ATTORNEY AND CLIENT

The FSM Supreme Court=s trial division is not precluded from allowing reasonable travel expenses of an attorney for a prevailing party as costs under 6 F.S.M.C. 1018 where there is a showing that no attorney is available on the island where the litigation is taking place. Ray v. Electrical Contracting Corp., 2 FSM R. 21, 26 (App. 1985).

The purpose of Rule 4.2 of the Model Rules of Professional Conduct as it applies to organizations is not to pull a veil of partial confidentiality around facts, or even people who have knowledge of the matter in litigation by virtue of their close relationship with a party, but to protect against intrusions by other attorneys upon an existing attorney-client relationship. Panuelo v. Pohnpei (II), 2 FSM R. 225, 232 (Pon. 1986).

The prohibition in Rule 4.2 of the Model Rules of Professional Conduct against communications with a client organization represented by another attorney applies only to communications with an individual whose interests at the time of the proposed communication are so linked and aligned with the organization that one may be considered the alter ego of the other concerning the matter in representation. Panuelo v. Pohnpei (II), 2 FSM R. 225, 232 (Pon. 1986).

The comment to Rule 4.2 of the Model Rules of Professional Conduct was written with the understanding or assumption that it could only affect people who, at the time of the proposed communication, have a working relationship with the organization. Panuelo v. Pohnpei (II), 2 FSM R. 225, 233 (Pon. 1986).

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

Truk State Bar Rule 13(a), which adopts the Code of Professional Responsibility, prevents conflicts of interest and appearances of impropriety by requiring that members of the state bar conduct themselves in a manner consistent with the American Bar Association=s Code of Professional Responsibility. Nakayama v. Truk, 3 FSM R. 565, 570 (Truk S. Ct. Tr. 1987).

An attorney holding public office should avoid all conduct which might lead the layman to conclude that the attorney is utilizing his former public position to further his subsequent professional success in private practice. Nakayama v. Truk, 3 FSM R. 565, 572 (Truk S. Ct. Tr. 1987).

Since Congress did not give any consideration to, or make any mention of, the services enumerated in article XIII, section 1 of the FSM Constitution in enacting the Foreign Investment Act, 32 F.S.M.C. 201-232, the avoidance of potential conflict with the Constitution calls for the conclusion that Congress did not intend the Foreign Investment Act to apply to noncitizen attorneys or to any other persons who provide services of the kind described in article XIII, section 1 of the Constitution. Carlos v. FSM, 4 FSM R. 17, 30 (App. 1989).

Counsel for a party in a civil action may not be appointed to prosecute the opposing party for criminal contempt for violating an order in that action because the primary focus of the private attorney is likely to be not on the public interest, but instead upon obtaining for his or her client the benefits of the court=s order. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 62, 67 (Pon. 1991).

By statute the practice of law is specifically included in businesses engaged in by noncitizens requiring a foreign investment permit. 32 F.S.M.C. 203. Michelsen v. FSM, 5 FSM R. 249, 254 (App. 1991).

The parties, not their attorneys, have ultimate responsibility to determine the purposes to be served by legal representation. Thus, clients always have the right, if acting in good faith, to agree to settle their

own case, with or without the consultation or approval of counsel, even when their attorneys have failed to settle. Iriarte v. Micronesian Developers, Inc., 6 FSM R. 332, 334 & n.1 (Pon. 1994).

Counsel=s own dissatisfaction with the settlement agreement reached by his clients without counsel=s consultation or approval does not take precedence over the clients= rights to settle their claims themselves. Iriarte v. Micronesian Developers, Inc., 6 FSM R. 332, 334-35 (Pon. 1994).

While it may be unethical for an attorney to testify at a trial in which he is an advocate, no actual conflict exists when the attorney has not yet been called to testify and case may be resolved without a trial. Triple J Enterprises v. Kolonia Consumer Coop. Ass=n, 7 FSM R. 385, 386 (Pon. 1996).

When the attorney of record at the time of appeal obtains a later trial court order substituting another attorney who cannot address all the issues on appeal, the appellate court will direct the first attorney to proceed with the appeal. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 520, 522 (App. 1996).

Rule 1.16(d) requires that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client=s interests, such as giving reasonable notice to the client. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 170 n.3 (App. 1999).

A court cannot unilaterally relieve an attorney of his obligations to his clients. It is initially the attorney=s responsibility, in consultation with his clients, to determine where his obligations and duties lie and if they will be satisfied by not participating in an appeal, and proceed accordingly. In re Sanction of Woodruff, 9 FSM R. 414, 415 (App. 2000).

Counsel must act with reasonable diligence and promptness in representing a client. Reasonable diligence requires follow up by legal counsel to determine whether any documents have been served upon him at his office. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 193 (Kos. S. Ct. Tr. 2001).

A lawyer must keep a client reasonably informed about the status of a matter. The failure of the counsel of record to inform his clients of an order striking their punitive damages count if new counsel did not file an appearance by March 30, 2001, would appear not to discharge that duty. Elymore v. Walter, 10 FSM R. 267, 268 (Pon. 2001).

A lawyer generally cannot appear as an advocate when he also appears as a witness, although there is an exception when the testimony relates to an uncontested issue. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 344 (Chk. 2001).

Attorney negligence, even gross negligence, if demonstrated, is not a separate basis for Rule 60(b)(6) relief from judgment. Under established FSM law, attorney neglect as a basis for Rule 60(b) relief falls within subsection Rule 60(b)(1), "mistake, inadvertence, surprise, or excusable neglect." Amayo v. MJ Co., 10 FSM R. 371, 381 (Pon. 2001).

Generally, attorney negligence is not a basis for Rule 60(b)(1) relief from judgment. Parties who freely choose their attorneys should not be allowed to avoid the ramification of the acts or omissions of their chosen counsel. A party in a civil case whose attorney=s conduct has fallen below a reasonable standard has other remedies. To grant Rule 60(b)(1) relief in such circumstances would penalize the nonmoving party for the negligent conduct of the moving party=s counsel. Amayo v. MJ Co., 10 FSM R. 371, 381 (Pon. 2001).

The exception to the rule that attorney neglect does not state a basis for relief under Rule 60(b)(1) is where the neglect itself is excusable. Clients must be held accountable for their attorneys= acts or omissions. Amayo v. MJ Co., 10 FSM R. 371, 381-82 (Pon. 2001).

Allegations of an attorney=s gross negligence do not entitle his client to relief from judgment under

the excusable neglect provision of Rule 60(b)(1). Amayo v. MJ Co., 10 FSM R. 371, 382 (Pon. 2001).

