RULES OF CIVIL PROCEDURE FOR THE COURTS OF THE REPUBLIC OF PALAU

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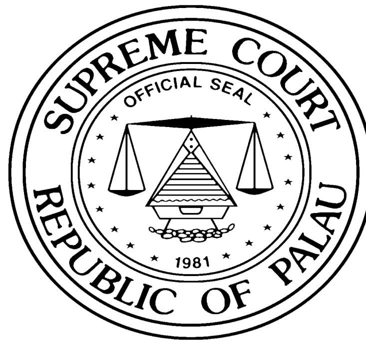

RULES OF CIVIL PROCEDURE

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RULES OF CIVIL PROCEDURE

I. GENERAL PROVISIONS

RULE 1. SCOPE OF RULES

(a) Applicability. These rules govern procedure in all suits of a civil nature whether cognizable as cases at law or in equity in the Republic of Palau Supreme Court Trial Division, National Court, and in the Court of Common Pleas to the extent that they are not inconsistent with the Small Claims Rules promulgated on March 3, 1995, or as subsequently amended, and in admiralty to the extent they are not inconsistent with the Admiralty Rules promulgated on February 16, 1995, or as subsequently amended. These rules shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

(b) Jurisdiction Unaffected. These rules shall not be construed to extend or limit the jurisdiction of the court.

(c) Procedure 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.

(d) Title. These rules may be known and cited as the Rules of Civil Procedure for the Republic of Palau Courts. (ROP R.Civ.P.___).

(e) Effective Date. These rules take effect on February__ , 2008. They govern all civil proceedings thereafter commenced and as far as is just and practicable will be applied to all proceedings then pending.

2002 Amendment: These rules are promulgated pursuant to Art. X, Section 14, Palau Constitution. They follow the format of the Rules of Civil Procedure for the United States District Courts [hereinafter, "the Federal Rules"]. Where appropriate, these Rules adopt language similar to the Federal Rules. The words "and administered" are added to the second sentence of subparagraph (a) for the same reason they were added in the 1993 Amendments to the Federal Rules: "to recognize the affirmative duty of the court to exercise the authority conferred by these rules to ensure that civil litigation is resolved not only fairly but also without undue cost or delay. As officers of the court, attorneys share this responsibility with the judge to whom the case is assigned." Federal Rules Advisory Committee Notes, 1993 Amendments, [hereinafter in these comments, "Advisory Committee Notes"]. Subparagraph (a) has been amended to reflect the fact that these rules do not supersede the Small Claims Rules applicable to small claims actions filed in the Court of Common Pleas. Subparagraphs (b), (c), (d) and (e) are former Rules 82, 82.1, 85, and 86.

2008 Amendment: The words "will be applied" are added to subsection (e) for clarity. No substantive change is intended.

RULE 2. ONE FORM OF ACTION

There shall be one form of action to be known as "civil action."

2002 Comment: No changes have been made from the last version of the Rules of Civil Procedure for the Republic of Palau, implemented in 1983 [hereinafter, "1983 rules"]. The general jurisdiction of the Court extends to "all matters in law and equity." Art. X, Section 5, Palau Constitution. Whether the matter is one of law or equity, it is considered a civil action in these rules.

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

RULE 3. COMMENCEMENT OF ACTION

A civil action is commenced by filing a complaint with the court.

2002 Comment: No changes have been made from the 1983 rules. Rules 8(a) and 10 list the requirements for a complaint and other pleadings.

RULE 4. SUMMONS

(a) Form. The summons shall be signed by the clerk, bear the seal of the court, identify the court and the parties, be directed to the defendant, and state the name and address of the plaintiff's counsel or, if unrepresented, of the plaintiff. It shall also state the time within which the defendant must appear and defend, and notify the defendant that failure to do so will result in a judgment by default against the defendant for the relief demanded in the complaint. The court may allow a summons to be amended.

(b) Issuance. Upon or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is in proper form, the clerk shall sign, seal, and issue it to the plaintiff for service on the defendant. A summons, or a copy of the summons if addressed to multiple defendants, shall be issued for each defendant to be served.

(c) Service with Complaint; by Whom Made.

(1) A summons shall be served together with a copy of the complaint. The plaintiff is responsible for service of a summons and complaint within the time allowed under subdivision (m) and shall furnish the person effecting service with the necessary copies of the summons and complaint.

(2) Service may be effected by any person who is not a party and who is at least 18 years of age. At the request of the plaintiff, however, the court may direct that service be effected by a person specially appointed by the court for that purpose.

(d) [Reserved]

(e) Service upon Individuals Within the Republic of Palau. Unless otherwise provided by law, service upon an individual other than an infant or an incompetent person, may be effected in the Republic of Palau by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process. Reasonable attempts shall be made by the person serving the summons and complaint to assure that the person served understands the meaning of the summons and complaint.

(f) Service Upon Individuals in a Foreign Country. Service upon an individual other than an infant or an incompetent person, may be effected in a place not within the Republic of Palau:

> **(1)** in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or
>
> **(2)** as directed by the foreign authority in response to a letter rogatory or letter of request; or
>
> **(3)** unless prohibited by the law of the foreign country,
>
> > **(A)** by delivery to the individual personally of a copy of the summons and the complaint; or
> >
> > **(B)** in the manner prescribed by any applicable statute of the Republic of Palau; or
>
> **(4)** by other means not prohibited by international agreement as may be directed by the court.

(g) Service Upon Infants and Incompetent Persons. Service upon an infant in the Republic of Palau shall be effected by serving the summons and complaint upon the infant's custodial parent or guardian in any manner otherwise provided for service upon individuals. Service upon an incompetent person in the Republic of Palau shall be effected by serving the summons and complaint upon the guardian of the person, if any, in the manner otherwise provided for service upon individuals or upon the agency to which the incompetent has been committed in the manner prescribed for service in subdivision (h). Service upon an infant or an incompetent person in a place not within the Republic of Palau shall be effected in the manner prescribed by paragraph (1) or (2) of subdivision (f).

(h) Service Upon Corporations and Associations. Unless otherwise provided by law, service upon a domestic or foreign corporation or upon a partnership or other unincorporated association that is subject to suit under a common name shall be effected:

> **(1)** within the Republic of Palau by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or a recognized representative in the manner prescribed for individuals by subdivision (e), 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 defendant; or
>
> **(2)** in a place not within the Republic of Palau in any manner prescribed for individuals by subdivision (f) except personal delivery as provided in paragraph 3(A) thereof.

(i) Service Upon the National Government of the Republic of Palau and Its Agencies, Corporations, or Officers.

> **(1)** Service upon the Republic of Palau and/or any of its officers shall be effected:

(A) by delivering a copy of the summons and of the complaint to the Attorney General personally, or to any Assistant Attorney General; and

(B) in any action naming a person in an official capacity, by delivering a copy of the summons and complaint to the person in the manner otherwise prescribed by subparagraph (e); and

(C) in any action attacking the validity of an order of an officer or agency of the National Government of the Republic of Palau not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to the officer or agency.

(2) In any action naming a corporation or agency of the National Government of the Republic of Palau that may sue or be sued in its own name, service shall not be effected by the means prescribed by subdivision (i)(1) of this rule but by serving the corporation or agency in the manner prescribed in subdivision (h).

(j) Service Upon Foreign, State, or Local Governments.

(1) Service upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected pursuant to the foreign state's law respecting service.

(2) Service upon a State of the Republic of Palau shall be effected by delivering a copy of the summons and of the complaint to the chief executive officer of that state. In any action naming a state officer in an official capacity, service shall be effected in the manner provided by subdivision (e) of this Rule.

(3) Service upon a state government's agencies or authorities that may sue or be sued in their own names, or their officers being sued in their official capacities, shall not be effected by the means prescribed in subdivision (j)(2), but by serving the corporation or agency in the manner prescribed in subdivision (h) and with respect to their officers in the manner prescribed in subdivision (e).

(k) Territorial Limits of Effective Service. All process may be served anywhere within the territorial limits of the Republic of Palau, and when authorized by statute or by these rules, beyond the territorial limits of the Republic of Palau.

(l) Proof of Service. The person effecting service shall make proof thereof to the court. If service is made by a person other than a police officer or court marshal, the person shall make affidavit thereof. Failure to make proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

(m) Time Limit for Service. If a defendant has not appeared in the action and proof of service of the summons and complaint upon that defendant has not been filed within 120 days of the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court

shall extend the time for service for an appropriate period.

(n) Seizure of Property; Service of Summons Not Feasible.

(1) If a statute of the Republic of Palau so provides, the court may assert jurisdiction over property. Notice to claimants of the property shall be sent in the manner provided by the statute or by service of a summons under this rule.

(2) Upon a showing that personal jurisdiction over a defendant cannot be obtained with reasonable efforts by service of summons in any manner authorized by this rule, the court may assert jurisdiction over any of the defendant's assets found within the Republic of Palau by seizing the assets at issue under the circumstances and in the manner provided by law.

2002 Amendment: The changes in this rule largely adopt those changes found in the 1993 Amendments to Rule 4 of the Federal Rules although there are significant differences. The amendments are intended to allow service of process with less expense and delay. Changes in Rule 4(i) and (j) regarding service upon governments are made to insure that proper persons of the defendant government receive notice early in the litigation. Changes in Rule 4(m) harmonize the deadline for filing proof of service with the Federal Rules.

2008 Amendment: The reference to a waiver of service in subsection (l) has been deleted because Palau has not adopted the waiver of service provisions of the Federal Rules.

RULE 4.1 SERVICE OF OTHER PROCESS

Process other than a summons as provided in Rule 4 or a subpoena as provided in Rule 45 shall be served by a national government police officer or marshal, or by a person specially appointed for that purpose, who shall make proof of service as provided in Rule 4(1).

2002 Amendment: The Federal Rules added this rule in 1993. Its substance is added here for the same reason: "To separate those few provisions of the former Rule 4 bearing on matters other than service of a summons to allow greater textual clarity in Rule 4." Advisory Committee Notes, 1993 Amendments.

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a) Service: When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte under these rules or the laws of the Republic of Palau, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) Same: How Made. Whenever under these rules service is required or permitted to be made upon a party represented by counsel, the service shall be made upon the counsel unless service upon the party is ordered by the court. Service upon the counsel or upon a party shall be made by delivering a copy to the counsel or party or by mailing it to the counsel or party at the last known address. If the person or agency maintains a filing box at the office of the Clerk of Courts, service may be made by delivering a copy to that box. Delivery of a copy within this rule means: handing it to the counsel, or to the party; or leaving it at counsel's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person over the age of 18 and of suitable discretion then residing therein. Service by mail is complete upon mailing.

(c) Same: Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counter-claim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. All papers after the complaint that are required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter. Depositions upon oral examination and interrogatories, requests for documents, admissions, and answers and responses thereto are not to be filed except pursuant to these rules, or on order of the court upon motion or of its own accord.

(e) Filing With the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the Clerk of Courts except that the judge may permit the papers to be filed with the judge personally, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the Clerk of Courts. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or general practice.

(f) Filing by Facsimile Transmission. The Clerk of Courts will accept for filing documents copied by telephone facsimile machine, either presented to the Clerk of Courts for filing or transmitted directly to the Clerk of Courts' office by telephone facsimile machine; provided, however, that the party filing such documents also transmits at the same time a cover letter from counsel of record stating that on the day the transmission was sent, the original documents were mailed to the Clerk of Courts by first-class or express mail or sent by courier. Counsel must also represent that the other parties to the action were served pursuant to Rule 5 of these rules. Representations made pursuant to this rule are subject to the provisions of Rule 11 of these rules.

Upon receipt of the original documents, the copies sent by facsimile transmission shall be discarded by the Clerk of Courts, and replaced by the original documents. Such documents will be deemed filed as of the date of the receipt of the facsimile transmission. The risk of non-delivery of documents sent by facsimile transmission because of power outages, telecommunications interruptions, and the like shall be on the party attempting the transmission.

(g) Electronic Service. Upon the agreement of the parties, any party may serve papers upon another party by electronic means. Before any papers may be served electronically, the party or counsel who consents to electronic service must file a signed written statement with the court stating their agreement to receive service electronically in that case. No papers may be filed electronically with the court.

2002 Amendment: The second paragraph to subparagraph (a) is new. It is adopted from the Federal Rules. Subparagraph (b) has an additional sentence added that conforms to the current practice of service of papers by delivering them to counsel's filing box. Subparagraph (d) is changed to reflect the current requirement in the Rules of Filing Discovery that discovery generally need not be filed and, further, that discovery materials may not be filed absent an order of the court except pursuant to the terms of Rules 26 and 30.

