statute or in these rules.

(c) Initial Appearance Before a State Judicial Officer. If a justice of the Chuuk State Supreme Court is not reasonably available under Rule 5(a), the arrested person shall be brought before a state judicial officer authorized by the laws of the State of Chuuk or the Federated States of Micronesia to commit persons charged with criminal offenses, and such officer shall inform the person of the rights specified in rule 5(b) and may authorized the release of the arrested person under the terms provided for by these rules. The judicial officer shall immediately transmit any written order of release or of confinement and any papers filed before him to the clerk of the appropriate Court within the state. Upon the release of the defendant the state judicial officer shall order him to appear at the next sitting of the Chuuk State Supreme Court at the next sitting of the Chuuk State Supreme Court.

III. INDICTMENT AND INFORMATION

Rule 6. Reserved.

Rule 7.
THE INFORMATION.

(a) Use. Offenses shall be prosecuted by information.

(b) Reserved.

(c) Nature and Contents.

(1) In General. The information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the attorney for the government. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that he committed it by one or more specified means. The information shall state for each count the citation of the statute, rule, regulation or other provision of law which the defendant is alleged to have violated.

(2) Reserved.

(3) Harmless Error. Error in the citation or description or its omission shall not be ground for dismissal of the information or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice.

(d) Surplusage. The court on motion of the defendant may strike surplusage from the information.

(e) Amendment. The court may permit an information to be amended at any time before finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

(f) Bill of Particulars. The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before the initial appearance or within ten days after arraignment or at such later time as the court may permit. A bill of particulars may be amended at any time subject to such conditions as justice requires.

Rule 8.
JOINDER OF OFFENSES AND OF DEFENDANTS.

(a) Joinder of Offenses. Two or more offenses may be charged in the same information in a separate count for each offense if the offenses charged are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) Joinder of Defendants. Two or more defendants may be charged in the information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

Rule 9.
WARRANT OR SUMMONS UPON INFORMATION.

(a) Issuance. Upon the request of the attorney for the State, the court shall issue a warrant for each defendant named in an information supported by a showing of probable cause under oath as is required by Rule 4(a). Upon the request of the attorney for the state, a summons instead of a warrant shall issue. If no request is made, the court may issue either a warrant or a summons in its discretion. More than one warrant or summons may issue for the same defendant. The clerk shall deliver the warrant or summons to the police officer or other person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) Form.

(1) Warrant. The form of the warrant shall be as provided in Rule 4(c) (1) except that it shall be signed by the clerk, it shall describe the offense charged in the information and it shall command that the defendant be arrested and brought before the court. The amount of bail may be fixed by the court and endorsed on the warrant.

(2) Summons. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court at a stated time and place.

(c) Execution or Service; and Return.

(1) Execution or Service. The warrant shall be executed or the summons served as provided in Rule 4(d)(1), (2), and (3). A summons to a corporation shall be served by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law

to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the corporation's last known address within the State of Chuuk or at its principal place of business. The officer executing the warrant shall bring the arrested person promptly before the court.

(2) Return. The officer executing a warrant shall make return thereof to the court. At the request of the attorney for the government any unexecuted warrant shall be returned and cancelled. On or before the return day the person to whom a summons was delivered for service shall make return thereof. At the request of the attorney for the state made at any time while the information is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the clerk to the policeman or other authorized person for execution or service.

IV. ARRAIGNMENT AND PREPARATION FOR TRIAL

Rule 10.
ARRAIGNMENT.

Arraignment shall be conducted in open court and shall consists of reading the information to the defendant or stating to him the substance of the charge and calling on him to plead thereto. He shall be given a copy of the information before he is called upon to plead.

Rule 11.
PLEAD.

(a) Alternatives. A defendant may plead not guilty, guilty, or nolo contendere. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(b) Reserved.

(c) Advice to Defendant. Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court inform him of, and determine that he understands, the following:

(1) the nature of the charge to which the plea is offered, and the maximum possible penalty provided by law; and

(2) if the defendant is not represented by counsel, that he has the right to be represented by counsel at every state of the proceeding against him and, if necessary, one will be appointed to represent him; and

(3) that he has the right to plead not guilty or to persist in that plea if it has already been made, and the right to a trial and at that trial has the right to the assistance of counsel, the right to confront and cross-examine witnesses against him, and the right against compelled to incriminate himself; and

(4) that if he pleads guilty or nolo contendere there will not be a further trial of any kind, so that by pleading guilty or nolo contendere he waives the right to a trial; and

(5) that if he pleads guilty or nolo contendere, the court may ask questions about the offense to which he a pleaded, and if the defendant answers these questions under oath, on record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or false swearing.

(d) Insuring That the Plea is Voluntary. The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the attorney for the state and the defendant or his attorney.

(e) Plea Agreement Procedure.

(1) In General. The attorney for the state and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense the attorney for the state will do any of the following:

(A) move for dismissal of other charges; or

(B) make a recommendation on, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the court, or

(C) agree that a specific sentence is the appropriate disposition of the case.