An analysis of excusable neglect under Rule 60(b)(1) by its terms brings into play the conduct of the client, as well counsel because the proper focus is upon whether the neglect of the clients and their counsel was excusable. Amayo v. MJ Co., 10 FSM R. 371, 382 (Pon. 2001).

The phrase "the endless stream of discovery drivel emanating from plaintiffs= quarter" in a written response has no place in the civil colloquy (especially in the course of written discourse which permits the authoring party time to reflect) within the bounds of which professional, zealous advocacy takes place. Such comments are no substitute for convincing arguments that follow from the careful marshaling of facts, and the application to those facts of carefully researched principles of law. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 473-74 (Pon. 2001).

Normally, a quasi-governmental agency would be represented by private counsel not associated with the agency. Hauk v. Board of Dirs., 11 FSM R. 236, 239 n.2 (Chk. S. Ct. Tr. 2002).

While counsel may be engaged for only limited purposes, it is expected that the court and the other parties would be so informed on the record at the representation=s start. If the court has not been so informed, the court and the other parties, must presume that counsel is the counsel of record for all purposes whatsoever. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

When the court has not been notified on the record at the representation=s start that counsel=s representation was limited, counsel then must seek the court=s permission to withdraw when he believes his representation has come to an end. He then remains counsel of record until, and if, the court grants him permission to withdraw. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

An experienced, certified trial counselor admitted to practice law in Kosrae is held to a higher standard regarding knowledge of contract requirements. He should have known that a valid, enforceable contract requires the material term of the cost. Youngstrom v. Mongkeya, 11 FSM R. 550, 554 (Kos. S. Ct. Tr. 2003).

Trial counsel may have a duty to take steps to protect a client=s appeal rights even though trial counsel may not be obligated or intended to be appellate counsel. Goya v. Ramp, 13 FSM R. 100, 106 (App. 2005).

Trial counselors and attorneys are expected to handle different types of cases, both civil and criminal. A counsel need not necessarily have special training or prior experience to handle legal problems of a type with which the counsel is unfamiliar. Consequently, even if a trial counselor did not have prior experience with the specific types of offenses charged against the defendant, that lack of experience does not automatically result in lack of competency. Kosrae v. Kinere, 13 FSM R. 230, 236 (Kos. S. Ct. Tr. 2005).

Since as an advocate, a lawyer zealously asserts the client=s position under the rules of the adversary system, clients have every expectation that counsel should vigorously pursue their interests along the line of uncovering incriminating evidence against the opposing parties even if it happens to involve another of counsel=s clients. McVey v. Etscheit, 14 FSM R. 207, 213 (Pon. 2006).

Dismissal for an attorney=s inexcusable neglect in failing to file an opening brief is handled differently in civil and criminal appeals. Appellate courts are much more reluctant to dismiss a criminal appeal for an attorney=s inexcusable neglect because a criminal defendant has no other remedy. In a civil appeal, when the appeal is dismissed for inexcusable neglect in prosecuting the appeal, if the party whose appeal is thus dismissed is thereby aggrieved, his remedy will be against his attorney. A criminal appellant has no such remedy. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114 (App. 2008).

Dismissal for an attorney=s inexcusable neglect in failing to file an opening brief must be handled differently in civil and criminal appeals. Appellate courts are much more reluctant to dismiss a criminal appeal for an attorney=s inexcusable neglect because a criminal defendant has no other remedy. When a civil appeal is dismissed for inexcusable neglect in prosecuting the appeal, if the party whose appeal is thus dismissed is thereby aggrieved, his remedy will be against his attorney. A criminal appellant has no such remedy. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 129-30 (App. 2008).

It is not the province of the court to prepare a party=s case but that of counsel. Clients must be held accountable for their attorneys= acts or omissions. Parties who freely choose their attorneys should not be allowed to avoid the ramification of the acts or omissions of their chosen counsel because to grant relief in such circumstances would penalize the nonmoving party for the conduct of the moving party=s counsel. Miochy v. Chuuk State Election Comm=n, 15 FSM R. 426, 429 (Chk. S. Ct. App. 2007).

When the contract is for an attorney to provide legal assistance for the plaintiffs= appeal case and when the terms are that the attorney will represent the plaintiffs and the plaintiffs will pay the attorney a $100 per hour, there is a promise between the two parties with an offer of performing legal services and the acceptance on the plaintiffs= behalf and there was mutual assent when the parties reached a meeting of the minds with the attorney making the offer and the plaintiffs accepting the offer. The consideration present for the promise was that the attorney offered his legal services to the plaintiffs in exchange for the plaintiffs= money. There was a bargained-for exchange between the parties and what was bargained for was considered of legal value. The contract terms were definite and therefore there was a valid written contract between the parties for the performance of legal services for a fee. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 645 (Kos. S. Ct. Tr. 2009).

When an attorney had promised to handle an appeal case for the plaintiffs and when the attorney failed to file a brief in the case resulting in the appeal=s dismissal, the attorney, by his failure to file a brief, breached his contract with the plaintiffs. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

When the plaintiffs had a contract with the defendant attorney and their appeal case was dismissed without the plaintiffs getting their day on court due to the attorney=s failure to file required materials with the appellate court, the plaintiffs are entitled to a refund of the $500 retainer that they paid the attorney in the case and to the $10 filing fee because $510 is the amount to put the non-breaching party, the plaintiffs, in a position they would have been in but for the attorney=s breach. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646-47 (Kos. S. Ct. Tr. 2009).

Notice served on a represented party=s attorney of record is notice to the party because clients must be held accountable for their attorneys= acts or omissions. Saimon v. Wainit, 18 FSM R. 211, 214 (Chk. 2012).

Although the court must first look to FSM sources of law, it may look to U.S. sources for guidance in interpreting the Model Rules of Professional Conduct when FSM case law does not provide a complete answer. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 391 n.3 (Pon. 2012).

Although the court must first look to FSM sources of law and circumstances, when an FSM court has not previously construed an FSM ethical rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 571-72 n.1 (Kos. 2013).

In representing a client, a lawyer must not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the other lawyer=s consent or is authorized by law to do so. Mori v. Hasiguchi, 19 FSM R. 16, 20 (Chk. 2013).

An attorney may rely on someone else to do the research and, based on past experience with that researcher or by double-checking the researcher=s research, be able to certify that the filing was well-grounded in fact and warranted by law or by a good faith argument that this is what the law should be. In re Sanction of Sigrah, 19 FSM R. 305, 310 (App. 2014).