2008 Amendment: Because only motions so authorized by the rules or laws of the Republic may be heard ex parte, this language has been added to clarify subsection (a). The provision in subsection (b) regarding service via the filing box in the Clerk's office has been moved into the body of the text. The last sentence of subsection 5(e) was added to reflect a change made to the Federal Rules in 1991. As noted by the Advisory Committee at the time, the rejection of papers offered for filing "is not a suitable role for the office of the clerk, and the practice exposes litigants to the hazards of time bars; for these reasons, such [rejection is] proscribed by this revision. The enforcement of these rules . . . is a role for a judicial officer. A clerk may of course advise a party or counsel that a particular instrument is not in proper form, and may be directed to so inform the court." Subsection 5(f) was formerly ROP R.Civ.P. 84. Subsection (g) has been added to allow parties to electronically serve documents on one another. This rule is similar to Rule 5(b)(2)(D) of the Federal Rules added in the 2001 Amendments. No party may be served electronically unless the party has consented in writing to such service. At this time, the Supreme Court does not accept electronic filing or service.

RULE 5.1. CONSTITUTIONAL CHALLENGE TO LAW

(a) Notice. A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a national or state law must promptly:

(1) file a notice of constitutional question stating the question and identifying the paper that raises it if:

(A) a national law is questioned and neither the Republic of Palau nor any of its agencies, officers, or employees is a party in an official capacity, or

(B) a state law is questioned and neither the state nor any of its agencies, officers, or employees is a party in an official capacity; and

(2) serve the notice and paper on the Attorney General of the Republic of Palau if a national or state law is challenged – and on the state Governor if a state law is challenged – as set forth in Rule 4.

(b) Intervention. Unless the court sets a later time, the Republic of Palau or state may intervene within thirty days after the notice of constitutional question is filed. Before the time to intervene expires, the court may reject the constitutional challenge, but may not enter a final judgment holding the law unconstitutional.

(c) Forfeiture. A party's failure to file and serve the notice does not forfeit a constitutional claim or defense that is otherwise timely asserted.

2008 Amendment: Rule 5.1 was added to the Federal Rules in 2006 and has been adopted with changes to make it conform to the governmental structures of the Republic of Palau. The word "law" has been used in place of "statute" to make clear that notice is required if a party is challenging the constitutionality of any statute, policy, or regulation that has the force of law. The court has an independent notice requirement under Rule 24(c).

RULE 6. TIME

(a) Computation. In computing any period of time prescribed or allowed by these rules, by order of the 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 so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" means any day appointed as a holiday by the President or the Olbiil Era Kelulau of the Republic of Palau.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of the court an act is required or allowed to be done at or within a specified time, the court may at any time in its discretion (1) with or without motion or notice, for good cause shown order the period enlarged if request therefore 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 where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them. No successive motions for enlargement will be granted absent the showing of extraordinary circumstances.

(c) Vacant.

(d) Vacant.

(e) Additional Time After Service by Mail. Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon that party and the paper is served by mail, three (3) days shall be added to the prescribed period.

2002 Amendment: The time frame provided by Rule 6(a) has been changed to harmonize it with the Federal Rules. The time periods that were included in the former Rule 6(d) have been deleted in favor of those now incorporated into Rule 7.

2008 Amendment: Subsection (b) has been changed to require good cause for an extension of time requested before the expiration of the period originally prescribed and to require extraordinary circumstances for any additional extensions of time. The language of subsection (e) has been changed to mirror the language used in ROP R. App. P. 26(b) and to remove an inconsistency with ROP R.Civ.P. 5(c) which states that "Service by mail is complete upon mailing." The 2004 amendments to the Federal Rule 6(e), which were designed to "remove any doubt as to the method for extending the time to respond," have not been adopted.

III. PLEADINGS AND MOTIONS

RULE 7. PLEADINGS ALLOWED; FORM OF MOTIONS

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

(b) Motions and Other Papers. An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Except as otherwise stated in these rules, the failure of a party to observe the requirements of the rules may be deemed an abandonment in whole or in part of that party's position on the pending motion.

(1) Supporting Briefs. Every motion raising a substantial issue of law shall be supported by a brief which shall be filed simultaneously with the motion. The brief shall contain a concise statement of the reasons for the motion and a citation of the authorities relied upon.

Briefs are not required when the motion raises no substantial issue of law and relief is within the court's discretion. Examples include, but are not limited to, motions to which all of the parties are shown to agree; motions for an extension of time; motions for default judgment; motions for voluntary or stipulated dismissal; and motions for leave to proceed *in forma pauperis*.

Motions for continuances or extensions of time shall be accompanied by a recitation that the moving party has consulted with the opposing party or its counsel, or a statement of the efforts that have been made to do so, and whether the opposing party has indicated whether it intends to oppose the motion.

(2) Evidence. If a motion requires consideration of matters not established by the pleadings, the moving party, at the time of filing the motion, shall also file such evidentiary materials, including affidavits, as are being relied upon. Documents must be identified and authenticated by affidavit. Each affidavit must be made on personal knowledge, must set forth such facts as would be admissible in evidence, must show affirmatively that the affiant is competent to testify to the matters stated therein, and must identify the motion in connection with which the affidavit is filed. If the motion requires consideration of discovery materials, the motion shall refer to the specific pages and lines being relied upon.

(3) Proposed Orders. At the time of filing a motion for which no supporting brief is required, the moving party shall submit to the judge a proposed order granting the motion and setting forth the requested relief. Proposed orders are to be separately captioned, and on a separate page that is not at the end of or part of the motion.

(4) Routine and Emergency Motions. Routine motions and motions requesting relief which should be granted or denied in less than 14 days may, at the discretion of the court, be ruled on by the court at any time after their filing. Examples of routine motions include motions for an extension of time and motions for leave to proceed *in forma pauperis*. Emergency motions should be so designated in the title of the motion and shall be accompanied by a showing of why the motion could not have been filed in a more timely manner. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.

(5) Motions for Reconsideration. Motions for reconsideration shall be plainly labeled as such and shall be filed within ten judicial days following the order to which it relates. The motion shall point out with specificity the matters which the movant believes were overlooked or misapprehended by the court, any new matters being brought to the court's attention for the first time, and the particular modifications being sought in the court's prior ruling. Motions for reconsideration are disfavored and the court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to the court's attention earlier in the exercise of reasonable diligence.

(6) Originals. Unless otherwise ordered by the court, parties must file an original of all documents filed with the court pursuant to these rules. The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(c) Opposing Briefs and Reply Briefs.

(1) Oppositions. Any brief or response opposing a motion shall contain a concise statement of the reasons for opposing the motion and a citation of authorities relied upon. Any opposition to a motion, including briefing or evidentiary material being relied on in opposition to a motion, including a motion for summary judgment, must be filed no later than 14 days after service of the motion. Failure to timely file an opposing brief or opposition authorizes the court, in its discretion, to deem the matter confessed and to enter the requested relief.

If a party files a motion that requests rehearing or reconsideration of an interlocutory ruling of the court, no opposition need be filed unless requested by the court, but a motion for rehearing or reconsideration will ordinarily not be granted in the absence of such a request.

(2) Evidence. If the opposition to a motion requires consideration of matters not established by the pleadings, the moving party at the time of filing the opposition shall also file such evidentiary materials, including affidavits, as are being relied upon. Any affidavits or evidentiary material filed in opposition to a motion shall conform to the requirements of subdivision (c)(2) of this rule.

(3) Replies. Any reply brief or rebuttal evidentiary material being relied on in

support of a motion, or notice that no such reply or rebuttal material shall be submitted, shall be filed no later than seven (7) days after service of the last opposing brief or opposition. Reply briefs shall only address arguments raised in opposition to the motion and shall not repeat previously presented arguments or raise new arguments. Rebuttal evidentiary materials shall be filed only to dispute evidentiary material(s) filed in opposition to the motion.

(d) Motions Supported by Oral Argument or Witness Testimony.

(1) Oral Argument. Oral argument on any motion shall be held only upon order of the court. Oral argument may be requested by any party by separate statement filed at the time of filing of the motion or any opposing brief or opposition, or no later than seven (7) days after service of the opposing party's opposition to the motion, or shall be included in the title of the motion or opposing brief or opposition.

(2) Witness Testimony. Oral testimony in support of or in opposition to any motion shall be permitted only upon order of the court. The opportunity to present witness testimony may be requested by any party by separate statement filed at the time of filing of the motion or any opposing brief or opposition, or no later than seven (7) days after service of the opposing party's opposition to the motion, or shall be included in the title of the motion or opposing brief or opposition.

(e) Submission of Motions. Unless oral argument or witness testimony is ordered, a motion shall be deemed submitted and shall be decided by the court on the briefs and evidence filed, if any, at the expiration of the time limits specified in these rules. Briefs and evidence filed not in conformity with these rules may, in the discretion of the judge, be disregarded.

(f) Stipulations and Agreed Motions. Stipulations and agreed motions shall be binding on the court only if adopted by the court through its endorsement of the proposed order. If a stipulation or agreed motion purports to alter a prior court order, including scheduling orders, the parties shall clearly state the reasons justifying the proposed change.

2002 Amendment: Rules 7(b) and (c) now incorporate former Rules 2, 4 and 5 of the former Motion Practice Rules. One substantive amendment is that the requirement of submitting a proposed order when the motion is filed is limited to motions for which no supporting brief is required. In such cases the proposed order is not to be placed at the bottom of the motion, but on a separate document. Another substantive amendment is that the court now has the discretion to consider a failure to file an opposition or opposing brief as a confession of the motion. The last paragraph of Rule 7(b)(1)(A) is new and requires a party moving for a continuance or an extension of time to inform the court of its efforts to contact the opposing party concerning the motion, and whether the motion is likely to be opposed. This information will enable the court considering the motion to make an informed decision whether to grant or deny the motion without waiting for a response, or to delay ruling until receiving the opposition of the non-moving party. The second paragraph of Rule 7(c)(1) is new and is designed to limit the burden placed on parties by the filing of ill-considered motions for rehearing or reconsideration. Rules 7(d) and 7(e) contain Rules 6-8 of the former Motion Practice Rules. Other language changes are technical and do not effect further substantive changes.

2008 Amendment: The content of Rule 7(b) has been reorganized and renumbered. The last sentences of Rule 7(b)(1) and Rule 7(b)(1)(A) have been deleted as duplicative. Subsection (b)(5) is new and sets forth the standards and procedures that govern motions for reconsideration (responses to such motions are discussed in subsection (c)(1)). The headings of subsection (c) have been amended to reflect the content of the subsections. Subsection (d) has been amended to make it clear that oral argument and the opportunity to present

witnesses can be requested on the face of the motion or opposition or by separate statement submitted after the opposition is filed. Subsection (f) has been added to make clear that the parties do not have the power to modify a court order through stipulation or agreed motion: such modification requires the endorsement of the presiding judicial officer.

RULE 8. GENERAL RULES OF PLEADINGS

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain:

> **(1)** a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it;
>
> **(2)** a short and plain statement of the claim showing that the pleader is entitled to relief; and
>
> **(3)** a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

(b) Defenses: Form of Denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to Be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal, equitable, or maritime grounds. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

2002 Amendment: The amendments are technical. No substantive change is intended.

RULE 9. PLEADING SPECIAL MATTERS

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other conditions of mind of a person may be averred generally.

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with the law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.

(h) Admiralty and Maritime Claims. A pleading or count setting forth a claim for relief within the admiralty and maritime jurisdiction of the court that is also within the jurisdiction of the court on some other ground may contain a statement identifying the claim as an admiralty or maritime claim for the purpose of Rule 14(c). If the claim is cognizable only in admiralty, it is an admiralty or maritime claim for those purposes whether so identified or not. The amendment of a pleading to add or withdraw an identifying statement is governed by the principles of Rule 15.

(i) Expedited Filing For Election of Public Officials; Qualifications or Office of Elected Officials. Any pleading or count setting forth a claim for relief in which the election of a public official or the qualifications or office of an elected official is disputed shall proceed in an expedited manner. Responses to the complaint, cross-claim, or counterclaim, if any, shall be served within ten (10) days after being served with the pleading to which a response is required. Motions for judgment on the pleadings under Rule 12 or motions for summary judgment under Rule 56 must be filed within ten (10) days after service of the answer. Opposition to the dispositive motion must be filed within ten (10) days of service of the motion. Replies, if any, must be filed within five (5) days of service of the opposition. The motion for dispositive relief or, if no motion is filed, the trial of the matter shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character and applications for temporary restraining orders under Rule 65. Discovery and enlargements of time will be permitted only upon a showing of extraordinary circumstances.

2008 Amendment: The 2006 amendment to Federal Rule 9(h) refers to a United States statute and is not applicable. Subsection (i) has been added to expedite cases involving the election of a public official or the qualification or office of an elected official. It is in the interests of justice to resolve election and qualification disputes expeditiously.