The court shall not participate in any such discussions.

(2) Notice of Such Agreement. If a plea agreement has been reached by the parties, the court shall, on the record, require the disclosure of the agreement in open court or, on a showing of god cause, in camera, at the time the plea is offered. If the agreement is of the type specified in subdivision (e)(1)(A) or (C), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement is of the type specified in subdivision (e)(I)(B), the court shall advise the defendant that if the court does not accept the recommendation or request the defendant nevertheless has no right to withdraw his plea.

(3) Acceptance of a Plea agreement. If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgements and sentence the disposition provided for the plea agreement.

(4) Rejection of a Plea Agreement. If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant personally in open court or on a

showing of good cause, in camera that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw his plea, and advise the defendant that if he persists in his guilty plea or plea of nolo contendere the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(5) Time of Plea Agreement Procedure. Except for good cause shown, notification to the court of the existence of a Plea agreement shall be given at the arraignment or at such other time, prior to trial, as may fixed by the court.

(6) Inadmissibility of Pleas, Plea Discussions, and Related Statements. Except a otherwise provided in this paragraph, evidence of the following is not, in any civil or criminal proceedings, admissible against the defendant who made the plea or was a participant in the plea discussions:

(A) a plea of guilty which was later withdrawn;

(B) a plea of nolo contendere

(C) any statement made in the course of any proceedings under this rule regarding either of the foregoing pleas; or

(D) any statement made in the course of plea discussions with an attorney for the state which do not result in a plea of guilty later withdrawn.

However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

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

(g) Record of Proceedings. A verbatim record of the proceedings at which the defendant enters a plea shall be made and, if there is a plea of guilty or nolo contendere, the record shall include, without limitation, the court's advice to the defendant, the inquiry into the voluntariness of the plea, and the inquiry into the accuracy of the plea.

Rule 12.
MOTIONS BEFORE TRIAL; DEFENSES AND OBJECTIVES.

(a) Pleadings and Motions. Pleadings in criminal proceedings shall be the information and the pleas of not guilty, guilty and nolo contendere. All other pleas, and demurrers and motions to quash shall be allowed, and defenses and objections raised before trial which heretofore could have been raised only by motion to dismiss or to grant appropriate relief, as provided in these rules.

(b) Pretrial Motions. Any defense, objection, or request which is capable of determination

without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following must be raised prior to trial:

(1) Defenses and objections based on defects in the institution of the prosecution; or

(2) Defenses and objections based on defects in the information (other than that it fails to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceedings); or

(3) Motions to suppress evidence; or

(4) Requests for discovery under Rule 16; or

(5) Requests for severance of charges or defendants under Rule 14; or

(c) Motion Date. The court may, at the time of the arraignment or as soon thereafter as practicable, set a time for the making of pretrial motions or requests and, if required, a later date of hearing.

(d) Notice by the State of the Intention to Use Evidence.

(1) At the Discretion of the Government. At the arraignment or as soon thereafter as is practicable, the state may give notice to the defendant of its intention to use specified evidence at trial in order to afford the defendant an opportunity to raise objections to such evidence prior to trial under subdivision (b)(3) of this rule.

(2) At the Request of the Defendant. At the arraignment or as soon thereafter as is practicable the defendant may, in order to afford an opportunity to move to suppress evidence under subdivision (b)(3) of this rule, request notice of the government's intention to use (in its evidence in chief at trial) any evidence which the defendant may be entitled to discover under Rule 16 subject to any relevant limitations prescribed in Rule 16.

(e) Ruling On Motion. A motion made before trial shall be determined before trial unless the court, for good cause, orders that it be deferred for determination at the trial of the general issue or until after finding, but no such determination shall be deferred if a party's right to appeal is adversely affected. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

(f) Effect of Failure to Raise Defenses or Objections. Failure by a party to raise defenses of objections or to make requests which must be made prior to trial, at the time set by the court pursuant to subdivision (c), or prior to any extension thereof made by the court shall constitute waiver thereof, but the court for cause shown may grant relief from the waiver.

(g) Records. A verbatim record shall be made of all proceedings at the hearing, including such findings of fact and conclusions of law as are made orally.

(h) Effect of Determination. If the court grants a motion based on a defect in the institution of

the prosecution or in the information, it may also order that the defendant be continued in custody or that his bail be continued for a specified time pending the filing of a new information. Nothing in this rule shall be deemed to affect the provisions of any law of the State of Chuuk relating to periods of limitations.

Rule 13.
TRIAL TOGETHER OF INFORMATION.

The court may order two or more informations to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single information. The procedure shall be the same as if the prosecution were under such single information.

Rule 14.
RELIEF FROM PREJUDICIAL JOINDER.

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the state to deliver to the court for inspection in camera any statements or confessions made by the defendants which the government intends to introduce in evidence at the trial.

Rule 15.
DEPOSITIONS.