If a disbarred or suspended attorney drafts a paper and an admitted attorney signs and files it, the attorney signature on the filing constitutes assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law. That would subject the signing attorney to discipline under Model Rule 5.5(b), which prohibits an attorney from assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

An attorney=s reputation is an important and valuable professional asset. Mori v. Hasiguchi, 19 FSM R. 414, 418 (App. 2014).

A motion sounding in an attorney=s purported negligence does not constitute a basis for Rule 60(b) relief from judgment, as clients are held accountable for their attorney=s acts or omissions. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015).

Under the foreign investment laws requiring noncitizens "engaging in business" to hold a valid foreign investment permit, "engaging in business" includes providing professional services as an attorney for a fee. Pacific Int=l, Inc. v. FSM, 20 FSM R. 346, 349 (Pon. 2016).

Someone providing professional services for a fee, such as an attorney, is not considered to be "engaging in business" unless he or she, while present in the FSM, performs his or her respective professional services for more than 14 days in any calendar year. Pacific Int=l, Inc. v. FSM, 20 FSM R. 346, 349 (Pon. 2016).

A noncitizen attorney, licensed to practice in the FSM since 1985 and a member of the Bar in good standing but currently resident and practicing on Guam, is excepted from the foreign investment permit requirement when he works in tandem with an FSM citizen licensed to practice in the FSM and when his involvement in the case has been from a remote location and, as a result, he has not been present in the FSM rendering professional services for more than 14 days in any calendar year. Pacific Int=l, Inc. v. FSM, 20 FSM R. 346, 349 (Pon. 2016).

Under 55 F.S.M.C. 419(1) and (2), no foreign investment permit is required of a noncitizen attorney when his representation directly involves "contract management activities" that relate to a public contract awarded for a civil works project to implement part of the Infrastructure Development Plan and that is supported by funds through the Amended Compact of Free Association Section 211. Pacific Int=l, Inc. v. FSM, 20 FSM R. 346, 349-50 (Pon. 2016).

An attorney cannot be said to come within the ambit of the 32 F.S.M.C. 204, which otherwise would require a foreign investment permit, when his legal representation, to date, has been conducted *in absentia*, and thus cannot be said to have rendered his professional services "while present in the FSM for more than 14 days in any calendar year" and when the present action involves an Infrastructure Development Plan project and the construction by his client was undertaken pursuant to a contract underwritten with Compact monies. Pacific Int=l, Inc. v. FSM, 20 FSM R. 346, 350 (Pon. 2016).

A non-attorney parent must be represented by counsel in bringing an action on behalf of his or her child. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

A minor child cannot bring suit through a parent acting as a next friend if the parent is not represented by an attorney. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

The requirement that a minor be represented by counsel is based on two cogent policy considerations. First, there is a strong governmental interest in regulating the practice of law. The second consideration is the importance of the rights at issue during litigation and the final nature of any adjudication on the merits. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

A non-attorney parent must be represented by counsel in bringing an action on behalf of a child. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

A garnishee=s payment of the monthly rent to the debtor or to his attorney does not excuse his non-compliance with the writ of garnishment, because clients are held accountable for their attorney=s acts or omissions. In re Contempt of Fujita, 21 FSM R. 634, 638-39 (Pon. 2018).

A garnishee=s attorney, as an officer of the court, is obligated to advise her garnishee client to comply with the writ of garnishment, and to transmit the garnishee=s monthly payments to the creditor and not to her other clients, who were not entitled to receive those funds. In re Contempt of Fujita, 21 FSM R. 634, 639 (Pon. 2018).

A lawyer=s incorrect legal argument does not, by itself, constitute a fraud upon the court since an attorney is to be expected to responsibly present his client=s case in the light most favorable to his client. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 12 (Pon. 2018).

The Chuuk State Supreme Court adopted the 1983 ABA Model Rules of Professional Conduct as the code of ethics and model for professional conduct. These Model Rules lack a provision concerning "prospective clients." Thus, a person who approaches a firm and has a consultation with its attorneys is classified as either a former client, current client, or perhaps as a non-client. Peter v. Gouland, 22 FSM R. 404, 406 (Chk. S. Ct. Tr. 2019).

A client is responsible for his attorney=s actions, inactions, or omissions. Rule 60(b) is not meant to relieve a party from its own carelessness and neglect, or from his counsel=s carelessness and neglect. FSM Dev. Bank v. Talley, 22 FSM R. 587, 593 (Kos. 2020).

– Admission to Practice

The normal Trust Territory High Court authorization to practice before it is unlimited as to time and covers the entire Trust Territory. Limited or provisional Trust Territory High Court authorization to practice law is not sufficient High Court "certification" to qualify an applicant for admission to practice under Rule I(A) of the FSM Supreme Court=s Rules for Admission. In re Robert, 1 FSM R. 4, 4-5 (Pon. 1981).

The grandfather clause of Rule I of the FSM Supreme Court=s Rules for Admission permits licensed or existing practitioners before the Trust Territory courts to continue in their same capacity by shielding them from the necessity of complying with the new licensing standards. In re Robert, 1 FSM R. 4, 7 (Pon. 1981).

In seeking authorization to practice before the FSM Supreme Court, if the High Court=s authorization of the applicant to practice before it is not an unreserved certification the applicant does not fulfill the requirements under the FSM Supreme Court=s Rule for Admission I(A), and must fulfill the conditions required of new applicants. In re Robert, 1 FSM R. 4, 11-13 (Pon. 1981).

In absence of express appellate division permission to appear without supervision of an attorney, the court will require all appellate level briefs and other documents to be signed by an attorney authorized to practice before the FSM Supreme Court. Any appellate submission not so signed will be rejected. Alaphonso v. FSM, 1 FSM R. 209, 230 n.13 (App. 1982).

Only attorneys admitted to practice before the FSM Supreme Court or trial counselors supervised by

an attorney admitted to practice may appear before the FSM Supreme Court on appeals from state court cases. Kephas v. Kosrae, 3 FSM R. 248, 252 (App. 1987).

Admission to appear for a particular case, pursuant to Rule 4(A) of the Rules for Admission to Practice, is liberally granted. Truk Transp. Co. v. Trans Pacific Import Ltd., 3 FSM 440, 443 (Truk 1988).

Where an attorney seeks to have another attorney disqualified on the grounds that such other attorney was not admitted to the state bar, and the attorney seeking the disqualification should have known that the other attorney was within an exception to that rule, the motion to disqualify is without merit and shall be denied. Nakayama v. Truk, 3 FSM R. 565, 568-69 (Truk S. Ct. Tr. 1987).