RULE 10. FORM OF PLEADINGS, MOTIONS AND OTHER PAPERS

(a) Caption, Form; Attached Papers.

(1) All pleadings, motions and other papers filed with the Clerk of Courts or otherwise submitted to the court, except exhibits, shall contain the proper case number and a caption on the first page setting forth the name of the court and the title of the action, and an accurate designation of what the document is, and except where it is a complaint, the name of the party on whose behalf it is submitted. In the complaint, the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties. Ancillary papers shall be attached at the end of the document to which they relate.

(2) The name, current address, and telephone number of any attorney of record or *pro se* litigant filing a paper shall be legibly signed and typed on it. The address of a party shall appear on the first paper filed on behalf of that party or by the party *pro se.* A post-office box number will be accepted as a mailing address, but a specific residence location description must also be provided for a *pro se* litigant.

(3) Exhibits other than documentary evidence in a different format shall conform to this rule.

(4) Counsel shall notify the court in writing of related cases pending in any court, stating the names and addresses of all counsel, the caption of each such case, and the jurisdiction where each is pending. "Related" cases are those involving common questions of law or fact.

(5) The term "papers" includes pleadings, motions, briefs, or other filings made pursuant to the rules of civil procedure.

(b) Paragraph; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in a paper filed under the same cause number. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

(d) General Rule Regarding Paper Size, Format and Spacing. Only documents which are clear and legible and are on permanent plain white 82 x 11 inch paper shall be filed by the Clerk of Courts. Except in *pro se* cases or for good cause shown, all pleadings shall be typed double-spaced or printed (except that footnotes and quotations of more than five lines may be single-spaced), on the face side of the page only, using black ink and not less than elite type (12 characters to the linear inch) and using margins of 12 inches at the top, and 1 inch at the left, right and bottom. A left justified margin shall be used for all typed material.

2002 Amendment: Rules 10(a) has been expanded and 10(d) added to regularize the format of papers to be filed with the court. Rule 10(a) also has a new requirement that counsel notify the court in writing of all related cases. No other changes have been made from the 1983 Rules.

2008 Amendment: Subsection (a)(1) has been amended to conform to the practice of placing the designation of what the document is under the case number, rather than under the title. Subsection (c) has been amended to preclude the practice of referring to briefs and exhibits submitted in another matter without providing copies for the court's review. Single-spaced footnotes and quotations are authorized under the revised subsection (d).

RULE 11. SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS; REPRESENTATIONS TO COURT; SANCTIONS

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney or trial counselor of record in the individual name of the attorney or trial counselor, or, if the party is not represented by counsel, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney, trial counselor, or party.

(b) Representation to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney, trial counselor, or unrepresented party is certifying that, to the best of that person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances:

> **(1)** the document is not being presented for any improper purpose, such as to harass or to cause any unnecessary delay or needless increase to the cost of the litigation;
>
> **(2)** the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> **(3)** the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> **(4)** the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, trial counselors, law firms or parties that have violated subdivision (b) or are responsible for the violation.

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions and requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expense and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, trial counselor, law firm, or party to show cause why it has not violated that subdivision.

(2) Nature of Sanctions; Limitations. A sanction imposed for the violation of this rule shall be limited to that which is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a non-monetary nature, an order to pay a penalty to the court, or if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys or trial counselors are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability to Discovery. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

2002 Amendment: Rule 11 is amended to track the current version of Rule 11 of the Federal Rules, as amended in 1993.

RULE 12. DEFENSES AND OBJECTIONS - WHEN AND HOW PRESENTED - BY PLEADING OR MOTION - MOTION FOR JUDGMENT ON THE PLEADINGS

(a) When Presented. A defendant shall serve an answer within 20 days after being served with the summons and complaint, except when service is made under Rule 4(f) or a different time is prescribed in the order of the court, Rule 9(i), or by a statute of the Republic of Palau. A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after being served. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer, or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court:

(1) if the court denies the motion or postpones its disposition until the trial on the

merits, the responsive pleading shall be served within 10 days after notice of the court's action;

(2) if the court grants a motion for a more definite statement the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

(1) lack of jurisdiction over the subject matter;

(2) lack of jurisdiction over the person;

(3) improper venue;

(4) insufficiency of process;

(5) insufficiency of service of process;

(6) failure to state a claim upon which relief can be granted;

(7) failure to join a party under Rule 19.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to that party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived

(A) if omitted from a motion in the circumstances described in subdivision (g), or

(B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

2002 Amendment: The amendments are technical. No substantive change is intended. The 1993 Amendments to Federal Rule 12 were not incorporated herein, because these Rules did not incorporate a formal procedure to waive service of process.

2008 Amendment: Subsection (a) has been amended to acknowledge the shorter service periods established in the new Rule 9(i).

RULE 13. COUNTERCLAIM AND CROSS-CLAIM

(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if:

> **(1)** at the time the action was commenced the claim was the subject of another pending action; or
>
> **(2)** the opposing party brought suit upon the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this rule.

(b) Permissive Counterclaims. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim Against the Republic of Palau. These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the Republic of Palau or an officer or agency thereof.

(e) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after serving the pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(f) Omitted Counterclaim. When a pleader fails to state a counterclaim through oversight, inadvertence, or excusable neglect, or when justice otherwise requires, the pleader may by leave of the court state the counterclaim by amendment.

(g) Cross-Claim Against Co-Party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) Joinder of Additional Parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

(i) Separate Trials; Separate Judgments. If the court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with

the terms of Rule 54(b) when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

2002 Amendment: The amendments are technical. No substantive change is intended.

RULE 14. THIRD-PARTY PRACTICE

(a) When Defendant May Bring in Third Party. At any time after commencement of the action, a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to defendant/third-party plaintiff for all or part of the plaintiff's claims against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than ten (10) days after serving the original answer. Otherwise, the third-party plaintiff must obtain leave of the court on motion and upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claims as provided by Rule 12, and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided by Rule 13. A third-party defendant may also assert any claims against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. A plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert party defenses as provided by Rule 12 and any counterclaims and cross-claims as provided by Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant. The third-party complaint, if within the court's admiralty or maritime jurisdiction, may be in rem against a vessel, cargo, or other property subject to admiralty or maritime process in rem, in which case references in this rule to the summons include the warrant of arrest, and references to the third-party plaintiff or defendant include, where appropriate, the claimant of the property arrested.

(b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third-party to be brought in under circumstances which under this rule would entitle a defendant to do so.

(c) Admiralty and Maritime Claims. When a plaintiff asserts an admiralty or maritime claim within the meaning of Rule 9(h), the defendant or claimant, as a third-party plaintiff, may bring in a third-party defendant who may be wholly or partly liable, either to the plaintiff or the third-party plaintiff, by way of remedy over, contribution to, or otherwise on account of the same transaction, occurrence, or series of transactions or occurrences. In such a case the third-party plaintiff may also demand judgment against the third-party defendant in favor of the plaintiff, in which event the third-party defendant shall make any defenses to the claim of the plaintiff as well as to that of the third-party plaintiff in the manner provided in Rule 12 and the action shall proceed as if the plaintiff had commenced it against the third-party defendant as well as the third-party plaintiff.

2002 Amendment: The amendments are technical. No substantive change is intended.

RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS

(a) Amendments. A party may amend the party pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, at any time within 20 days after it is served. Otherwise a party may amend the party pleading only by leave of the court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to the amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendment to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised by the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of theses issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action, the party to be brought in by amendment:

> **(1)** has received such notice of the institution of the action that the party will not be prejudiced in maintaining any defense on the merits; and
>
> **(2)** knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party being added.

The delivery or mailing of process to the Attorney General of the Republic of Palau or an agency or officer who would have been a proper defendant if named, satisfies the requirements of clauses (1) and (2) hereof with respect to the National Government of the Republic of Palau or any agency or officer thereof to be brought into the action as a defendant.

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading

setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

2002 Amendment: The amendments are technical. No substantive change is intended. The 1991 Amendments to the Federal Rules, which were in response to *Schiavone v. Fortune*, 106 S.Ct. 2379 (1986), are not needed here because this rule is not susceptible to the interpretation reached by the United States Supreme Court in *Schiavone*.

RULE 16. PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

(a) Pretrial Conferences; Objectives. In any action, the court may at its discretion direct the attorneys or trial counselors for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as:

(1) expediting the disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation; and

(5) facilitating the settlement of the case.

(b) Scheduling and Planning. The judge or justice shall, after consulting with the attorneys or trial counselors for the parties and any unrepresented parties, by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time:

(1) to join other parties and to amend the pleadings;

(2) to file and hear motions; and

(3) to complete discovery.

The scheduling order may include:

(4) the date or dates for conferences before trial, a final pretrial conference, and trial; and

(5) any other matters appropriate in the circumstances of the case.

A schedule shall not be modified except by leave of the judge or justice upon a showing of good cause.

(c) Status Reports. On the day before the date set for the first status conference, or on such

date as set by the court, each party shall file a status report shall set forth the party's proposed action with respect to:

(1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admissions of facts and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;

(4) the avoidance of unnecessary proof and of cumulative evidence;

(5) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

(6) the advisability of referring matters to a master;

(7) the possibility of settlement or the use of extra-judicial procedures to resolve the dispute;

(8) the form and substance of the pretrial order;

(9) the disposition of pending motions;

(10) the need for adopting special procedures for managing potentially difficult legal questions, or unusual proof problems; and

(11) such other matters as may aid in the disposition of the action.

The parties may submit a joint status report.

At least one of the attorneys or trial counselors for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants reasonably anticipate may be discussed.

(d) Final Pretrial Conference. Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys or trial counselors who will conduct the trial for each of the parties and by any unrepresented parties.

(e) Pretrial Orders. After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.

(f) Sanctions. If a party or party's attorney or trial counselor fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, of if a party or party's attorney or trial counselor is substantially unprepared to participate in the conference, or if a party or party's attorney or trial counselor fails to participate in good faith, or if a party's representative attends any pretrial conference without the authority required to enter into stipulations or make admissions, the court, upon motion or its own initiative, may make such orders with regard thereto as are just, including, among others, any of the orders provided for in Rule 37(b)(2)(B), (C), and (D). In lieu of, or in addition to any other sanction, the court shall require the party or the attorney or trial counselor representing the party, or both, to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's or trial counselor's fees, unless the judge or justice finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

2002 Amendment: This Rule retains the substance of the Rule as it was originally promulgated and does not adopt the 1993 amendments to the Federal Rules, because the experience under the Rule as worded has been generally satisfactory in the courts of Palau. The amendment adds that pretrial statements are to be filed before the pretrial conference, and that the parties may submit joint pretrial statements.

2008 Amendment: Subsection (c) has been revised to clarify that the parties must submit a status report addressing all of the listed topics prior to the first status conference or as otherwise ordered by the court.

IV. PARTIES

RULE 17. PARTIES PLAINTIFF AND DEFENDANT: CAPACITY

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in the person's own name without joining the party for whose benefit the action is brought; and when a statute of the Republic of Palau so provides, an action for the use or benefit of another shall be brought in the name of the Republic of Palau. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action has been commenced in the name of the real party in interest.

(b) Vacant.

(c) Minors or Incompetent Persons. Whenever a minor or an incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the minor or incompetent person. A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian *ad litem*. The court shall appoint a guardian *ad litem* for a minor or an incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the minor or incompetent person.

2002 Amendment: The amendments are technical. No substantive change is intended.

RULE 18. JOINDER OF CLAIMS AND REMEDIES

(a) Joinder of Claims. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal, equitable, or maritime, as the party has against an opposing party.

(b) Joinder of Remedies; Fraudulent Conveyances. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to that plaintiff, without first having obtained a judgment establishing the claim for money.

2002 Amendment: The amendments are technical. No substantive change is intended.

RULE 19. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

(a) Persons to Be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if:

(1) in the person's absence complete relief cannot be accorded among those already parties; or

(2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may:

(A) as a practical matter impair or impede the person's ability to protect that interest; or

(B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as

indispensable. The factors to be considered by the court include:

(1) to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties;

(2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or by other measures, the prejudice can be lessened or avoided;

(3) whether a judgment rendered in the person's absence will be adequate; and

(4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of Class Actions. This rule is subject to the provisions of Rule 23.

2002 Amendment: The amendments are technical. No substantive change is intended.

RULE 20. PERMISSIVE JOINDER OF PARTIES

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or, in the alternative, in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any question of law or fact common to all these persons will arise in the action. All persons (and any vessel, cargo or other property subject to admiralty process in rem) may be joined in one action as defendants if there is asserted against them jointly, severally, or, in the alternative, any right to relief in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

2002 Amendment: The amendments are technical. No substantive change is intended.

RULE 21. MISJOINDER AND NON-JOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and

proceeded with separately.