(a) When Taken. Whenever due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, the court may upon motion of such party and notice to the parties order that testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged, be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that the witness' deposition be taken. After the deposition has been subscribed the court may discharge the witness.

(b) Notice of Taking. The party at whose instance a deposition is to be taken shall give to every party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition. The officer having custody of a defendant shall be notified of the time and place set for the examination and shall, unless the defendant waives in writing the right to be present, produce the defendant at the examination. A defendant not in custody shall have the right to be present at the examination upon request subject to such terms as may be fixed by the court, but the defendant's failure, absent good cause shown, to appear after notice and tender of expenses in accordance with subdivision (c) of this rule shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

(c) Payment of Expenses. Whenever a deposition is taken at the instance of the state, or whenever a deposition is taken at the instance of a defendant who is unable to bear the expenses of the taking of the deposition, the court may direct that the expense of travel and subsistence of the defendant and his attorney for attendance at the examination and the cost of the transcript of

the deposition shall be paid by the government.

(d) How Taken. Subject to such additional conditions as the court shall provide, a deposition shall be taken and filed in the manner provided in civil actions except as otherwise provided in these rules, provided that (1) in no event shall a deposition be taken of a party defendant without that defendant's consent, and (2) the scope and manner of examination and cross-examination shall be such as would be allowed in the trial itself. The state shall make available to the defendant or his counsel for examination and use at the taking of the deposition any statement of the witness being deposed which is in the possession of the state and to which the defendant would be entitled at the trial.

(e) Use. At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the witness is unavailable, as unavailability is defined in Rule 804(a) of the Rules of Evidence, or the witness gives testimony at the trial or hearing inconsistent with that his deposition.

Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

(f) Objections to Deposition Testimony. Objections to deposition testimony or evidence or parts thereof and the grounds for the objection shall be stated at the time of the taking of the deposition.

(g) Deposition by Agreement Not Precluded. Nothing in this rule shall preclude the taking of a deposition, orally or upon written questions, or the use of a deposition, by agreement of the parties with the consent of the court.

Rule 16.
DISCOVERY AND INSPECTION.

(a) Disclosure of Evidence by the Government.

(1) Information Subject to Disclosure.

(A) Statement of Defendant. Upon request of a defendant the state shall permit the defendant to inspect and copy or photograph any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the state, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the state; the substance of any oral statement which the state intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a state agent.

(B) Defendant's Prior Record. Upon request of the defendant, the state shall furnish to the defendant such copy of his prior criminal record, if any, as is within the possession, custody, or control of the state, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the state.

(C) Documents and Tangible Objects. Upon request of the defendant the shall permit the

defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the state, and which are material to the preparation of the his defense, or are intended for use by the state as evidence in chief at the trial, or were obtained from or belong to the defendant.

(D) Report of Examinations and Tests. Upon request of a defendant the state shall permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests and experiments, or copies thereof, which are within the possession, custody, or control of the state, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the state, and which are material to the preparation of the defense or are intended for use by the state as evidence in chief at the trial.

(E) Prosecution Witnesses. Upon request of a defendant the state shall provide to the defendant the name and address of any person whom the prosecuting attorney intends to call as a witness together with the witness' relevant written or recorded statement, and the record of any felony convictions of such proposed witness.

(F) Material Favorable to Defendant. Upon request of a defendant the state shall provide to the defendant any material or information which tends to negate the guilt of the defendant as to the offense charged or would tend to reduce his punishment therefor.

(2) Information Not Subject to Disclosure.

Except as provided in paragraphs (A), (B), and (D) of subdivision (a)(1), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal state documents made by the attorney for the state or other state agents in connection with the investigation or prosecution of the case.

(b) Disclosure of Evidence by the Defendant.

(1) Information Subject to Disclosure.

(A) Documents and Tangible Objects. If the defendant requests disclosure under subdivision (a)(1)(C) or (D) of this rule, upon compliance with such request by the state, the defendant, on request of the government, shall permit the state to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial.

(B) Reports of Examinations and Tests. If the defendant requests disclosure under subdivision (a)(1)(C) or (D) of this rule, upon compliance with such request of the state, the defendant, on request of the state, shall permit the state to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to his testimony.

(C) Defense Witnesses. The defendant, on request of the state, shall state the nature of

any defense which he intends to use at trial and the name and address of any person whom the defendant intends to call in support thereof.

(2) Information Not Subject to Disclosure. Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or the his attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by state or defense witnesses, to the defendant, his agents or attorneys.

(c) Continuing Duty to Disclose. If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, or discovers additional witnesses or defenses, such party shall promptly notify the other party or his attorney or the court of the existence of the additional evidence, material, witness or defense.

(d) Regulation of Discovery.

(1) Protective and Modifying Orders. Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(2) Failure to Comply With a Request. If any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. The court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

Rule 17.
SUBPOENA.