In a nation constitutionally committed to attempt to provide legal services for its citizens, the mere fact that an attorney had previously sued the state, without any suggestion that actions taken were frivolous, vexatious, or for purposes of harassment, cannot be viewed as reasonable grounds for denying the attorney the opportunity to practice law in that state. Carlos v. FSM, 4 FSM R. 17, 24 (App. 1989).

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

The decision whether to permit an attorney, not licensed within the FSM, to practice before the FSM Supreme Court, in a particular case falls within the sound discretion of the trial judge. In re Chikamoto, 4 FSM R. 245, 248 (Pon. 1990).

FSM Admission Rule IV(A) does not provide a means for a nonresident attorney, who has not been licensed to practice before the court and who has no reasonable prospect of being licensed in the near future, nonetheless to be permitted to practice before the court on a continuing basis. In re Chikamoto, 4 FSM R. 245, 249 (Pon. 1990).

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

FSM Admission Rule III presumes that an arrangement of reciprocity must already exist between the FSM Court and another jurisdiction, in order for the rule to apply. When no such arrangement exists, it must first be created before Rule III can be applied. In re McCaffrey, 6 FSM R. 20, 21 (Pon. 1993).

The fact that the Pohnpei Supreme Court admits attorneys of the FSM Bar does not alone create a formal arrangement of reciprocity. The arrangement must be formal, neither implied nor constructive. In re McCaffrey, 6 FSM R. 20, 22 (Pon. 1993).

The language of FSM Admission Rule III contemplates that formal arrangements between the FSM Supreme Court and other jurisdictions must exist before an attorney from another jurisdiction may apply for admission to the FSM Supreme Court on the basis of reciprocity. McCaffrey v. FSM Supreme Court, 6 FSM R. 279, 281-82 (App. 1993).

FSM Admission Rule III is directed at attorneys residing outside of the FSM in other Pacific jurisdictions. McCaffrey v. FSM Supreme Court, 6 FSM R. 279, 282 (App. 1993).

Motions to appear are not granted as a matter of course and each application must be carefully reviewed for compliance with the Rules of Admission. Pohnpei v. M/V Zhong Yuan Yu #606, 6 FSM R. 464, 466 (Pon. 1994).

The FSM Supreme Court=s Chief Justice=s constitutional powers to make rules governing the attorney discipline and admission to practice is limited to the national courts. He is not authorized to govern admission to practice in state courts. Berman v. Santos, 7 FSM R. 231, 236 (Pon. 1995).

The FSM Supreme Court and the state courts may each admit and discipline attorneys to appear before their respective courts. Berman v. Santos, 7 FSM R. 231, 237-38 (Pon. 1995).

A chief justice=s actions in reviewing an attorney=s application for admission is a judicial function that is entitled to absolute immunity from suit for damages. Berman v. Santos, 7 FSM R. 231, 240 (Pon. 1995).

The power to make rules governing the admission of attorneys to practice in state courts is a state power, not a power of the FSM Supreme Court Chief Justice. Berman v. Santos, 7 FSM R. 624, 626 (App. 1996).

Once an attorney has started private practice she must submit a $25 fee to the Pohnpei Supreme Court in order to be admitted there even if she was exempt from that requirement before as a government attorney. Berman v. Santos, 7 FSM R. 624, 627 (App. 1996).

A motion to appear pro hac vice requires a Rule II(B) certification as to the morals and character of the applying attorney. In re Certification of Belgrove, 8 FSM R. 74, 77 (App. 1997).

The FSM Supreme Court has the discretion to properly raise the issue of the fitness and character of an applicant for admission to the FSM bar even when the rule=s requirements have been met by the applicant=s actions because the court may require, in addition to the applicant=s certificate, other proof of good character. In re Certification of Belgrove, 8 FSM R. 74, 77 (App. 1997).

When there are pending criminal or professional responsibilities charges against an applicant to the FSM bar the FSM Supreme Court normally has the necessary discretion to investigate and reach a conclusion concerning the applicant=s character and fitness. That discretion may be abused by an unexplained, lengthy delay. Failure to exercise the discretion within a reasonable time is an abuse of the discretion. In re Certification of Belgrove, 8 FSM R. 74, 77-78 (App. 1997).

When there is no right of appeal from the Chief Clerk=s deferral of an applicant=s certification as an attorney entitled to practice law before the FSM Supreme Court, and no other remedy exists, and when the deferral was without giving the applicant a hearing, and the deferral was continued during an unexplained, lengthy delay in the subsequent disciplinary proceeding, constituting an abuse of the discretion allowed by the admission rules, a writ of mandamus will lie to compel the certification of the applicant. In re Certification of Belgrove, 8 FSM R. 74, 78 (App. 1997).

Admission to appear pro hac vice may be granted conditioned upon counsel=s later providing to the court certificates of good standing in the jurisdictions where she is permitted to practice. Kosrae v. Worswick, 9 FSM R. 536, 538 (Kos. 2000).

The FSM Supreme Court Admission Rules apply to all cases properly before the national courts, regardless of where the case originated. There is no exception to these rules, express or implied, for legal representatives whose cases are removed to the national court from a state court. Nett Dist. Gov=t v. Micronesian Longline Fishing Corp., 10 FSM R. 520, 521-22 (Pon. 2002).

When trial counselors seek to appear in the FSM Supreme Court without supervision, the court will, in addition to any relevant criteria specified in Rule IV.A., consider the availability to the trial counselor of an attorney for consultation; the client=s wishes and whether the trial counselor had prior professional association with the client; the litigation=s complexity and the importance of the issues to the FSM; the trial counselor=s previously demonstrated competence and other factors indicating whether granting the motion would be in the interests of justice. Nett Dist. Gov=t v. Micronesian Longline Fishing Corp., 10

FSM R. 520, 522 (Pon. 2002).

When the issues involved in the litigation are complex, and are important to the people of Micronesia and of Pohnpei and when the trial counselor has had a prior professional association with the client, but had been required to appear with supervision in previous FSM Supreme Court cases in which he represented the client, and when there are several private attorneys in Pohnpei who are admitted to practice before the court, the trial counselor will be admitted to appear in the case only after he has submitted a written motion and a written agreement, signed by an attorney admitted to practice before the FSM Supreme Court, stating that the attorney will supervise him. Nett Dist. Gov=t v. Micronesian Longline Fishing Corp., 10 FSM R. 520, 522 (Pon. 2002).