2002 Comment: No change has been made from the 1983 rules.

RULE 22. INTERPLEADER

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

2002 Amendment: The amendments are technical. No substantive change is intended.

RULE 23. CLASS ACTIONS.

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of:

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or would substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act upon grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;

(D) the difficulties likely to be encountered in the management of a class action.

(c) Determining by Order Whether to Certify a Class Action; Appointing Class Counsel; Notice and Membership in Class; Judgment; Multiple Classes and Subclasses.

(1) **(A)** When a person sues or is sued as a representative of a class, the court must, at an early practicable time, determine by order whether to certify the action as a class action.

(B) An order certifying a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g).

(C) An order under Rule 23(c)(1) may be altered or amended before final judgment.

(2) **(A)** For any class certified under Rule 23(b)(1) or (2), the court may direct appropriate notice to the class.

(B) For any class certified under Rule 23(b)(3), the court must direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must concisely and clearly state in plain, easily understood language:

(i) the nature of the action,

(ii) the definition of the class certified,

(iii) the class claims, issues, or defenses,

(iv) that a class member may enter an appearance through counsel if the member so desires,

(v) that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded, and

(vi) the binding effect of a class judgement on class members under Rule 23(c)(3).

(3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate

(A) an action may be brought or maintained as a class action with respect to particular issues, or

(B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall be construed and applied accordingly.

(d) Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the court may make appropriate orders:

(1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses or otherwise come into the action;

(3) imposing conditions on the representative parties or on intervenors;

(4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly;

(5) dealing with similar procedural matters.

The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

(e) Settlement, Voluntary Dismissal, or Compromise.

(1) **(A)** The Court must approve any settlement, voluntary dismissal, or compromise of the claims, issues, or defenses of a certified class.

(B) The court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.

(C) The court may approve a settlement, voluntary dismissal, or compromise that would bind class members only after a hearing and on finding that the settlement, voluntary dismissal, or compromise is fair, reasonable, and adequate.

(2) The parties seeking approval of a settlement, voluntary dismissal, or compromise under Rule 23(e)(1) must file a statement identifying any agreement made in connection with the proposed settlement, voluntary dismissal, or compromise.

(3) In an action previously certified as a class action under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(4) **(A)** Any class member may object to a proposed settlement, voluntary dismissal, or compromise that requires court approval under Rule 23(e)(1)(A).

(B) An objection made under Rule 23(e)(4)(A) may be withdrawn only with the court's approval.

(f) Class Counsel.

(1) Appointing Class Counsel

(A) Unless a statute provides otherwise, a court that certifies a class must appoint class counsel.

(B) An attorney appointed to serve as class counsel must fairly and adequately represent the interests of the class.

(C) In appointing class counsel, the court:

(i) must consider:

• the work counsel has done in identifying or investigating potential claims in the action,

• counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action,
• counsel's knowledge of the applicable law, and
• the resources counsel will commit to representing the class;

(ii) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(iii) may direct potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney fees and nontaxable costs; and

(iv) may make further orders in connection with the appointment.

(2) Appointment Procedure

(A) The court may designate interim counsel to act on behalf of the putative class before determining whether to certify the action as a class action.

(B) When there is one applicant for appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1)(B) and (C). If more than one adequate applicant seeks appointment as class counsel, the court must appoint the applicant best able to represent the interests of the class.

(C) The order appointing class counsel may include provisions about the award of attorney fees or nontaxable costs under Rule 23(h).

(g) Attorney Fees Award. In an action certified as a class action, the court may award reasonable attorney fees and non-taxable costs authorized by law or by agreement of the parties as follows:

(1) Motion for Award of Attorney Fees. A claim for an award of attorney fees and nontaxable costs must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision, at a time set by the court. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) Objections to Motion. A class member, or a party from whom payment is sought, may object to the motion.

(3) Hearing and Findings. The court may hold a hearing and must find the facts and state its conclusions of law on the motion under Rule 52(a).

2002 Amendment: The amendments are technical. No substantive change is intended.

2008 Amendment: Federal Rule 23 was substantially revised in 2003. Most of the additional provisions correct procedural silences or defects in the earlier rule and have been adopted here with only minor changes to make them conform to the judicial structure of the Republic of Palau.

RULE 23.1 DERIVATIVE ACTIONS BY SHAREHOLDERS

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege:

(1) that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the share or membership thereafter devolved on the plaintiff by operation of law; and

(2) that the action is not a collusive one to confer jurisdiction on a court of the Republic of Palau which it would not otherwise have. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action the Plaintiff desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for the Plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

2002 Amendment: The amendments are technical. No substantive change is intended.

RULE 23.2 ACTIONS RELATING TO UNINCORPORATED ASSOCIATIONS

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e).

2002 Comment: No change has been made from the 1983 rule.

RULE 24. INTERVENTION

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action:

(1) when a statute of the Republic of Palau confers an unconditional right to intervene; or

(2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action:

(1) when a statute of the Republic of Palau confers a conditional right to intervene; or

(2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a national or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the Republic of Palau gives a right to intervene. When the constitutionality of an act of the Olbiil Era Kelulau affecting the public interest is drawn in question in any action to which the Republic of Palau or an officer, agency or employee thereof is not a party, the court shall notify the Attorney General of the Republic of Palau.

2002 Amendment: The amendments are technical. No substantive change is intended.

RULE 25. SUBSTITUTION OF PARTIES

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties in the manner provided by Rule 5 and upon persons not parties in the manner provided by Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the

surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. If a party becomes incompetent, the court, upon motion served as provided by subdivision (a) of this rule, may allow the action to be continued by or against the party's representative.

(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided by subdivision (a) of this rule.

(d) Public Officers: Death or Separation from Office.

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

(2) A public officer who sues or is sued in an official capacity, may be described as a party by the public officer's official title rather than by name; but the court may require the public officer's name to be added.

2002 Amendment: The amendments are technical. No substantive change is intended.

V. DEPOSITIONS AND DISCOVERY

RULE 26. GENERAL PROVISION GOVERNING DISCOVERY

(a) Discovery Methods and Filing Requirements. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(1) Interrogatories and requests under rules 33, 34 and 36 and the responses shall be served upon other counsel or parties, but shall not be filed with the Clerk of Courts. Depositions shall be filed pursuant to the terms of rule 30(f).

(2) The demanding party's counsel, upon serving interrogatories or requests shall file a certificate of service. The responding party's counsel shall also file a certificate of service upon serving a response.

(3) If used in support or in opposition to a motion or if relief is sought under rules

26(c) or 37(a), copies of the portions of the interrogatories, requests, answers or responses relied on in support or opposition to a motion or which are in dispute shall be filed with the Clerk of Courts contemporaneous with the motion. If interrogatories, requests, answers or responses are to be used at trial, the portions to be used shall be filed at the outset of the trial insofar as their use reasonably can be anticipated.

(b) Required Disclosures; Methods to Discover Additional Matter. When the court, in its discretion, so orders, a party shall, without awaiting a discovery request, provide to other parties:

(1) Initial Disclosures.

(A) the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information;

(B) a copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed facts alleged with particularity in the pleadings;

(C) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(D) for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

A party shall make its initial disclosures based on information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) Disclosure of Expert Testimony.

(A) A party must, without awaiting a discovery request or order of the court, disclose to other parties the identity of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Palau Rules of Evidence.

(B) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the

party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis of the reasons therefor; the data of other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the witness, including a list of all publications authored by the witness within the preceding 10 years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(C) These disclosures shall be made at the times and in the sequence directed by the court. In the absence of other directions from the court or stipulation by the parties, the disclosures shall be made at least 90 days before the trial date or the date the case is to be ready for trial or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (b)(2)(B), within 30 days after the disclosure made by the other party. The parties shall supplement these disclosures when required under subdivision (f)(1).

(3) Pretrial Disclosures. In addition to the disclosures required in the preceding paragraphs, a party shall provide to other parties the following information regarding the evidence that it may present at trial other than solely for impeachment purposes:

(A) the name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises;

(B) the designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(C) an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Unless otherwise directed by the court, these disclosures shall be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve and file a list disclosing (i) any objections to the use under Rule 32(a) of a deposition designated by another party under subparagraph (B) and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under subparagraph (C). Objections not so disclosed, other than objections under Rules 402 and 403 of the Palau Rules of Evidence, shall be deemed waived unless excused by the court for good cause shown.

(4) Form of Disclosures; Filing. Unless otherwise directed by order or by other provisions of these rules, all disclosures under paragraphs (b)(1) through (3) shall be made in writing, signed, served, and promptly filed with the court.

(c) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Limitations. The frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that:

(A) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(B) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(C) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (d).

(3) Insurance Agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purpose of this paragraph, an application for insurance shall be treated as part of an insurance agreement.

(4) Trial Preparation: Materials. Subject to the provisions of subdivision (c)(5) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (c)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or for that other party's representative (including the party's attorney, trial counselor, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made; the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney, trial counselor, or other representative of a party concerning

the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is

(A) a written statement signed or otherwise adopted or approved by the person making it; or

(B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(5) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provision of subdivision (c)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (c)(5)(C) of this rule, concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result:

(i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery pursuant to court order under subdivisions (c)(5)(A) and (c)(5)(B) of this rule; and

(ii) with respect to discovery obtained pursuant to court order under subdivision (c)(5)(A) of this rule the court may require, and with

respect to discovery obtained under subdivision (c)(5)(B) of this rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinion from the expert.

(d) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the discovery not be had;

(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the court;

(6) that a deposition after being sealed be opened only by order of the court;

(7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Sequence and Timing of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(f) Supplementation of Responses. A party who has been required to make a disclosure under Rule 26(b) or who has responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired if ordered by the court or in the following circumstances:

(1) A party is under a duty to supplement at appropriate intervals its disclosures

under subdivision (b) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to the testimony of an expert from whom a report is required under subdivision (b)(2)(B) the duty extends both to information contained in the report and to information provided through a deposition of the expert, and any additional or other changes to this information shall be disclosed by the time the party's disclosures under Rule 26(b)(3) are due.

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(3) A further duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(g) Discovery Conference. At any time after commencement of an action the court may direct the attorney or trial counselor for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney or trial counselor for any party if the motion includes:

(1) a statement of the issues as they then appear;

(2) a proposed plan and schedule of discovery;

(3) any limitations proposed to be placed on discovery;

(4) any other proposed orders with respect to discovery; and

(5) a statement showing that the attorney or trial counselor making the motion has made a reasonable effort to reach agreement with opposing attorneys or trial counselors on the matters set forth in the motion. Each party and attorney or trial counselor are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney or trial counselor for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery, establishing a plan and schedule for discovery; setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as necessary for the proper management of discovery in the action. Such order may be altered or amended whenever justice so requires.

Subject to the right of a party who moves for a discovery conference to the prompt convening of the conference, the court may combine this discovery conference with the pre-

trial conference authorized by Rule 16.

(h) Signing of Discovery Requests, Responses, and Objections. Every request for discovery or response or objection thereto made by a party represented by an attorney or trial counselor shall be signed by at least one attorney or trial counselor of record in that attorney's or trial counselor's individual name, whose address shall be stated. A party who is not represented by an attorney or trial counselor shall sign the request, response, or objection and state the party's address. The signature of the attorney, trial counselor or party constitutes a certification that the signor has read the request, response, or objection, and that to the best of the signor's knowledge, information, and belief formed after a reasonable inquiry it is:

> **(1)** consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;
>
> **(2)** not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and
>
> **(3)** not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection was made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including reasonable attorney's or trial counselor's fees.

2002 Amendment: Rule 26(a) has been modified to incorporate in part and supersede in part the provisions of Rule 1 of the Rules Re: Filing of Discovery as amended on September 4, 1996. Rule 26(b), which authorizes the court to require the party to make a series of disclosures to each other, is new and largely tracks the mandatory disclosure requirements of Rule 26(a) of the Federal Rules. Rule 26(f) modifies the prior Rule 26(e) in that it largely tracks Federal Rule 26(e) and imposes a broader duty to supplement than previously existed in these rules. The other amendments are technical. No substantive change is intended. The bulk of the 1993 Amendments to the Federal Rules, which are designed to remedy problems related to discovery expense and abuse of the process, address problems not generally present in this jurisdiction, and so were not adopted.

2008 Amendment: Rule 26(b)(2)(A) has been amended to make it clear that disclosure of expert witnesses is required regardless of whether the court ordered initial disclosures under Rule 26(b)(1). The amendments to subsection (b)(2)(C), (c)(2)(C), (c)(4), and (c)(5) merely correct cross-references to other parts of the rule. The title "Limitations" has been added to subsection (c)(2) to match the corresponding subsection in the Federal Rules.

RULE 27. DEPOSITIONS BEFORE ACTION OR PENDING APPEAL

(a) Before Action.