(a) For Attendance of Witnesses; Form; Issuance. A subpoena shall be issued by the clerk of the court. It shall state the name of the court and the title of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena, signed and with the seal of the FSM Supreme Court, but otherwise in blank to a party requesting it, who shall fill in the blanks before it is served.

(b) Defendants Unable to Pay. The court shall order at any time that a subpoena be issued for service on a named witness upon an ex parte application of a defendant upon a satisfactory showing that the defendant is financially unable to pay the fees of the witness and that the presence of the witness is necessary to an adequate defense. If the court orders the subpoena to be issued the costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed in behalf of the government.

(c) For Production of Documentary Evidence and of Objects. A subpoena may also command

the person to whom it is directed to produce the books, papers, documents or other objects designated. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

(d) Service. A subpoena may be served by a policeman or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and, by tendering to him the fee for one day's attendance and the mileage allowed by law. Reasonable attempts shall also be made to assure that the person served understands the meaning of the subpoena and what the person served is required to do. Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the State of Chuuk, or any governmental officer or agency charged with the responsibility of enforcing the criminal laws of the of the State of Chuuk. At or before the time stated for appearance in the subpoena, the person to whom such a subpoena is delivered for service shall write a report of his action on it, sign it and have it delivered to the court named therein. If he has served the subpoena, his report shall show the date, place, and method of service.

(e) Place of Subpoena. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the State of Chuuk.

(f) For Taking Deposition; Place of Examination.

(1) Issuance. An order to take a deposition authorizes the issuance by the clerk of subpoenas for the persons named or described herein.

(2) Place. The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the court, taking into account the convenience of the witness and the parties.

(g) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court.

(h) Information Not Subject To Subpoena. Statements made by witnesses or prospective witnesses may not be subpoenaed from the government or the defendant under this rule, but shall be subject to production only in accordance with the provisions of Rules 16(a)(1)(E) and 26.2.

Rule 17.1.
PRETRIAL CONFERENCE.

At any time after the filing of the information the court upon motion of any party or upon its own motion may order one or more conferences to consider such matters as will promote a fair and expeditious trial. At the conclusion of a conference the court shall prepare and file a memorandum of the matters agreed upon. No admissions made by the defendant or his attorney at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and the his attorney. This rule shall not be invoked in the case of a

defendant who is not represented by counsel.

V. VENUE

Rule 18.
PLACE OF PROSECUTION AND TRIAL.

Except as otherwise permitted by statute or by these rules, the prosecution shall be in the state in which the offense was committed. The court shall fix the place of trial within the state with due regard to the convenience of the defendant and the witnesses and the prompt administration of justice.

Rule 19-22. Reserved.

VI. TRIAL

Rule 23.
FINDINGS BY THE COURT UPON TRIAL.

The court shall make a general finding and shall in addition, on request made before the general finding, find the facts specially and make necessary conclusions of law. Such findings and conclusions may be oral. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein.

Rule 24. Reserved.

Rule 25.
JUSTICE, DISABILITY AFTER FINDING OF GUILT.

If by reason of absence, death, sickness or other disability the justice before whom the defendant has been tried is unable to perform the duties to be performed by the court after a finding of guilt, any other justice regularly sitting or assigned may perform those duties; but if such other justice is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

Rule 26.
TAKING OF TESTIMONY

In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by law or by any rule adopted by this court.

Rule 26.1.
Determination of Foreign Law.

A party who intends to raise an issue concerning the law of a foreign country shall give reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Rules of Evidence of this Court. The court's determination shall be treated as a ruling on a

question of law.

Rule 26.2.
PRODUCTION OF STATEMENTS OF WITNESSES.

(a) Motion for Production. After a witness other than the defendant has testified on direct examination, the court, on motion of a party who did not call the witness, shall order the attorney for the state or the defendant and his attorney, as the case may be, to produce, for the examination and use of the moving party, any statement of the witness then in their possession that relates to the subject matter concerning which the witness has testified.

(b) Production of Entire Statement. If the entire contents of the statement relate to the subject matter concerning which the witness has testified, the court shall order that the statement be delivered to the moving party.

(c) Production of Excised Statement. If the other party claims that the statement contains matter that does not relate to the subject matter concerning which the witness has testified, the court shall order that it be delivered to the court in camera. Upon inspection, the court shall excise the portions of the statement that do not relate to the subject matter concerning which the witness has testified, and shall order that the statement, with such material excised, be delivered to the moving party. Any portion of the statement that is withheld from the defendant over the defendant's objection shall be preserved by the attorney for the government, and, in the event of a conviction and an appeal by the defendant, shall be made available to the appellate court for the purpose of determining the correctness of the decision to excise the portion of the statement.

(d) Recess for Examination of Statement. Upon delivery of the statement to the moving party, the court, upon application of that party, may recess proceedings in the trial for the examination of such statement and for preparation for its use in the trial.

(e) Sanction for Failure to Produce Statement. If the other party elects not to comply with an order to deliver a statement to the moving party, the court shall order that the testimony of the witness be stricken from the record and that the trial proceed, or, if it is the attorney for the government who elects not to comply, shall declare a mistrial if required by the interest of justice.