A person seeking to appear *pro hac vice* in a case, but who is not licensed to practice law, nor admitted as a trial counselor in Chuuk or in any other jurisdiction is therefore moving to permit "third-party lay representation" in the case. Chuuk v. Ernist Family, 12 FSM R. 154, 156 (Chk. S. Ct. Tr. 2003).

The Chuuk State Supreme Court follows the general rule that in order to obtain permission to appear for a particular case (*pro hac vice*), in a jurisdiction where the applicant is not admitted to practice, the applicant must be properly admitted to practice law in another jurisdiction. The only exceptions to this rule are when a party represents him or he self, *pro se*, or where a husband or wife appears on behalf of either or both when one or the other are parties to a lawsuit, pursuant to the custom that a spouse may represent the other spouse in matters involving either or both of them. Chuuk v. Ernist Family, 12 FSM R. 154, 156-57 (Chk. S. Ct. Tr. 2003).

While it might perhaps be better if the rule that admission *pro hac vice* requires admission in another jurisdiction could be relaxed or waived in some cases, the potential injury to the client, should the applicant fail to discharge his duties as an attorney properly, clearly outweighs the benefits of permitting him to act as an attorney without having the requisite credentials. For these reasons a motion for admission *pro hac vice* will be denied. Chuuk v. Ernist Family, 12 FSM R. 154, 157 (Chk. S. Ct. Tr. 2003).

Any attorney who assists parties in a case must be one admitted to practice before the national court. Without the court=s prior authorization, attorneys or individuals who are not admitted to the national court are expressly prohibited from taking any part in any matter filed in the national court. Damerlane v. Sato Repair Shop, 12 FSM R. 231, 233 (Pon. 2003).

All persons admitted to practice law in Kosrae must comply with the Model Rules of Professional Conduct as adopted by the American Bar Association in August 1983 as amended through 1995. The word "lawyer" as it appears in the Model Rules is deemed to refer to attorneys and trial counselors practicing law in the state. George v. Nena, 12 FSM R. 310, 318 n.5 (App. 2004).

When a complaint and a later memorandum are signed by the plaintiffs and a practitioner not admitted to practice in the national courts and the practitioner has not moved to appear pro hac vice, the court must therefore disregard the practitioner=s signature and consider the plaintiffs as appearing pro se only. Puchonong v. Chuuk, 14 FSM R. 67, 68 n.1 (Chk. 2006).

The filing of a motion to appear pro hac vice does not automatically entitle the applicant to appear. Goya v. Ramp, 14 FSM R. 303, 305 n.2 (App. 2006).

The filing of a motion to appear pro hac vice does not automatically entitle the applicant to appear. Goya v. Ramp, 14 FSM R. 305, 308 n.4 (App. 2006).

All attorneys and trial counselors admitted to practice law before the FSM Supreme Court pursuant to the court=s rules for admission to practice are eligible to appear before the FSM Supreme Court=s appellate division. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 11 (App. 2007).

When attorneys were granted permission to appear pro hac vice before the court=s trial division in the underlying matter at issue in an appeal, but have not been admitted to practice law before the court, they must, if they intend to appear in the appeal, undertake the appropriate action to appear before the appellate division. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 11 (App. 2007).

When counsel was admitted pro hac vice conditioned upon his submission of certificates of good standing from all jurisdictions in which he is admitted along with a sworn statement that complied with the morals and character requirement imposed under FSM Admission Rule II(B), but counsel failed to submit certificates of good standing for two of the three jurisdictions he was admitted in, his request to appear pro hac vice will be denied. Upon the submission of another request to appear pro hac vice which contains all the relevant documentation needed for the court to issue a determination on the request to appear, the court will reconsider its ruling. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 361 (App. 2007).

Although the better practice is to file the motion to appear pro hac vice simultaneously with the first filing in the FSM Supreme Court appellate division, it is not uncommon for unlicensed counsel to move for pro hac vice admission at a reasonable time after the filing of a notice of appeal, as meeting the rules= time constraints and thus protecting the client=s interest is of paramount concern. Akinaga v. Heirs of Mike, 15 FSM R. 391, 395 (App. 2007).

When no substantial activity took place on the appeal before counsel filed his motion for pro hac vice admission or before his full admission to the FSM Supreme Court bar after he passed the FSM bar examination and when that counsel did not submit the appellant=s brief until he was fully licensed to appear before the appellate division as contemplated by Appellate Rule 46(a) thus complying with Appellate Rule 31(d)=s explicit mandate, which requires all briefs to be signed by licensed attorneys admitted to the FSM Supreme Court, the appeal was not precluded either by the appellant=s flawed notice of appeal or the fact that her counsel was not admitted to practice before the FSM Supreme Court at the time the notice of appeal was filed in the FSM Supreme Court. Akinaga v. Heirs of Mike, 15 FSM R. 391, 395-96 (App. 2007).

An argument that the residency requirement for foreign citizens to take the FSM bar exam violates the U.S. Constitution=s privileges and immunities clauses is without merit. In re Neron, 16 FSM R. 472, 474 (Pon. 2009).

Admitted attorneys are required to annually provide certain contact information and those attorneys who fail to comply are removed from the list of active members and are no longer authorized to practice before the FSM Supreme Court. In re Attorney Disciplinary Proceeding, 19 FSM R. 576, 578 (Pon. 2014).

An attorney who has not complied with FSM GCO 2012-01, ' X, and who is thus "removed from the list of active members" remains a member of the FSM bar otherwise in good standing and licensed to practice law before the FSM Supreme Court and who, upon submission of the required contact information, will be included in or restored to the list of active members authorized to appear before the court. Until then the attorney is an inactive member of the bar in good standing. In re Attorney Disciplinary Proceeding, 19 FSM R. 576, 578 (Pon. 2014).

– Appearance

An attorney, who stated that he was appearing temporarily for a party and only for the purposes of that one brief, in chambers, off-the-record status conference and who did not file a notice of appearance either then or subsequently, did not appear of record. And when that attorney did nothing officially of record in the case until he came to court with the party for the trial=s afternoon session, he was not the party=s counsel of record as of the date the notice of trial was served, and it is immaterial whether he

received the notice of trial. Amayo v. MJ Co., 10 FSM R. 371, 378-79 (Pon. 2001).

When a court allows an attorney=s limited appearance, it is not clear whether litigants represented in a limited manner understand that their attorney is not taking full responsibility for prosecuting or defending them. Thus trial judges should consider carefully, on a case-by-case basis, whether to allow "limited appearances." As a general rule, attorneys should either enter formal appearances and accept full responsibility for a case, or not be permitted to appear before the court. Panuelo v. Amayo, 12 FSM R. 365, 373 (App. 2004).