(1) Petition. A person who desires to perpetuate testimony regarding any matter that may be cognizable in any court of the Republic of Palau may file a verified petition in the Trial Division of the Supreme Court. The petition shall be entitled in the name of the petitioner and shall show:

(A) that the petitioner expects to be a party to an action cognizable in a court of the Republic of Palau but is presently unable to bring it or cause it to be brought;

(B) the subject matter of the expected action and the petitioner's interest therein;

(C) the facts which the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it;

(D) the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known; and

(E) the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each.

The petition shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) Notice and Service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served in the manner provided by Rule 4 for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided by Rule 4, an attorney or trial counselor who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Rule 17(c) apply.

(3) Order and Examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules; and the court may make orders of the character provided for by Rules 34 and 35.

(4) Use of Deposition. If a deposition to perpetuate testimony is taken under these rules, it may be used in any action involving the same subject matter subsequently

brought in any trial court of the Republic of Palau, in accordance with the provisions of Rule 32(a).

(b) Pending Appeal. If an appeal has been taken from a judgment or before the taking of an appeal if the time therefor has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceeding in the trial court. In such case the party who desires to perpetuate the testimony may make a motion in the trial court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the trial court. The motion shall show:

(1) the names and addresses of the persons to be examined and the substance of the testimony which the party expects to elicit from each; and

(2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34, and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in pending actions.

(c) Perpetuation by Action. This rule does not limit the power of a court to entertain an action to perpetuate testimony.

2002 Amendment: The amendments are technical. No substantive change is intended.
2008 Comment: The changes made to Federal Rule 27(a)(2) in 2004 have not been adopted: most of the changes were stylistic and the one substantive change, to correct an outdated cross-reference, was accomplished previously.

RULE 28. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN

(a) Within the Republic of Palau. Within the Republic of Palau depositions shall be taken before an officer authorized to administer oaths by the law of the Republic of Palau, or before a person appointed by the court in which the action is pending. A person so appointed has the power to administer oaths and take testimony. The term officer as used in Rules 30, 31, and 32 includes a person appointed by the court or designated by the parties under Rule 29.

(b) In Foreign Countries. In a foreign country, depositions may be taken:

(1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the Republic of Palau; or

(2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of that commission to administer any necessary oath and take testimony; or

(3) pursuant to a letter of request. A commission or a letter of request (whether or

not captioned a letter rogatory) shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To the Appropriate Authority in (here name the country)." Evidence obtained in response to a letter of request need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the Republic of Palau under these rules.

(c) Disqualification for Interest. No deposition shall be taken before a person who is a relative or employee or attorney, trial counselor, or counsel of any of the parties, or is a relative or employee of such attorney, trial counselor, or counsel, or is financially interested in the action.

2002 Amendment: The amendments are technical. No substantive change is intended. The 1993 Amendments to the Federal Rules, added because the United States is a party to the Hague Convention, were not adopted.

RULE 29. STIPULATIONS REGARDING DISCOVERY PROCEDURE

Unless the court orders otherwise, the parties may by written stipulation:

(a) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions; and

(b) modify the procedures provided by these rules for other methods of discovery, except that stipulations extending the time provided by Rules 33, 34, and 36 for responses to discovery may, if they would interfere with any time set for completion of discovery, for hearing of a motion, or for trial, be made only with the approval of the court pursuant to Rule 7(f).

2002 Amendment: The amendment adds the 1993 amendment to Federal Rule broadening the language of Rule 29(b) "to give greater opportunity for litigants to agree upon modifications to the procedures governing discovery or to limitations upon discovery." Advisory Committee Notes, 1993 Amendments.

2008 Amendment: A reference to new Rule 7(f), which addresses the procedure for amending deadlines through stipulations and agreed motions, is added to subsection (b).

RULE 30. DEPOSITIONS UPON ORAL EXAMINATION

(a) When Depositions May Be Taken; When Leave Required.

(1) A party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in paragraph (2) of this subdivision. The attendance of witnesses may be compelled by subpoena as provided in Rule 45.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(c), if the person to be examined is confined in prison or if, without the written stipulation of the parties:

(A) a proposed deposition would result in more than 10 depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by third-party plaintiffs; or

(B) the person to be examined already has been deposed in the case.

(b) Notice of Examination: General Requirements; Special Notice; Non-Stenographic Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone.

(1) A party desiring to take a deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the deponent or the particular class or group to which the deponent belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the costs of the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by non-stenographic means.

(3) With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the court orders otherwise.

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes:

(A) the officer's name and business address;

(B) the date, time and place of the deposition;

(C) the name of the deponent;

(D) the administration of the oath or affirmation to the deponent; and

(E) an identification of all persons present.

If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in the notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf and may set forth, for each person designated, the matters on which the deponent will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The person(s) so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or other remote electronic means.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Rules of Evidence except rules 103 and 615. The officer before whom the deposition is to be taken shall put the witness under oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision (b)(2) of this rule. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings, shall be noted by the officer upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Schedule and Duration; Motion to Terminate or Limit Examination.

(1) Any objection to evidence during a deposition shall be stated concisely and in a non-argumentative manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed

by the court, or to present a motion under paragraph (3) of this subdivision.

(2) The court may limit by order the time permitted for the conduct of a deposition, but shall allow additional time if needed for a fair examination of the deponent or if the deponent or another party impedes or delays the examination. If the court finds such an impediment, delay, or other conduct that has frustrated the fair examination of the deponent, it may impose upon the person(s) responsible an appropriate sanction, including the reasonable costs and attorney's or trial counselor's fees incurred by the parties as a result thereof.

(3) At any time during a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition. If the order made terminates the examination, it shall be resumed thereafter only upon order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Review By Witness; Changes; Signing. If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are any changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

(f) Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.

(1) The officer shall certify on the deposition that the witness was duly sworn and that the deposition is a true record of the testimony given by the witness. Unless otherwise ordered by the court, the officer shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it or send it by registered or certified mail to the Clerk of Courts for filing. Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them that person may:

(A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or

(B) offer the originals to be marked for identification after giving to each party an opportunity to inspect and copy them, in which event the materials

may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned to the court with the deposition, pending final disposition of the case.

(2) Unless otherwise ordered by the court or agreed by the parties, the officer shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by another method. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney or trial counselor pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by the party and the party's attorney or trial counselor in attending, including reasonable attorney's or trial counselor's fees.

(2) If the party giving the notice or the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney or trial counselor because the party expects the deposition of the witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by the party and the party's attorney or trial counselor in attending, including reasonable attorney's or trial counselor's fees.

2002 Amendment: Rule 30 has been significantly amended to adopt the substance and track the form of the 1993 Amendments to Rule 30 of the Federal Rules which reorganized the rule for clarity and added detail regarding procedure for recording depositions by non-stenographic means.

RULE 31. DEPOSITIONS UPON WRITTEN QUESTIONS

(a) Serving Questions; Notice. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided by Rule 45. The deposition of a person confined in prison may be taken only by leave of the court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating:

(1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; and

(2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation, or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e) and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer.

(c) Notice of Filing. When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

2002 Amendment: The amendment is technical. No substantive change is intended. The 1993 amendment to the Federal Rules is not adopted.

RULE 32. USE OF DEPOSITIONS IN COURT PROCEEDINGS

(a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for other purpose permitted by the Rules of Evidence.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party, may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(A) that the witness is dead; or

(B) that the witness is out of the Republic of Palau, unless it appears that the

absence of the witness was procured by the party offering the deposition; or

(C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offering party to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action has been brought in any court of the Republic of Palau and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition taken may also be used as permitted by the Rules of Evidence.

(b) Objections to Admissibility. Subject to the provisions of Rule 28(b) and subdivision (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Form of Presentation. A party offering deposition testimony pursuant to this rule shall provide the court with a transcript of the portions so offered, unless the court for good cause orders otherwise.

(d) Effect of Errors and Irregularities in Depositions.

(1) As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to Disqualification of Officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to Taking of Deposition.

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them

before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five (5) days after service of the last questions authorized.

(4) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

2002 Amendment: Some technical changes have been made. Rule 32(c) now requires a transcript of that part of the deposition offered as evidence unless the court otherwise orders.

RULE 33. INTERROGATORIES TO PARTIES

(a) Availability. Without leave of the court or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 25 in number including all discrete subparts, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent thereof, who shall furnish such information as is available to the party. Leave to serve additional interrogatories may be granted at the discretion of the court.

(b) Answers and Objections.

(1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable.

(2) All responses to interrogatories shall be preceded by a full quotation of the interrogatory being answered or objected to.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29.

(4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown.

(5) The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(c) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under rule 26(c)(1), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(d) Option to Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and identify, as readily as the party served, the records from which the answer may be ascertained.

2002 Amendment: The Rule is amended to adopt Rule 33 of the Federal Rules as amended in 1993 to "reduce the frequency and increase the efficiency of interrogatory practice." Advisory Committee Notes, 1993 Amendments.

2008 Amendment: The amendment to subsection (c) corrects a cross-reference to Rule 26.

RULE 34. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

(a) Scope. Any party may serve on any other party a request:

(1) to produce and permit the party making the request, or someone acting on the party's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(c) and which are in the possession, custody or control of the party upon whom the request is served; or

> **(2)** to permit entry upon designated land or other property in control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(c).

(b) Procedure. The request may, without leave of the court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days of the service of the request, except that a defendant may serve a response within 45 days of service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(c) Persons Not Parties. A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided by Rule 45.

> **2002 Amendment:** There are some technical amendments which do not effect any substantive change. Rule 34(c) is amended to reflect the amended version of Rule 45, which now provides that subpoenas may be served to compel non-parties to produce documents and things and to submit to inspection of premises.
>
> **2008 Amendment**: The amendments to subsection (a) merely correct cross-references to Rule 26.

RULE 35. PHYSICAL AND MENTAL EXAMINATION OF PERSONS

(a) Order for Examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner, or to produce for examination the person in the party's custody or legal control. The order may be made only on motion, for good cause shown, and upon notice to the person to be examined and to all parties, and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of Examiner.

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the requesting party or examinee a copy of a detailed written report made by the examiner setting out the examiner's findings, including results of all tests made, diagnoses, and conclusions, together with like reports of all earlier examinations of the same condition. After delivery, the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows an inability to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report the court may exclude the examiner's testimony if offered at trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other rule.

2002 Amendment: The amendment is made to extend the coverage of the Rule so that the exam may be conducted by a "suitable licensed or certified examiner," rather than limit its scope to exams by "physicians or medical officers." For example, dentists or occupational therapists would now be within the Rule. This broadening of the Rule is also found in the 1991 amendment to the Federal Rules. Other language changes are technical. No substantive change is otherwise intended.

RULE 36. REQUESTS FOR ADMISSION

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(c) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of the court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter concerning which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney or trial counselor, but, unless the court shortens

the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon the party. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the party's answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny the matter. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice the party in maintaining the party’s action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

2002 Amendment: The amendments are technical. No substantive change is intended.

2008 Amendment: The amendment to subsection (a) corrects a cross-reference to Rule 26.

RULE 37. FAILURE TO MAKE OR COOPERATE IN DISCOVERY: SANCTIONS

(a) Motion for Order Compelling Discovery. Upon reasonable notice to other parties and all persons affected thereby, a party may apply for an order compelling discovery as follows:

(1) Appropriate Court. An application for an order to a party or a deponent who is not a party shall be made to the court in which the action is pending.

(2) Motion. If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or if a party fails to answer an interrogatory submitted under Rule

33, or if a corporation or other entity fails to make a designation under Rules 30(b)(6) or 31(a), or if a party, in response to a request for inspection submitted under Rule 34, fails to comply with the discovery request, the discovering party may move for an order compelling an answer or designation or inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

All discovery motions shall include in the motion or in an attachment a verbatim recitation of each such interrogatory, request, answer, response, or objection that is the subject of the motion.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(d).

(3) Evasive or Incomplete Answer. For purposes of this subdivision, an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of Expenses of Motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney or trial counselor advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's or trial counselor's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the counsel advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's or trial counselor's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(5) Prerequisites to Discovery Motions. No motion relating to discovery shall be considered by the court unless the moving party, as part of the motion, makes a written showing that reasonable attempts have been made to engage in personal consultation with counsel for opposing parties and sincere attempts have been made to resolve differences, but that the parties are unable to reach an accord. This showing shall note with reasonable specificity the attempts so made and the persons contacted or attempted to be contacted

(b) Failure to Comply With Order.

(1) Sanctions by Court. If a deponent fails to be sworn or to answer a question after being directed to do so by the court, the failure may be considered a contempt of the

court.