(f) Definition. As used in this rule, a "statement" of a witness means:

(1) a written statement made by the witness that is signed or otherwise adopted or approved by him; or

(2) a substantially verbatim recital of an oral statement made by the witness that is recorded contemporaneously with the making of the oral statement and that is contained in a stenographic, mechanical, electrical, or other recording or a transcription thereof.

Rule 27.
PROOF OF OFFICIAL RECORD.

An official record or an entry therein or the lack of such a record or entry may be proved in the same manner as in civil actions.

Rule 28.
INTERPRETERS.

The court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter. Such compensation shall be paid out of funds provided by law or by the government, as the court may direct.

Rule 29.
MOTION FOR JUDGEMENT OR ACQUITTAL.

(a) Motion Before Parties Rest. The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the information after the evidence of either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the government is not granted, the defendant may offer evidence without having reserved the right.

(b) Reserved.

(c) Motion After Finding of Guilt. A motion for judgment of acquittal may be made or renewed within seven days after the court makes a finding of guilt or within such further time as the court may fix during the seven day period. If a finding of guilt is made the court may on such motion set aside the finding and enter judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the parties resting.

Rule 29.1.
CLOSING ARGUMENT.

After the closing of evidence the prosecution shall open the argument. The defense shall be permitted to reply. The prosecution shall then be permitted to reply in rebuttal.

Rule 30. Reserved.

Rule 31.
FINDING.

(a) Return. The finding of the judge shall be returned in open court.

(b) Reserved.

(c) Conviction of Lesser Offense. The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

(d) and (e) Reserved.

VII. JUDGMENT

Rule 32.

SENTENCE AND JUDGMENT.

(a) Sentence.

(1) Imposing of Sentence. Sentence shall be imposed without unreasonable delay. Before imposing sentence the court shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment. The attorney for the government shall have an equivalent opportunity to speak to the court.

(2) Notification of Right to Appeal. After imposing sentence in a case which has gone to trial on a plea of not guilty, the court shall advise the defendant of the right to appeal and of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal in forma pauperis. There shall be no duty on the court to advise the defendant of any right of appeal after sentence is imposed following a plea of guilty or nolo contendere. If the defendant so requests, the clerk of the court shall prepare and file forthwith a notice of appeal on behalf of the defendant.

(b) Judgment.

(1) In General. A judgment of conviction shall set forth the plea, the findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk.

(2) Reserved.

(c) Presentence Investigation.

(1) When Made. Upon order of the court, the office of the justice ombudsman shall make a presentence investigation and report to the court before the imposition of sentence or the granting of probation.

(2) Report. The report of the presentence investigation shall contain any prior criminal record of the defendant and such information about the defendant's characteristics, financial condition and circumstances affecting the defendant's behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court.

(3) Disclosure.

(A) Before imposing sentence the court shall upon request permit the defendant, or his counsel if he so represented, to read the report of the presentence investigation exclusive of any recommendation as to sentence, but not to the extent that in the opinion of the court the report contains diagnostic opinion which might seriously disrupt a program of rehabilitation, sources of information obtained upon a promise of confidentiality, or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons; and the court shall afford the defendant or his counsel an opportunity to comment thereon and, at the discretion of the court to introduce testimony or other information relating to any alleged factual inaccuracy contained in the presentence report.

(B) If the court is of the view that there is information in the presentence report which should not be disclosed under subdivision (c)(3)(A) of this rule, the court in lieu of making the report or part

thereof available shall state orally or in writing a summary of the factual information contained therein to be relied on in determining sentence, and shall give the defendant or his counsel an opportunity to comment thereon. The statement may be made to the parties in camera.

(C) Any material disclosed to the defendant or his counsel shall also be disclosed to the attorney for the government.

(D) Any copies of the presentence investigation report made available to the defendant or the defendant's counsel and the attorney for the government shall be returned to the probation officer immediately following the imposition of sentence or the granting of probation, unless the court, in its discretion otherwise directs.

(d) Withdrawal of Plea of Guilty. A motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea.

Rule 32.1.
REVOCATION OR MODIFICATION OF PROBATION.

(a) Revocation of Probation.

(1) Preliminary Hearing. Whenever a probationer is held in custody on the ground that the person has violated a condition of probation or supervised release, the person shall be afforded a prompt hearing before a judicial officer in order to determine whether there is probable cause to hold the person for a revocation hearing. The probationer shall be given:

(A) notice of the preliminary hearing and its purpose and of the alleged violation;

(B) an opportunity to appear at the hearing and to present evidence on his behalf;

(C) upon request, the opportunity to question witnesses against him unless, for good cause, the judicial officer decides that justice does not require the appearance of the witness; and

(D) notice of his right to be represented by counsel.