If the court learns that an attorney is providing legal advice and/or drafting documents for a *pro se* litigant but concealing that fact from the court, the court should consider ordering the attorney to file a formal notice of appearance or be subjected to sanctions. Panuelo v. Amayo, 12 FSM R. 365, 373-74 (App. 2004).

A special appearance is for the purpose of testing or objecting to the sufficiency of service or the court=s jurisdiction over the defendant without submitting to such jurisdiction. Civil Procedure Rule 12 obviates the need for special appearances, since that rule abolished the distinction between general and special appearances. Ehsa v. Pohnpei Port Auth., 14 FSM R. 567, 572 (Pon. 2007).

When one defendant=s trial level counsel and his appellate counsel are both employed by the Kosrae Public Defender=s Office and appellate counsel is admitted to practice before the FSM Supreme Court, but trial counsel is not, since both counsel are employed by the Kosrae Public Defender=s Office, the appellate counsel properly appeared in the appeal, and it would have been improper for trial counsel to file the appeal, since he is not admitted to practice before the FSM Supreme Court. Nedlic v. Kosrae, 15 FSM R. 435, 437 (App. 2007).

In the trial court, a party has the right to appear pro se. To appear "pro se" means to appear on one=s own behalf; without a lawyer. A person appearing pro se thus appears only for himself and does not represent any other person or anyone else. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

A pro se party can, of course, represent his own business when that business is merely a d/b/a because a "d/b/a" is not a separate person or party since a d/b/a is just another name under which a person operates the business or by which the person or business is known. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

A party appearing pro se cannot represent anyone else. That would be the unauthorized practice of law. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

A corporation is not a human being but a creature created by the government and subject to its regulation and control, including the rule that in court proceedings a corporation must be represented by a licensed attorney. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

In instances where there is no FSM precedent, such as whether to require an attorney to appear for a corporation (although it has been a rather long-standing practice in the FSM Supreme Court), the court may consider cases from other jurisdictions in the common law tradition. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 n.2 (Pon. 2011).

Just as natural persons, appearing pro se, are not permitted to act as "attorneys" and represent other natural persons, by the same token, non-attorney agents are not allowed to represent corporations in litigation, for a wholly unintended exception to the rules against unauthorized practice of law would otherwise result. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

A corporation obviously cannot appear pro se and represent itself since it is not a natural person and

it cannot physically appear in court or draft pleadings or the like. Someone must appear for the corporation. Corporations of necessity must always act through their agents. In a court case, that someone would ordinarily be an attorney admitted to appear before the court. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

The widely-recognized general rule is that a corporation can only appear through an attorney and that a corporation may not represent itself through nonlawyer employees, officers, or shareholders. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

When a business accepts the advantages of incorporation, it must also bear the burdens, including the need to hire counsel to sue or defend in court. Corporations are required to appear through attorneys because a corporation is a hydra-headed entity and its shareholders are insulated from personal responsibility. There must therefore be a designated spokesman accountable to the court. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

Unlike lay agents of corporations, attorneys are subject to professional rules of conduct and are amenable to disciplinary action by the courts for violations of ethical standards. Therefore, attorneys, being fully accountable to the courts, are properly designated to act as the representatives of corporations. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

A corporation cannot appear in the FSM Supreme Court and represent itself either "pro se" or by its nonlawyer officers or employees. It can only appear through an attorney licensed to practice law. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

Often when a shareholder files a derivative action against a corporation, the corporation=s regular attorney may defend it as he would an other suit. But when a corporation does not have a regular corporate counsel and neither the plaintiff nor a defendant corporation control the majority of the corporation=s shares (each owning 50%) and because they are adverse to each other, neither the plaintiff nor the defendant should choose and hire an attorney to represent that corporation since its corporate interests would likely differ from those of both of its two shareholders. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 412 (Pon. 2011).

An attorney that represents a corporation represents the organization itself, and does not represent the organization=s constituents such as its shareholders or its officers. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 412 (Pon. 2011).

It is extremely rare that the court will assign counsel in a civil case. It may be worth a try when the plaintiff and an adverse defendant each own 50% of a corporation that needs representation. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 412 (Pon. 2011).

Since a corporation can only be represented by counsel, any possibility that a corporation could proceed pro se is precluded. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 572 (Kos. 2013).

Being off-island does not prohibit an attorney from appearing telephonically. In re Contempt of Jack, 20 FSM R. 452, 466 (Pon. 2016).

Although a corporation may appear only through licensed counsel, there is no requirement that such licensed attorney must not be an employee of the corporation that he or she represents. The licensed attorney may be an employee of the corporation. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 451 (Pon. 2018).

The court expects prior notice when circumstances cause an attorney to appear telephonically in a matter. Salomon v. FSM, 21 FSM R. 522, 524 (Pon. 2018).

– Attorney Discipline and Sanctions

A counsel=s decision to take steps which may cause him to be late for a scheduled court hearing, coupled with his failure to advise the court and opposing counsel of the possibility that he might be late to the hearing, may, when followed by failure to appear at the scheduled time, constitute an intentional obstruction of the administration of justice within the meaning of section 119(a) of the Judiciary Act, and may be contempt of court. 4 F.S.M.C. 119(a). In re Robert, 1 FSM R. 18, 20 (Pon. 1981).

The summary contempt power may be invoked even after some delay if it was necessary for a transcript to be prepared to substantiate the contempt charge, or when the contemner is an attorney and immediate contempt proceedings may result in a mistrial. In re Iriarte (II), 1 FSM R. 255, 261 (Pon. 1983).

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

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

Courts have inherent power, and an obligation, to monitor the conduct of counsel and to enforce compliance with procedural rules. Leeruw v. Yap, 4 FSM R. 145, 150 (Yap 1989).

Under Rule 3.7 of the Model Rules of Professional Conduct, when a party=s counsel believes the opposing party=s attorney should be required to testify as to information which may be prejudicial to the opposing party, it is appropriate for counsel for the first party to move to disqualify opposing counsel from further representation of the opposing party, but this is not the only procedure which may be followed and counsel who fails to file such a motion may not be sanctioned for his failure in absence of harm to the opposing party or a showing of bad faith. Bank of Guam v. Sets, 5 FSM R. 29, 30 (Pon. 1991).