(2) Sanctions by Court in Which Action is Pending. If a party or an officer, director, or managing agent of a party or a person designated under Rules 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) an order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing designated matters in evidence;

(C) an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) in lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) where a party has failed to comply with an order under Rule 35(a) requiring that party to produce another for examination, such orders as are listed in paragraphs (A), (B) and (C) of this subdivision, unless the party failing to comply shows an inability to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney or trial counselor advising the party or both to pay the reasonable expenses, including attorney's or trial counselor's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's or trial counselor's fees. The court shall make the order unless it finds that:

(1) the request was held objectionable pursuant to Rule 36(a); or

(2) the admission sought was of no substantial importance; or

(3) the party failing to admit had reasonable ground to believe that it might prevail on the matter; or

(4) there was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails:

(1) to appear before the officer who is to take the deposition, after being served with a proper notice; or

(2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories; or

(3) to serve written response to a request for inspection submitted under Rule 34, after proper service of the request,

the court in which the action is pending may, on motion, make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. Any motion specifying a failure under clause (2) or (3) of this subdivision shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order, or in addition thereto, the court shall require the party failing to act or the attorney or trial counselor advising the party or both to pay the reasonable expenses, including attorney's or trial counselor's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

(e) Vacant.

(f) Vacant.

(g) Failure to Participate in the Framing of a Discovery Plan. If a party or the party's attorney or trial counselor fails to participate in good faith in the framing of a discovery plan by agreement pursuant to Rule 26~~(f)~~(g), the court may, after opportunity for hearing, require such party or the party's attorney or trial counselor to pay to any other party the reasonable expenses, including attorney's or trial counselor's fees, caused by the failure

2002 Amendment: The 1993 amendments to the Federal Rules are adopted in part, specifically the requirement in subdivision (d)(3) that where a party fails to respond to interrogatories or a Rule 34 request the discovering party must first seek to obtain such responses informally before filing a motion for sanctions. The remainder of the 1993 amendments were not adopted because the discovery abuses and expenses that required the change in United States federal

district courts have not been present in this court. Former Rule 10 of the Motion Practice Rules, regarding the form of discovery motions, was incorporated into Rule 37(a)(2). Rule 9 of the Motion Practice Rules requiring prior consultation with the opposing counsel before a discovery motion is brought, was incorporated in slightly different form as Rule 37(a)(5). The changes in language are intended to reflect that sometimes, because of recalcitrance or unavailability of opposing counsel, no consultation can be done in any reasonable time frame. Other amendments are technical. No substantive change is intended.

2008 Amendment: The amendments to subsections (a) and (g) correct cross-references to Rule 26.

VI. TRIALS

RULES 38-40. VACANT

RULE 41. DISMISSAL OF ACTIONS

(a) Voluntary Dismissal: Effect Thereof.

(1) By Plaintiff; By Stipulation. Subject to the provisions of Rule 23(e), Rule 66, and any statute of the Republic of Palau, an action may be dismissed by the plaintiff without order of the court :

(A) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever occurs first; or

(B) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the Republic of Palau an action based on or including the same claim.

(2) By Order of Court. Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon that defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against that defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary Dismissal: Effect Thereof.

(1) On Court's Own Motion. The court, on its own motion, after notice to the parties, and in the absence of a showing of good cause to the contrary, shall dismiss an action for want of prosecution at any time more than six months after the last docket entry showing any action taken therein by the plaintiff other than a motion for continuance.

(2) On Motion of Defendant. For failure of the plaintiff to prosecute or to comply with these rules or any order of the court, a defendant may move for dismissal of an action or of any claim against the defendant.

(3) Effect. Unless the court in its order of dismissal otherwise specifies, a dismissal under this subdivision (b) and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

(c) Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) Costs of Previously Dismissed Action. If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

2002 Amendment: Rule 41(b)(1) is new. The language has no counterpart in the Federal Rules. A court has inherent power to dismiss a case for want of prosecution. The Rule now gives notice regarding when that power will be exercised. Rule 41(b)(2) is rewritten to incorporate the 1991 amendment to the Federal Rules. As stated by the Advisory Committee's Notes in 1991, "[l]anguage is deleted that authorized the use of this rule as a means of terminating a non-jury action on the merits when the plaintiff has failed to carry a burden of proof in presenting the plaintiff's case. The device is replaced by the new provisions of Rule 52 (c), which authorize entry of judgment against the defendant as well as the plaintiff, and earlier than the close of the case of the party against whom judgment is rendered. A motion to dismiss under Rule 41 on the ground that a plaintiff's evidence is legally insufficient should now be treated as a motion for judgment on partial findings as provided in Rule 52(c)." The amendments in other parts of the rule are technical. No substantive change is intended.

RULE 42. CONSOLIDATION; SEPARATE TRIALS

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters at issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate Trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

2002 Amendment: No changes have been made from the 1983 rules.

RULE 43. TAKING OF TESTIMONY

(a) Form. In all trials the testimony of witnesses shall be taken in open court, unless

otherwise provided by these rules or by the Rules of Evidence.

(b) Vacant.

(c) Vacant.

(d) Affirmation in Lieu of Oath. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) Vacant.

(f) Interpreters. The court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

> **2002 Amendment:** Reference to "oral" testimony is deleted because it is possible that a person with speech difficulties may communicate other than orally. The 1996 amendments to the Federal Rules concerning methods of testimony by transmission to the trial court from different locations is not incorporated.

RULE 44. PROOF OF OFFICIAL RECORD

(a) Authentication.

> **(1) Domestic.** An official record kept within the national government of the Republic of Palau, or any state thereof, admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has custody of the record. The certificate may be made by a judge of a court of record in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the government agency or political subdivision in which the record is kept, authenticated by the seal of the officer's office.
>
> **(2) Foreign.** A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the Republic of Palau, or a diplomatic or consular official of the foreign country assigned or accredited to the Republic of Palau.

If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy

without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification.

(b) Lack of Record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other Proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

2002 Amendment: No change has been made in this Rule. Amendments to the Federal Rules in 1993 were necessitated by the changing relationship the United States has with its overseas territories and the Trust Territory, and have no applicability here.

RULE 44.1 DETERMINATION OF FOREIGN LAW

A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other 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. The court's determination shall be treated as a ruling on a question of law.

2002 Amendment: The amendment is technical. No substantive change is intended.

RULE 45. SUBPOENA

(a) Form; Issuance.

(1) Every subpoena shall:

(A) state the name of the court from which it issued; and

(B) state the title of the action, the name of the court in which it is pending, and its civil action number; and

(C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection, copying, testing, or sampling of designated books, documents, electronically stored information, or tangible things in the possession, custody or control of that person, or to permit inspection of the premises, at a time and place therein specified.

A command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately.

(2) A subpoena commanding attendance at a trial or hearing shall issue from the court in which the hearing or trial is to be held. A subpoena for attendance at a deposition shall issue from the court hearing the case for which the deposition is to be taken and

shall state the method for recording the testimony. If separate from a subpoena commanding the attendance of a person, a subpoena for production or inspection shall issue from the court hearing the case for which production or inspection is required.

(3) The Clerk of Courts shall issue a subpoena, signed but otherwise blank, to a party requesting it, who shall complete it before service. An attorney or trial counselor who is admitted to practice in Palau may, as an officer of the court, also issue and sign a subpoena.

(b) Service.

(1) A subpoena may be served by any person who is not a party and is not less than eighteen (18) years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person. Prior notice of any commanded production of documents and things or inspections of premises before trial shall be served on each party in the manner prescribed by Rule 5(b).

(2) A subpoena may be served at any place in the Republic of Palau. When provided for by law, the court issuing the subpoena may, upon proper application and cause shown, authorize the service of the subpoena at any other place. A subpoena directed to a witness in a foreign country who is a national or resident of the Republic of Palau shall issue under the circumstances and in the manner and be served as provided by 14 PNC 143.

(3) Proof of service when necessary shall be made by filing with the Clerk of Courts a statement of the date and manner of service and of the names of the person(s) served, certified by the person who made the service.

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney or trial counselor responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and shall impose upon a party and/or its attorney or trial counselor in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's or trial counselor's fee.

(2) **(A)** A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to appear or produce and permit inspection and copying may, within 14 days after service of the subpoena, or before the time specified for compliance if that time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the

designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) **(A)** On timely motion, the court by which a subpoena issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party or an officer of a party to make extraordinary efforts to travel to the place commanded by the subpoena, except that subject to the provisions of clause (c)(3)(B) of this rule, such a person may be commanded to make such efforts in order to attend trial; or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) The court may, to protect a person subject to or affected by a subpoena, quash or modify the subpoena if a subpoena requires

(i) disclosure of a trade secret or other confidential research, development or commercial information; or

(ii) disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

(iii) a person who is not a party or an officer of a party to incur substantial expense in the course of traveling to attend trial.

However, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order the appearance or production only upon specified conditions notwithstanding the other provisions of this rule.

(d) Duties in Responding to Subpoena

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications or things not produced that is sufficient to enable the demanding party to contest the claim.

(e) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a non-party to attend or produce in a manner not within the limits provided by clause (ii) of subparagraph (c)(3)(A) of this rule.

2002 Amendment: This Rule is revised to adopt the substance of Rule 45 of the Federal Rules, as amended in 1991, and as modified to reflect local conditions in Palau. As noted by the Advisory Committee, these revisions "clarify and enlarge the protection afforded persons who are required to assist the court by giving information or other evidence; . . . facilitate access outside the deposition procedure provided by Rule 30 to documents and other information in the possession of persons who are not parties; . . . facilitate service at places distant from . . . [where] an action is proceeding; . . . [and] clarify the organization of the text of the rule." Advisory Committee Notes, 1991 Amendments.

2008 Amendment: Subsection (a)(1)(C) and (a)(2)(C) are amended to reflect the 2006 changes to Federal Rule 45. The revision makes clear that a subpoena may authorize testing and sampling of physical objects and may also compel the production of electronically stored information. Subsection (a)(2) is amended to reflect a 2004 change to Federal Rule 45. The clause "and shall state the method for recording the testimony" is added to close a gap in regard to notifying witnesses, as opposed to parties, of the manner for recording a deposition.

RULE 46. EXCEPTIONS UNNECESSARY

Formal exceptions to rulings or orders of the court are unnecessary; but 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 the party desires the court to take or the party's objection to the action of the court and the grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

2002 Amendment: The changes are technical. No substantive change is intended.

RULES 47-51. VACANT

RULE 52. FINDINGS BY THE COURT; JUDGMENT ON PARTIAL FINDINGS

(a) Effect. In all actions tried upon the facts, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the

findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on witness or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in subdivision (c) of this rule.

(b) Amendment. On a party's motion filed no later than 10 days after entry of judgment, the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59. When findings of fact are made, the sufficiency of the evidence supporting the findings may later be questioned whether or not the party raising the question objected to the findings, moved to amend them, or moved for partial findings, in the court that made the findings.

(c) Judgment on Partial Findings. If during a trial a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subdivision (a) of this rule.

2002 Amendment: Subdivision (a) adds the phrase "whether based on witness or documentary evidence" to clarify that there is no less deferential standard on appeal for rulings based upon documentary evidence. *Rechelulk v. Tmilchol*, 6 ROP Intrm. 1 (1996). Subdivision (c) is added to incorporate the 1991 Amendment to Rule 52 of the Federal Rules, and is adopted for the same reasons stated in the Advisory Committees Notes: to authorize "the court to enter judgment at any time that it can appropriately make a dispositive finding of fact on the evidence." Other changes are technical and are not intended to effect any substantive change.

2008 Amendment: The phrase "without a jury" is deleted from subsection (c): all civil matters are tried by the court.

RULE 53. MASTERS AND ASSESSORS

(a) Masters. The court in which any action is pending may appoint a master and refer issues concerning that action to the master for hearing and report. A master may be used ~~on~~ to address any matter that cannot be addressed effectively and timely by the presiding judge, including issues involving testimony of witnesses who are located at a point which makes their appearance before the court unduly burdensome or expensive and issues where the court deems hearing should be held or evidence taken before any action is taken by the court.

(b) Powers. The order of reference to the master may specify or limit the master's powers and may direct the master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications

and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order. The master may require the production of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. The master may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses under oath and may personally examine them and may call the parties to the action and examine them under oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in the Rules of Evidence.

(c) Proceedings.

(1) Meeting. When a reference is made, the Clerk of Courts shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof, unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and the master, may apply to the court for an order requiring the master to speed the proceedings and to make the report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, at the master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of adjournment.

(2) Witnesses. The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided by Rule 45. If without adequate excuse a witness fails to appear or give evidence, the witness may be punished as for contempt and be subjected to the consequences, penalties, and remedies provided by Rules 37 and 45.

(3) Statement of Accounts. When matters of accounting are at issue before the master, the master may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted, or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as the master directs.