(2) Revocation Hearing. The revocation hearing, unless waived by the person, shall be held within a reasonable time. The person shall be given:

(A) written notice of the alleged violation of probation;

(B) disclosure of the evidence against him;

(C) an opportunity to appear and to present evidence in his own behalf;

(D) the opportunity to question witnesses against him; and,

(E) notice of his right to be represented by counsel.

(b) Modification of Probation. A hearing and assistance of counsel are required before the terms or conditions of probation can be modified, unless the relief granted to the probationer upon is request or the court's own motion is favorable to him.

Rule 33.
NEW TRIAL.

The court on motion of a defendant may grant a new trial to him if required in the interests of justice. The court on motion of a defendant for a new trial may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only before or within two years after final judgment, but if an appeal is pending the court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within 7 days after the finding of guilt or within such further time as the court may fix during the 7-day period.

Rule 34.
ARREST OF JUDGEMENTS.

The court on motion of a defendant shall arrest judgment if the information does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within 7 days after the finding of guilt, or after plea of guilty or nolo contendere, or with such further time as the court may fix during the 7-day period.

Rule 35.
CORRECTION OR REDUCTION OF SENTENCE.

(a) Correction of Sentence. The court may correct an illegal sentence at any time and may correct an unreasonable sentence or a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

(b) Reduction of Sentence. The court may reduce a sentence within 120 days after the sentence is imposed, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 120 days after entry of any order or judgment of the Appellate Division of the State Court denying review of, or having the effect of upholding, a judgment of conviction. Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision.

Rule 36.
CLERICAL MISTAKES.

Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

VIII. APPEAL

Rule 37. Reserved.

Rule 38.

STAY OF EXECUTION, AND RELIEF PENDING REVIEW.

(a) Stay of Execution.

(1) Reserved.

(2) Imprisonment. A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is released pending disposition of appeal pursuant to Rule 9(b) of the Chuuk State Supreme Court Rules of Appellate Procedure. If not stayed, the court may recommend to the Director of Public Safety that the defendant be retained under conditions, and at a place, which permit the defendant to assist in the preparation of his appeal to the Appellate Division.

(3) A sentence to pay a fine, restitution or costs, if an appeal is taken, may be stayed by the trial court or by the Appellate Division upon such terms as the court deems proper. The court may require the defendant pending appeal to deposit the whole or any part of the fine, restitution or costs in the registry of the trial court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating his assets.

(4) Probation. An order placing the defendant on probation may be stayed if an appeal is taken. If not stayed, the court shall specify when the term of probation shall commence. If the order is stayed the court shall fix the terms of the stay.

Rule 39. Reserved.

IX. SUPPLEMENTARY AND SPECIAL PROCEEDINGS

Rule 40. Reserved.

Rule 41.

SEARCH AND SEIZURE.

(a) Authority to Issue Warrant. A search warrant authorized by this rule may be issued by a judicial officer upon the request of a policeman or an attorney for the government.

(b) Property or Persons Which May be Seized With a Warrant. A warrant may be issued under this rule to search for and seize any (1) property that constitutes evidence of the commission of a criminal offense; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) property designed or intended for use or which is or has been used as the means of committing a criminal offense.

(c) Issuance and Contents.

(1) Warrant upon Affidavit. A warrant shall issue only on affidavit or affidavits sworn to before a judicial officer and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property to be seized and naming or describing the person or place to be searched. The finding of probable cause may be based upon hearsay evidence in whole or in part. Before ruling on a request for a warrant the judicial officer may require the affiant to appear personally and may examine under oath the affiant and any witnesses he may produce, provided

that such proceeding shall be taken down by a court reporter or recording equipment and made a part of the affidavit. The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorized its execution at times other than daytime. It shall designate the judicial officer to whom it shall be returned.

(d) Execution and Returns With Inventory. The policeman taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the policeman. The judicial officer shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) Motions for Return of Property. A person aggrieved by search and seizure may move the court for the return of the property on the ground that he is entitled to lawful possession of the property which was illegally seized. The justice shall receive evidence on any issue of fact necessary to the decision of the motion.

If the motion is granted the property shall be restored and it shall not be admissible in evidence at any hearing or trial. If the motion for return of property is made or comes on for hearing after an information is filed, it shall be treated also as a motion to suppress under Rule 12.

(f) Motion to Suppress. A motion to suppress evidence may be made as provided in Rule 12.

(g) Return of Papers to Clerk. The justice before whom the warrant is returned shall attach to the warrant a copy of the return, inventory and all other papers in connection therewith and shall file them with the clerk of court.

(h) Definitions. The term "property" is used in this rule to include documents, books, papers and any other tangible objects. The term "daytime" is used in this rule to mean the hours from 6:00 a.m. to 07:00 p.m. according to local time.

Rule 42.
CRIMINAL CONTEMPT.

(a) Summary Disposition. A criminal contempt may be punished summarily if the justice certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court, provided however, that no punishment of a fine of more than $100 or imprisonment may be imposed by summary disposition. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

(b) Disposition Upon Notice and Hearing. A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice may

be given orally by the judge in open court in the presence of the defendant or, on application of the state attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a finding of guilt the court shall enter an order fixing the punishment.