Where the record lacked any identifiable order directing a particular counsel to appear before the court, insofar as the court=s expectation was that "somebody" from the Office of the Public Defender appear, no affirmative duty to appear existed, nor did any intentional obstruction of the administration of justice occur to support the lower court=s finding of contempt against counsel. In re Powell, 5 FSM R. 114, 117 (App. 1991).

Where the information desired from another party=s lawyer as a witness was material and necessary and unobtainable elsewhere and the party desiring it had not acted in bad faith in the late service of a subpoena, a motion for sanctions may be denied at the court=s discretion. In re Island Hardware, Inc., 5 FSM R. 170, 174-75 (App. 1991).

Certification of extraditability is an adversarial proceeding. An advocate in an adversarial proceeding is expected to be zealous. In re Extradition of Jano, 6 FSM R. 26, 27 (App. 1993).

Dismissal of actions for attorney misconduct is generally disfavored in light of the judicial preference for adjudication on the merits whenever possible so as to allow parties a reasonable opportunity to present their claims and defenses. Paul v. Hedson, 6 FSM R. 146, 147 (Pon. 1993).

The court may sanction an attorney by its inherent authority to enforce compliance with procedural rules whenever it is apparent that the attorney has failed to abide by such rules without good cause. Paul v. Hedson, 6 FSM R. 146, 148 (Pon. 1993).

An attorney who fails to make timely requests for enlargement of time to complete discovery beyond the deadline set by court order; who has someone other than the client sign answers to interrogatories; and who fails to serve the answers properly on opposing counsel while filing a proof of service with the court is sanctionable on the court=s own motion. Paul v. Hedson, 6 FSM R. 146, 148 (Pon. 1993).

In light of the court=s policy for adjudicating matters on the merits the court may sanction counsel for initial noncompliance with the procedural rules rather than dismissing his client=s case. Nakamura v. Bank of Guam (I), 6 FSM R. 224, 229 (App. 1993).

A member of the FSM Bar may be suspended or disbarred if that individual has been suspended or disbarred by any other court. When an attorney has been suspended or disbarred in another jurisdiction and has not shown cause why he is not unfit to practice law in the FSM, he will be disbarred in the FSM. In re Webster, 7 FSM R. 201, 201 (App. 1995).

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

An attorney who takes a fee for representation and fails to provide any services to his client and whose client has to sue him for the return of the fee has violated the bar=s ethical rules and his oath, and no longer has the good moral character required of a member of the Chuuk State Bar and will be suspended from the practice of law. In re Suspension of Chipen, 7 FSM R. 268, 268-69 (Chk. S. Ct. Tr. 1995).

An attorney may be sanctioned when that attorney=s use of two different addresses and his failure to monitor both addresses for service of papers causes delay. FSM Telecomm. Corp. v. Worswick, 7 FSM R. 420, 422 (Yap 1996).

A lawyer has an ethical obligation to disclose legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to her client=s position. Iriarte v. Etscheit, 8 FSM R. 231, 237 (App. 1998).

When counsel has not been specifically advised that the court is considering the issuance of personal sanctions against him and he was not specifically given notice of a hearing on the court=s motion to sanction him, the sanction will be vacated and a hearing scheduled to provide the counsel an opportunity to be heard on every matter relevant to the court=s resolution of the issue. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 150, 153 (Pon. 1999).

A disbarment proceeding is adversarial and quasi-criminal in nature and the moving party bears the burden of proving all elements of a violation. The same is true when an attorney disciplinary proceeding results in a lesser sanction. Any disciplinary proceeding has the potential to end in disbarment or suspension. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 171 (App. 1999).

The disciplinary counsel=s burden is to prove attorney misconduct by clear and convincing evidence. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 171 (App. 1999).

The FSM Disciplinary Rules do not encourage settlement or compromise between disciplinary counsel and the respondent attorney. Settlements between a complainant and the respondent attorney do not, in themselves, justify abatement of the disciplinary proceeding. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 171 (App. 1999).

The reviewing justice has every right to reject a sanction proposed by the disciplinary counsel and respondent attorney. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 172 (App. 1999).

Any reliance on a "proposed disposition" to prove the respondent attorney=s misconduct is improper

when the respondent attorney=s statements show that any admissions of misconduct were only for the purpose of the reviewing justice=s approval of the proposed disposition and if it was not accepted, the respondent attorney would have to call defense witnesses. Such equivocation is not an admission of professional misconduct. It is thus inadmissible under FSM Evidence Rules 410 and 408, which bar the admission of pleas, plea discussions, and related statements and compromises and offers to settle, respectively. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 172 (App. 1999).

The standard of proof for establishing allegations of attorney misconduct is clear and convincing evidence. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

A hearing cannot qualify as the full evidentiary hearing contemplated by Disciplinary Rule 5(b) when neither side had an opportunity to present evidence. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 174 (App. 1999).

A hearing cannot qualify as the full evidentiary hearing contemplated by Disciplinary Rule 5(b) when the decision finding the allegations of misconduct proven had been made and announced before the hearing was held. Such a hearing must take place before the decision is made. Otherwise it is a denial of due process. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 174 (App. 1999).

Although 4 F.S.M.C. 121 mandates the publication of FSM Supreme Court appellate opinions, confidentiality in the spirit of the rules can been maintained in a continuing attorney disciplinary matter by the omission of names and identifying characteristics. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 175 (App. 1999).

Appellate counsel will not be sanctioned when they were not the party=s counsel before the trial division or in previous appellate procedures and once they became counsel acted expeditiously to comply with the rules. Chuuk v. Secretary of Finance, 9 FSM R. 255, 257 (App. 1999).

When the pleadings, the documents submitted as evidence during the hearing, the responding attorney=s signed affidavit which clearly and unequivocally states that he admits to a violation of Rule 1.16(d) and to a violation of Rule 1.7(a), and his statements during the hearing, constitute clear and convincing evidence establishing that violations of the Model Rules occurred, the court may find that the attorney violated Rules 1.7 and 1.16 of the Model Rules. In re Robert, 9 FSM R. 278a, 278g (Pon. 1999).

Suspensions may run concurrently, beginning 30 days from the date that the Clerk of Court enters the order. In re Robert, 9 FSM R. 278a, 278g (Pon. 1999).

In the event that a suspended attorney is reinstated under Rule 13 of the Disciplinary Rules, his future practice of law may be supervised for some time. In re Robert, 9 FSM R. 278a, 278g (Pon. 1999).

A suspended attorney may be assessed the costs, excluding salaries, but including airfare, per diem, and car rentals, that were incurred in connection with the prosecution of his disciplinary matter. In re Robert, 9 FSM R. 278a, 278h (Pon. 1999).