(d) Report.

(1) Contents and Filing. The master shall prepare a report upon the matters submitted to the master by the order of reference and, if required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master shall file the report with the Clerk of Courts and serve on all parties notice of the filing. Unless otherwise directed by the order of reference, the master shall file with the report an audio recording or transcript of the proceedings, other evidence, and the

original exhibits. Unless otherwise directed by the order of reference, the master shall serve a copy of the report on each party.

(2) Standard of Review. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed by Rule 5(b). The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions. The court's review of all factual and legal findings is de novo. The court may set aside a master's ruling on a procedural matter only for an abuse of discretion.

(3) Vacant.

(4) Stipulation as to Findings. The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(5) Draft Report. Before filing the master's report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

(e) Assessors. A court may appoint one or more assessors to advise the court at a trial or hearing on aspects of local law, custom or such other matters requiring specialized knowledge, but not to participate in the determination of the case. All such advice shall be a matter of record. Assessors will sit with the court at such compensation as the Chief Justice of the Supreme Court shall determine.

2002 Amendment: In 1983, Rule 53 of the Federal Rules was substantively amended because of the creation of full-time magistrates, and those 1983 amendments are not incorporated herein. The provision of Rule 53(a) requiring a showing of "exceptional circumstances" was deleted to provide more flexibility in the use of this rule. Subdivisions (c) and (d) are added to clarify the manner in which proceedings are to be conducted and to provide more detail concerning the master's report. They have been part of the Federal Rules since the inception of those rules in 1937. Subdivision (e) is the former subdivision (c), recodified so the subsections concerning masters are not interrupted by one concerning assessors. Other changes are technical and are not intended to effect any substantive change.

2008 Amendment: Subsection (a) is amended to make clear that a master can be used for any purpose that would increase the efficiency of court proceedings. Subsection (d) is amended to authorize the filing of an audio recording in place of a written transcript of the proceedings and to clarify the provision requiring submission of all evidence received by the master. Subsection (e) is amended to adopt the standards of review set forth in Federal Rule 53. Most of the extensive revisions of Federal Rule 53 worked by the 2003 Amendments have not been adopted. Courts in the Republic of Palau rarely utilize masters and the procedural impediments imposed by the revised rule would further limit referrals.

VII. JUDGMENT

RULE 54. JUDGMENT; COSTS

(a) Definition, Form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

(d) Costs; Attorney's or Trial Counselor's Fees.

(1) Costs Other than Attorney's or Trial Counselor's Fees. Except when express provision therefor is made either by a statute of the Republic of Palau or by these rules, costs other than attorney's or trial counselor's fees shall be allowed as a matter of course to the prevailing party unless the court otherwise directs; but costs against the Republic of Palau, its officers, and agencies shall be imposed only to the extent permitted by law. Claims for costs other than attorney's or trial counselor's fees shall be made by motion. Unless otherwise provided by statute or order of the court, the motion must be filed and served no later than 14 days after entry of judgment, and must state with particularity the amount sought. On request of a party or class member, the court may, at its discretion, afford an opportunity for adversary submissions with respect to the motion.

(2) Attorney's or Trial Counselor's Fees.

(A) Claims for attorney's fees and related non-taxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to be proved at trial. The amount requested for attorney's fees may not exceed limits established by statute or order of the court.

(B) Unless otherwise provided by statute or order of the court, the motion must be filed and served no later than 14 days after entry of judgment; must

specify the judgment and the statute, rule, or other grounds entitling the moving party to the award; and must state the amount or provide a fair estimate of the amount sought. If directed by the court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which claim is made.

(C) On request of a party or class member, the court shall afford an opportunity for adversary submissions with respect to the motion. The court may determine issues of liability for fees before receiving submissions bearing on issues of evaluation of services for which liability is imposed by the court. The court shall find the facts and state its conclusions of law as provided by Rule 52(a), and a judgment shall be set forth in a separate document as provided by Rule 58.

2002 Amendment: No procedure for recovery of costs or attorney's or trial counselor's fees was provided in the Rules as originally promulgated. Rule 54(d) is amended to add such a procedure and, with certain modifications, follows the approach found in the 1993 amendments to the Federal Rules.

2008 Amendment: Subsection (d)(2)(A) has been amended to limit attorney's fees according to limitations established by statute, such as 14 PNC § 2110, or court order.

RULE 55. DEFAULT

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the Clerk of Courts shall enter the party's default.

(b) Judgment. Judgment by default may be entered as follows:

(1) By the Clerk of Courts. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the Clerk of Courts upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and if the defendant is not a minor or an incompetent person.

(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against a minor or an incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the representative) shall be served with written notice of the application for judgment at least three (3) days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper.

(c) Setting Aside Default. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

(d) Plaintiffs, Counterclaimants, Cross-Claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(e) Judgment Against the Republic of Palau or any State or Other Governmental Entity or Agency Thereof. No judgment by default shall be entered against the Republic of Palau or any state or governmental entity of the Republic of Palau or an officer or agency thereof unless the claimant establishes the claim or right to relief by evidence satisfactory to the court.

(f) Motion for Default Judgment. Any motion for default judgment for a sum certain shall be accompanied by an affidavit of the party or the party's counsel showing that the party against whom judgment is sought is not a minor or incompetent person, and has defaulted in appearance in the action, that the damages alleged in the complaint are justly due and owing, that no part thereof has been paid, and that the costs sought to be taxed have been made or incurred in the action or will necessarily be made or incurred therein. No motion for default judgment shall be granted against an individual defendant unless the affidavit of service of process shows that the process server complied with the requirement of Rule 4(e), that "reasonable attempts shall be made by the person serving the complaint to assure that the person served understands the meaning of the summons and complaint." No motion for default judgment shall be granted against a party when service has been accomplished by certified or registered mail unless the affidavit of service of process shows that the defendant has received the summons and complaint 30 days or more before the filing of the motion for default or cause is shown why such is not necessary.

> **2002 Amendment:** The amendments found in subdivisions (a)-(d) are technical. No substantive change is intended. Rule 55(e) has been amended to clarify that default judgment may only be entered against governmental agencies and political subdivisions of the Republic of Palau in the same fashion as it may be entered against the Republic itself. Rule 55(f) is former Rule 12 of the Motion Practice Rules.

RULE 56. SUMMARY JUDGMENT

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment which is interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

> **(1) Brief Supporting a Motion for Summary Judgment.** A party moving for summary judgment shall set forth in the supporting brief a separate statement of each material fact as to which the moving party contends there is no genuine issue to be tried and, as to each such fact, shall identify the specific document or affidavit, portion thereof, or discovery response or deposition testimony, by line and page, which it is claimed establishes the fact.
>
> **(2) Brief or Opposition Opposing a Motion for Summary Judgment.** The party opposing a motion for summary judgment shall set forth in its opposing brief or opposition a separate statement of each material fact as to which it is contended there exists a genuine issue to be tried and, as to each such issue, shall identify the specific document or affidavit, or portion thereof, or discovery response or deposition testimony, by page and line, which it is claimed establishes the issue.

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts

essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's or trial counselor's fees, and any offending party or attorney or trial counselor may be adjudged guilty of contempt.

2002 Amendment: Rule 56(c)(1) & (c)(2) are incorporated from the former Rule 11 of the Motion Practice Rules. The former provision in Rule 56 allowing for the filing of affidavits the day before the hearing has been deleted. The timing for motions for summary judgment is to be governed by the general provisions of Rules 6 and 7.

RULE 57. DECLARATORY JUDGMENTS

In a case of actual controversy within its jurisdiction, the court, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for declaratory judgment and may advance it on the calendar.

2002 Comment: No changes have been made from the 1983 rules.

RULE 58. ENTRY OF JUDGMENT

Subject to the provisions of Rule 54(b), upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the Clerk of Court shall forthwith prepare, sign, and enter the judgment. The court shall enter judgment when it grants any relief or combination of remedies other than those specified above. Every judgment shall be set forth on a separate document. A judgment or amended judgment is effective only when so set forth and when entered as provided by Rule 79(a). Except where a default judgment is sought, counsel shall not submit forms of judgment except upon direction of the court, and these directions shall not be given as a matter of course. Entry of the judgment shall not be delayed, nor the time for appeal extended, in order to tax costs or award fees, except that, when a timely motion for attorney's fees is made under Rule 54(d)(2), the court, before a notice of appeal has been filed and has become effective, may order that the motion have the same effect under Rule 4(a) of the Rules of Appellate Procedure as a timely motion under Rule 59.

2002 Amendment: The 1993 amendment to Federal Rule 58 treating a motion for attorney's or trial counselor's fees as a motion to amend the judgment has been incorporated into this rule. Other changes are technical and are not intended to have substantive effect.

2008 Amendment: The old version of the rule limited the entry of judgment to a very narrow subset of cases. The language has been amended to require a judgment in every case that is decided

by the court. Separate judgments are also necessary to give effect to an amendment. Because proposed forms of judgment are regularly used in default proceedings, the fifth sentence of the rule is amended to add "Except where a default judgment is sought."

RULE 59. NEW TRIALS; AMENDMENT OF JUDGMENTS

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues for manifest errors of law apparent in the record or for newly discovered evidence. On a motion for a new trial, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for Motion. Any motion for a new trial shall be served no later than 10 days after entry of the judgment.

(c) Time for Serving Affidavits. When a motion for a new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended up to 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) On Initiative of Court. No later than 10 days after entry of judgment the court, on its own, may order a new trial for any reasons for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment. A post-judgment motion styled as a "motion to reconsider" shall be construed as a motion to alter or amend the judgment if filed within the time for such a motion as prescribed by this rule. A "motion to reconsider" filed after the time prescribed by this rule for the filing of a motion to alter or amend the judgment shall be deemed a motion for relief from judgment pursuant to Rule 60 and shall be determined accordingly.

2002 Amendment: Rule 59(e) has been expanded to clarify the manner in which post-judgment motions styled as "motions for reconsideration" was be addressed. The other amendments are technical. No substantive change is intended.

RULE 60. RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the Appellate Division, and thereafter while the appeal is pending may be so corrected with leave of the Appellate Division.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud,

Etc. On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:

> **(1)** mistake, inadvertence, surprise, or excusable neglect;
>
> **(2)** newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
>
> **(3)** fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
>
> **(4)** the judgment is void;
>
> **(5)** the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
>
> **(6)** any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are not to be used, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

2002 Amendment: The amendments are technical. No substantive change is intended.

RULE 61. HARMLESS ERROR

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court to be inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

2002 Amendment: The amendments are technical. No substantive change is intended.

RULE 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

(a) Automatic Stay; Exceptions - Injunctions, Receiverships, and Patent Accountings. Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action, or a judgment or order directing an accounting in an action for

infringement of letters patent, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) Stay on Motion for New Trial or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

(c) Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) Stay Upon Appeal. When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

(e) Stay in Favor of the Republic of Palau or any State or Other Governmental Entity or Agency Thereof. When an appeal is taken by the national government of the Republic of Palau, or any state or other governmental entity of the Republic of Palau, or any officer or agency thereof, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) Vacant.

(g) Power of Appellate Division Not Limited. The provisions in this rule do not limit any power of the Appellate Division of the Supreme Court or of a justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of the appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(h) Stay of Judgment as to Multiple Claims or Multiple Parties. When a court has ordered a final judgment under the conditions stated by Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

2002 Amendment: Rule 62(e) has been amended to cover stays entered against governmental entities and political subdivisions of the Republic of Palau. The other amendment is technical. No substantive change is intended.

RULE 63. INABILITY OF A JUDGE OR JUSTICE TO PROCEED

If a trial or hearing has been commenced and the judge is unable to proceed, any other judge may proceed with it upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties. The successor judge shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

2002 Amendment: The substance of Rule 63 of the Federal Rules, as amended in 1991, is hereby adopted for the reasons set forth in the Advisory Committee's Rules in 1991: "[t]he former rule was limited to the disability of the judge, and made no provision for disqualification or possible other reasons for the withdrawal of the judge during proceedings."

2008 Amendment: The title of Rule 63 is amended to reflect that the rule is no longer applicable only when the presiding officer becomes disabled.

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

RULE 64. SEIZURE OF PERSON OR PROPERTY

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the Republic of Palau existing at the time the remedy is sought. The remedies thus available may include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether the remedy is ancillary to the action or must be obtained by an independent action.

2002 Comment: No changes have been made from the 1983 rules.

RULE 65. INJUNCTIONS

(a) Preliminary Injunction.

(1) Notice. No preliminary injunction shall be issued without notice to the adverse party.

(2) Consolidation of Hearing With Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible at the trial on the merits becomes part of the record of the trial and need not be repeated at the trial.