X. GENERAL PROVISIONS

Rule 43.
PRESENCE OF THE DEFENDANT.

(a) Presence Required. The defendant shall be present at arraignment, at the time of the plea, at every stage of the trial including the finding of the court, and at the imposition of sentence, except as otherwise provided by this rule.

(b) Continued Presence Not Required. The further progress of the trial to and including the finding of the court shall not be prevented and the defendant shall be considered to have waived his right to be present whenever a defendant voluntarily absent has been informed by the court of his obligation to remain during the trial.

(c) Presence Not Required. A defendant need not be present in the following situations:

(1) A corporation may appear by counsel for all purposes.

(2) In prosecutions for offenses punishable by fine or by the imprisonment for not more than one year or both, the court, with the written consent of the defendant, may permit arraignment, plea, trial and imposition of sentence in the defendant's absence.

(3) At a conference or argument upon a question of law.

(4) At a reduction of sentence under Rule 35.

Rule 44.
RIGHT TO AND ASSIGNMENT OF COUNSEL.

(a) Right to Assigned Counsel. Every defendant who is unable to obtain counsel shall be entitled to have counsel assigned to represent him at every stage of the proceedings from his initial appearance through appeal, unless he waives such appointment.

(b) Reserved.

(c) Joint Representation. Whenever two or more defendants have been jointly charged pursuant to Rule 8(b), or have been joined for trial pursuant to Rule 13, and are represented by the same retained or assigned counsel or by retained or assigned counsel who are associated in the practice of law, the court shall promptly inquire with respect to such joint representation. Unless it appears that there is good cause to believe no conflict of interest is likely to arise, the court shall

take such measures as may be appropriate to protect each defendant's right to counsel.

Rule 45.
TIME.

(a) Computation. In computing any period of time the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a, Friday, Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Friday, Saturday, a Sunday, or legal holiday. When a 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 these rules "legal holiday" includes any day appointed as a holiday by the President or the Congress of the Federated States of Micronesia, the Governor or the Legislature of the State of Chuuk, or other holiday designated by the Chief Justice of the Chuuk State Supreme Court.

(b) Enlargement. When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period, permit the act to be done if the failure to act was the result of excusable neglect; but the court may not extend the time for taking any action under Rules 29, 33, 34, and 35, except to the extent and under the conditions stated in them.

(c) For Motions. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served, with a memorandum of points and authorities, not later than 14 days before the time specified for the hearing unless a different period is fixed by order of the court. For cause shown such an order may be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion.

The party opposing the motion shall not later than 10 days after the service of the motion upon him, file and serve responsive papers. When a motion is opposed by affidavit, the affidavit shall be served with the responsive papers. The responsive paper shall consist of either (1) a memorandum of points and authorities, or (2) a written statement that he will not oppose the motion.

Failure by the moving party to file the memorandum of points and authorities shall be deemed a waiver by the moving party of the motion; such failure by the opposing party shall constitute a consent to the granting of the motion.

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

Rule 46.
RELEASE FROM CUSTODY.

(a) Release Prior to Trial.

(1) Any person charged with an offense shall, at his appearance before a judicial officer be ordered released pending trial on his personal recognizance or upon the execution of an

unsecured appearance bond in an amount specified by the judicial officer, unless the officer determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required. When such a determination is made, the judicial officer shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

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

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

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

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

(E) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

(2) In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court or of flight to avoid prosecution or failure to appear at court proceedings.

(3) A judicial officer authorizing the release of a person under this section shall issue an appropriate order containing a statement of the condition imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his release and shall advise that a warrant for his arrest will be issued immediately upon any such violation.

(4) A person for whom conditions of release are imposed and who after twenty-four hours from the time of the release hearing continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed conditions of release is not available, any other judicial officer may review such conditions.

(5) A judicial officer ordering the release of a person on any condition specified in this section may at any time amend his order to impose additional or different conditions of release provided, if the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of subsection (4) shall apply.

(6) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(7) If it appears by affidavit that the testimony of a person is material in any criminal proceeding, and if it is shown that it may become impracticable to secure his presence by subpoena, a judicial officer shall impose conditions of release pursuant to Rule 46(a)(1) through (6) above. No material witness shall be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and further detention is not necessary to prevent a failure of justice. Release may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to Rule 15.

(b) Release During Trial. A person released before trial shall continue on release during trial under the same terms and conditions as were previously imposed unless the court determines that other terms and conditions or termination of release are necessary to assure his presence during the trial or to assure that his conduct will not obstruct the orderly and expeditious progress of the trial.

(c) Pending Sentence and Notice of Appeal. A person who has been convicted of an offense and is either awaiting sentence or has filed an appeal shall be treated in accordance with the provisions of Rule 46(a)(1) through (6) above unless the court or judge has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained.