(b) Temporary Restraining Order; Notice; Hearing; Duration. A temporary restraining order may be granted without written or oral notice to the adverse party or that party's

attorney or trial counselor only if:

> **(1)** it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's counsel can be heard in opposition; and
>
> **(2)** the applicant's counsel certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.

Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the Clerk of Courts' office and entered on record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry not to exceed 10 days, as the court fixes, unless within the time so fixed, the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for longer period. The reasons for the extension shall be entered in the record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if the party does not do so, the court shall dissolve the temporary restraining order. On three (3) days notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move for the dissolution or modification of the temporary restraining order and, in that event, the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) Security. The giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained may be required, at the discretion of the court, before the issuance of a restraining order or preliminary injunction. No such security shall be required of the Republic of Palau, or any state or other governmental entity of the Republic of Palau, or of any officer or agency thereof.

The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule.

(d) Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, trial counselors, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

2002 Amendment: The amendments are technical. No substantive change is intended.

RULE 65.1 SECURITY: PROCEEDINGS AGAINST SURETIES

Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the Clerk of Courts or the court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion 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 Courts, who shall forthwith mail copies to the sureties if their addresses are known.

2002 Amendment: The amendments are technical. No substantive change is intended.

RULE 66. RECEIVERS APPOINTED BY COURTS

An action wherein a receiver has been appointed shall not be dismissed except by order of the court. Actions in which the appointment of a receiver is sought or which are brought by or against a receiver are governed by these rules.

2002 Amendment: The amendments are technical. No substantive change is intended.

RULE 67. DEPOSIT IN COURT

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of the court, may deposit with the court all or any part of such sum or thing.

2002 Amendment: The amendment is technical. No substantive change is intended.

RULE 68. OFFER OF JUDGMENT

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against that party for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the court shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by finding or order or judgment but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

2002 Amendment: The amendments are technical. No substantive change is intended.

RULE 69. EXECUTION

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the court, existing at the time the remedy is sought, except that any statute of the Republic of Palau governs to the extent that it is applicable. In aid of the judgment or execution, the judgment creditor, or the judgment creditor's successor in interest when that interest appears of record, may, within one year of the entry of judgment, obtain discovery from any person, including the judgment debtor, in the manner provided in these rules. In aid of a judgment that is more than one year old, or in aid of execution thereof, the judgment creditor, or the judgment creditor's successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, with prior permission of the court.

2002 Amendment: The amendments are technical. No substantive change is intended.

2008 Amendment: Discovery is available from both the debtor, as a party, and the debtor's friends, relatives, and acquaintances. Discovery initiated in a timely manner after the entry of judgment should be governed by the liberal procedures and standards of Rules 26-36, thereby giving the judgment creditor as much flexibility as possible. When the judgment creditor has waited more than a year before attempting to execute on the judgment, however, the court should weigh the interests of the potential witnesses against the need for the requested discovery. The language of Rule 69 is hereby amended to provide the court with an opportunity to determine whether limitations should be imposed on the nature and scope of the discovery taken more than a year after judgment was entered.

RULE 70. JUDGMENT FOR SPECIFIC ACTS; VESTING TITLE

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the court or the Clerk of Courts shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the Republic of Palau, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the court.

2002 Amendment: The amendments are technical. No substantive change is intended.

RULE 71. PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES

When an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if the person were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as if the person were

a party.

2002 Amendment: The amendments are technical. No substantive change is intended.

IX. SPECIAL PROCEEDINGS

2008 Amendment: The chapter title is amended to comport with the Federal Rules.

RULES 72-76. VACANT

X. CLERKS, OFFICIALS, AND OFFICERS OF THE COURT

RULE 77. COURTS AND CLERKS

(a) Courts Always Open. The courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

(b) Trial and Hearings; Orders in Chambers. All trials upon the merits shall be conducted in open court and so far as convenient in a regular court room. All other acts or proceedings may be done or conducted by a judge in chambers, without the Clerk of Courts or other court officials.

(c) Clerk of Courts' Office and Orders by Clerk of Courts. The Clerk of Courts' office with the Clerk of Courts or an assistant in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays. All motions and applications in the Clerk of Courts' office for issuing mesne process, for issuing final process to enforce and execute judgment, for entertaining defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable by the Clerk of Courts; but the Clerk of Courts' action may be suspended or altered or rescinded by the court upon cause shown.

(d) Notice of Orders or Judgments. Immediately upon the entry of an order or judgment, the Clerk of Courts shall serve a copy of the order or judgment in the manner provided for by Rule 5 upon each party who is not in default for failure to appear, and shall make a note in the docket of the service. Such service is sufficient notice for all purposes for which notice of the entry of an order is required by these rules; but any party may in addition serve a notice of such entry in the manner provided by Rule 5 for the service of papers. Lack of notice of the entry by the Clerk of Courts does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted by Rule 4(a) of the Rules of Appellate Procedure.

(e) Deficient Filings. Upon the filing of:

(1) a paper not accompanied by a certificate as required by Rule 82;

(2) a pleading or motion not captioned as required by Rule 10(a);

(3) any unsigned pleading, written motion or other paper that is required to be signed pursuant to Rule 11, or any paper not containing the signer's address, and, if any, the signer's telephone number; or

(4) a motion not accompanied by a proposed order as required by Rule 7(b)(1)(C)

the Clerk of Courts shall notify both the filer and the presiding judicial officer of the deficiency. The filer shall, within two days of such notice, correct the deficiency or be subject to the sanctions otherwise stated in these rules, including the striking of the document.

2002 Amendment: Rule 77(e) has been added to indicate which documents the clerk of courts may choose not to file because of non-compliance with a substantive rule. The other amendments are technical and no substantive change is intended by them.

2008 Amendment: Subsection (d) is amended to encompass service by other methods than mailing. A title is added to subsection (e) to conform with the style of the other subsections. Subsection (e) is revised because, as noted by the Advisory Committee in 1991, the rejection of papers offered for filing "is not a suitable role for the office of the clerk, and the practice exposes litigants to the hazards of time bars; for these reasons, such [rejection is] proscribed by this revision. The enforcement of these rules . . . is a role for a judicial officer. A clerk may of course advise a party or counsel that a particular instrument is not in proper form, and may be directed to so inform the court."

RULE 77.1. VACANT

2002 Amendment: The former Rule 77.1 has been moved to Rule 78.

RULE 78. OFFICIALS

The court may appoint, on a temporary basis, interpreters, reporters and other officials whenever these are needed for a particular case or cases and have not previously been appointed by the Chief Justice. Such officials shall, when practicable, be drawn from those already in government employment and shall not be entitled to any extra compensation for the performance of court duties without the prior approval of the Chief Justice. Any official, reporter, or interpreter appointed hereunder, shall, before assuming duties, take an oath that the person will perform such duties to the best of the person's ability, except that official court translators employed by the court need not be sworn.

2002 Amendment: Rule 78 is the former Rule 77.1. The old Rule 78 has been deleted to reflect the fact that the court has no standing motion day. The other changes to the former Rule 77.1 are technical. No substantive change is intended.

RULE 79. BOOKS AND RECORDS KEPT BY THE CLERK OF COURTS AND ENTRIES THEREIN

(a) Civil Docket. The Clerk of Courts shall keep a record known as "civil docket" of such form and style as may be prescribed by the Administrative Director of the courts, and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the Clerk of Courts, all process issued and returns made thereon, all appearances, orders, findings, and

judgments shall be entered chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the return showing execution of process. The entry of an order or judgment shall show the date the entry is made.

(b) Civil Judgment and Orders. The Clerk of Courts shall keep, in such form and manner as the Administrative Director of the courts may prescribe, a correct copy of every final judgment or appealable order, or order affecting title to or lien upon real or personal property, and any other which the court may direct to be kept.

(c) Indices; Calendars. Suitable indices of the civil docket and of every civil judgment and order referred to in subdivision (b) of this rule shall be kept by the Clerk of Courts under the direction of the court.

(d) Other Books and Records of the Clerk of Courts. The Clerk of Courts shall also keep such other books and records as may be required from time to time by the Administrative Director of the Courts.

2002 Amendment: The amendments are technical. No substantive change is intended.

2008 Amendment: Subsection (a) is amended to reflect that the court docket need not be in "book" form.

RULE 80. STENOGRAPHICALLY RECORDED TESTIMONY AS EVIDENCE

Whenever the testimony of a witness at a trial or hearing which was stenographically reported or electronically recorded is admissible in evidence at a later trial, it may be proved by the audio recording and/or transcript thereof duly certified by the person who reported, recorded or transcribed the testimony.

2002 Amendment: No change has been made from the 1983 rules.

2008 Amendment: The rule was amended to permit the use of properly certified audio recordings as evidence in subsequent proceedings.

RULE 81. APPEARANCES, SUBSTITUTIONS AND WITHDRAWALS OF ATTORNEYS

(a) Appearances. Whenever a party has appeared by an attorney or trial counselor, the party may not thereafter appear or act in the party's own behalf in the action, or take any steps therein, unless an order of substitution shall first have been made by the court, after notice to the attorney or trial counselor of such party, and to all other parties; provided, that the court may, in its discretion, hear a party in open court, notwithstanding the fact that the party has appeared or is represented by an attorney or trial counselor.

(b) Substitutions. When an attorney or trial counselor of record for any reason ceases to act for a party, such party shall appear in person or appoint another attorney or trial counselor either:

(1) by a written substitution of attorney or trial counselor signed by the party, the attorney or trial counselor ceasing to act, and the newly appointed attorney or trial counselor; or

(2) by a written designation filed and served upon the attorney or trial counselor ceasing to act, unless said attorney or trial counselor is deceased, in which event the designation of a new attorney or trial counselor shall so state.

(c) Withdrawals.

(1) No attorney or trial counselor of record for a party may withdraw from representing that party without leave of the court. Before an attorney or trial counselor is to be granted leave to withdraw, the attorney or trial counselor shall serve a copy of the motion on the client, and shall present to the court a proposed order permitting the attorney or trial counselor to withdraw and directing the client to appoint another attorney to appear, or to appear in person by filing a written notice with the court stating how the party will be represented. All motions to withdraw shall be accompanied by a written showing setting forth the manner by which notice was given to the client, the client's last known address and telephone number, if any, and that reasonable efforts have been made to give actual notice to the client:

(A) that the attorney or trial counselor wishes to withdraw;

(B) that the court retains jurisdiction to decide the lawsuit;

(C) that the client has the obligation of keeping the court informed of where notices, pleadings, or other papers may be served;

(D) that the client has the obligation to prepare for trial or hire other counsel to prepare for trial when the trial date is set;

(E) that if the client fails or refuses to meet these obligations, the client may suffer possible default;

(F) of the dates of any proceedings, including trial, and that the holding of such proceedings will not be affected by the withdrawal of counsel;

(G) of the client's right to object to the motion to withdraw no later than 14 days after the service of the notice; and

(H) of the client's obligation, within 30 days of entry of an order granting a motion to withdraw, to file written notice with the court stating how the client will be represented.

After the court has entered an order granting a motion to withdraw, the client shall have 30 days from the date of service by the attorney or trial counselor to file written notice with the court stating how the client will be represented.

(2) Upon entry of the order, no further proceedings can be had in the action which will affect the rights of the party represented by the withdrawing attorney or trial counselor for a period of 30 days. If, by the conclusion of this 30 day period, said party has failed to appear through a newly appointed attorney, or has failed to inform the court that the party intends to proceed pro se, such failure shall be sufficient grounds for, in the court's discretion, the entry of a default against such party or dismissal of the action of such party and without further notice, which shall be stated in the order of the court.

2002 Amendment: This rule incorporates the provisions of Rule 13 of the Motion Practice Rules and is further intended to clarify and explicate the procedures that are to be followed for the appearances, substitutions and withdrawals of attorneys and trial counselors.

RULE 82. CERTIFICATE OF SERVICE

All papers required by Rule 5 to be served shall be filed accompanied by a certificate of service identifying the papers that were served, the recipient, and the method of service.

2002 Amendment: The provisions of this rule were formerly Rule 14 of the Motion Practice Rules. The changes are technical to comply with the provisions of Rule 5.

2008 Amendment: The rule has been amended to require the identification of the papers that were served, the recipient, and the method of service. General certifications that service was made in accordance with Rule 5, without additional details, make it difficult for the court to ascertain whether a particular individual was served or to estimate the actual date of receipt.

RULE 83. CITATION TO AUTHORITY NOT CONTAINED IN THE PALAU SUPREME COURT LIBRARY

If a party relies on or cites to any authority not contained in the Palau Supreme Court Library, then the text of the relevant portion of such authority must be appended to the party's brief for it to be considered. If the authority is a court decision or opinion, then a copy of the entire decision or opinion must be appended.

2002 Amendment: This provision is adopted from ROP R. App. Pro. 28(f).