(d) Justification of Sureties. Every surety, except a corporate surety which is approved as provided by law, shall justify by affidavit and may be required to describe in the affidavit the property by which he proposes to justify and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by him and remaining undischarged and all his other liabilities. No bond shall be approved unless the surety thereon appears to be qualified.

(e) Forfeiture.

(1) Declaration. If there is a breach of condition of a bond, the court shall declare a forfeiture of the bail.

(2) Setting Aside. The court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture.

(3) Enforcement. When a forfeiture has not been set aside, the court shall on motion enter a judgment of a default and execution may issue thereon. By entering into a bond the obligors submit to the jurisdiction of the court and irrevocably appoint the clerk of the court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the obligors to their last known addresses.

(4) Remission. After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in paragraph (2) of this subdivision.

(f) Exoneration. When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody.

(g) Supervision of Detention Pending Trial. The court shall exercise supervision over the detention of defendants and witnesses pending trial for the purpose of eliminating all unnecessary detention. The attorney for the state shall make a biweekly report to the court listing each defendant and witness who has been held in custody pending information arraignment or trial for a period in excess of ten days. As to each witness so listed the attorney for the state shall make a statement of the reasons why such witness should not be released with or without the taking of his deposition pursuant to Rule 15(a). As to each defendant so listed the attorney for the state shall make a statement of the reasons why the defendant is still held in custody.

Rule 47.
MOTIONS.

An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit. The requirement of time and for the submission of memoranda of points and authorities are found in Rule 45.

Rule 48.
DISMISSAL.

(a) By Attorney for State. The attorney for the state may by leave of court file a dismissal of an information or complaint and the prosecution shall thereupon terminate. Such a dismissal may be filed during the trial without the consent of the defendant.

(b) By Court. If there is unnecessary delay in filing an information against a defendant who has been held to answer, or if there is unnecessary delay in bringing a defendant to trial, the court may dismiss the information or complaint.

Rule 49.
SERVING AND FILING OF PAPERS.

(a) Service: When Required. Written motions other than those which are heard ex parte,

designations of record on appeal and similar papers shall be served upon each of the parties.

(b) Service: How Made. Whenever under these rules or by an order of the court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made in the manner provided in civil actions.

(c) Notice of Orders. Immediately upon the entry of an order made on a written motion subsequent to arraignment the clerk shall mail a notice thereof to each party, or shall have each party served with a notice thereof. The clerk shall note in the docket the provision and method of notice.

(d) Filing. Papers required to be served shall be filed with the court. Papers shall be filed in the manner provided in civil actions. Unless otherwise ordered by the court, parties must file with the court an original and one copy of all documents filed with the court pursuant to these rules.

Rule 50. Reserved.

Rule 51.
EXCEPTIONS UNNECESSARY.

Exceptions to rulings or orders of the court are unnecessary and for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and the grounds therefor; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him.

Rule 52.
HARMLESS ERROR AND PLAIN ERROR.

(a) Harmless Error. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) Plain Error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

Rule 53. Reserved.

Rule 54.
APPLICATION AND EXCEPTION.

(a) Courts. These rules apply to all criminal proceedings in the trial division of the Chuuk State Supreme Court.

(b) Application of Terms. As used in these rules the following terms have the designated meanings.

"Attorney for the state" means the Attorney General of the State of Chuuk, or his designate, the

"Justice of the Chuuk State Supreme Court" means the Chief Justice of the Chuuk State Supreme Court, an associate justice of the Chuuk State Supreme Court, or a judge or justice serving under special assignment.

"Judicial officer" means a justice of the Chuuk State Supreme Court.

"Attorney" means any person certified to appear before this court, as an attorney or as a trial assistant, whether the certification is a general one, or only for a particular case.

Rule 55.
RECORDS.

The clerk and assistant clerks of the State Court shall keep such records in criminal proceedings as the Chief Justice shall prescribe. Among the records required to be kept by the clerk shall be a book known as the "criminal docket" in which, among other things, shall be entered each order or judgment of the court. The entry of an order or judgment shall show the date the entry is made.

Rule 56.
COURTS AND CLERKS.

The court 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 clerk's office with the clerk or an assistant in attendance shall be open during business hours on all days except Fridays, Saturdays, Sundays and legal holidays, but a court may provide by local rule or order that its clerk's office shall be open for specified hours on Fridays, Saturdays or particular legal holidays.

Rule 57.
RULES OF COURT.

(a) Procedures Not Otherwise Specified. If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these rules or with any applicable statute.

Rule 58. Reserved.

Rule 59.
EFFECTIVE DATE.

All these rules take effect on the date of Certification by the Chief Justice of the Chuuk State Supreme Court. They govern all criminal proceedings thereafter commenced and as far as just and practicable all proceedings then pending.

Rule 60.
TITLE.

These rules may be known and cited as the Rules of Criminal Procedure for the Trial Division of the Chuuk State Supreme Court of the State of Chuuk (Chuuk Cr. R_____).