A suspended attorney is required to abide by the provisions of the Disciplinary Rules during his suspension, including Rule 12, which governs disbarred or suspended attorneys. In re Robert, 9 FSM R. 278a, 278h (Pon. 1999).

An attorney can be sanctioned in his individual capacity for willfully violating a valid court order, for causing the needless consumption of substantial amounts of the court=s time and resources and for otherwise engaging in conduct abusive of the judicial process. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 327 (Pon. 2000).

When Rule 37 sanctions have proven futile in resolving a discovery dispute and because they do not provide a remedy for the waste of a court=s time and resources, a court may invoke its inherent power to

control the orderly and expeditious disposition of cases and proper compliance with its lawful mandates. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 329 (Pon. 2000).

When a court has issued no sanction in response to a discovery motion and sanctions of attorney=s fees and costs in response to a second motion and when a third motion reveals that the attorney=s behavior was then at the root of the problem to be corrected, an attorney=s knowing and deliberate violation of a valid court order may result in personal monetary sanctions against him because while the court is cautious of exercising its inherent powers to issue personal monetary sanctions against an attorney, it cannot and will not tolerate continued discovery abuse. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 331-32 (Pon. 2000).

An attorney may appeal a sanction, but only if proceeding under his or her own name and as real party in interest. In re Sanction of Woodruff, 9 FSM R. 374, 375 (App. 2000).

An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on him, whether that sanction is imposed on him under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Woodruff, 10 FSM R. 79, 84 (App. 2001).

In addition to its statutory contempt power, the FSM Supreme Court does retain inherent powers to sanction attorneys. In re Sanction of Woodruff, 10 FSM R. 79, 85 (App. 2001).

Sanctions imposed personally on an attorney must be based on that attorney=s personal actions or omissions, not on the court=s frustration, no matter how justified, with previous counsel=s actions or omissions, or with a recalcitrant client=s actions or omissions that are beyond an attorney=s control or influence. In re Sanction of Woodruff, 10 FSM R. 79, 87 (App. 2001).

No proper personal sanction against an attorney should include any consideration of the amount of time and work the court spent on earlier motions when the attorney was not responsible for or personally involved with the case at the time the court=s work was done. In re Sanction of Woodruff, 10 FSM R. 79, 87 (App. 2001).

The clear and convincing evidence standard of an inherent powers sanction is also consistent with the standard of proof needed to discipline an attorney. It would be inequitable if a court could avoid the heightened standard of a disciplinary proceeding by instead resorting to its inherent powers to sanction an attorney. In re Sanction of Woodruff, 10 FSM R. 79, 88 (App. 2001).

The Professional Conduct Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies, and are not designed to be a basis for civil liability. The Rules= purpose can be subverted when they are invoked by opposing parties as procedural weapons. Nix v. Etscheit, 10 FSM R. 391, 395 (Pon. 2001).

The fact that a Professional Conduct Rule is a just basis for a lawyer=s self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek the Rule=s enforcement. Nix v. Etscheit, 10 FSM R. 391, 395 (Pon. 2001).

Kosrae Civil Procedure Rule 11 provides that for a wilful violation of that rule an attorney or trial counselor may be subjected to appropriate disciplinary action. In re Bickett, 11 FSM R. 124, 125 (Kos. S. Ct. Tr. 2002).

Kosrae practitioners may be disciplined by the Kosrae Chief Justice after notice and hearing. In re Bickett, 11 FSM R. 124, 125 (Kos. S. Ct. Tr. 2002).

The Model Rules of Professional Conduct are applicable to attorneys and trial counselors practicing

before the Kosrae State Court. In re Bickett, 11 FSM R. 124, 126 (Kos. S. Ct. Tr. 2002).

A complaint that alleges violations of Model Rules 3.1, 5.1, and 8.4, taken together, are sufficient to allege a Civil Rule 11 violation. In re Bickett, 11 FSM R. 124, 126 (Kos. S. Ct. Tr. 2002).

A finding of subjective bad faith on the part of the attorney filing the pleading is required in order to impose sanctions under Kosrae=s Civil Rule 11. In re Bickett, 11 FSM R. 124, 127 (Kos. S. Ct. Tr. 2002).

A complaint for declaratory judgment was not filed in subjective bad faith and thus did not violate Kosrae Civil Rule 11 when, although the claim did not survive a motion to dismiss, it was colorable, and the fact that the court later found that the dispute in question was not justiciable as a matter of law did not change that. Not every colorable claim will succeed, and the benefit of hindsight may not serve to bootstrap a Rule 11 violation. In re Bickett, 11 FSM R. 124, 128 (Kos. S. Ct. Tr. 2002).

When the court cannot conclude that the complaint for declaratory judgment constituted a claim not simply lacking in merit, but bordering on frivolity and when the court is not persuaded that there is clear evidence that the declaratory judgment claim was entirely without color and made for reasons of harassment or delay or for other improper purposes, the case was a colorable claim, supported by some authority. Thus Kosrae Civil Rule 11 was not violated when the complaint for declaratory judgment was filed. In re Bickett, 11 FSM R. 124, 129 (Kos. S. Ct. Tr. 2002).

No authority leads to the conclusion that various procedural defects in the pleadings in themselves constitute sanctionable conduct, and the court finds such contentions to be without merit. In re Bickett, 11 FSM R. 124, 129 (Kos. S. Ct. Tr. 2002).

The Model Rules of Professional Conduct are applicable to practitioners before the FSM Supreme Court. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 230 (Pon. 2002).

A lawyer must not knowingly make a false statement of material fact or law to a tribunal. Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 230 (Pon. 2002).

Model Rule 1.2 prohibits a lawyer from perpetrating a fraud upon the court. If a party=s attorney pursues a spurious lack of relevancy claim on the party=s behalf with the specific intent to prevent the disclosure of evidence damaging to the party, then Rule 1.2 is implicated. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 230 (Pon. 2002).

While the court cannot find, beyond a reasonable doubt, that an attorney intended either to obstruct the administration of justice or to disobey the court=s order since he thought the order did not apply to him because he believed he was no longer counsel and he thought (at that time) that he had informed the court of that, it can conclude that the attorney=s conduct falls below that expected of someone admitted to the FSM bar. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

A proper sanction is to admonish an attorney in the strongest terms for his failure, as counsel of record, to appear at a scheduled hearing. Further such inattentiveness and lack of diligence may require the attorney=s referral to the attorney disciplinary process. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

The practice of attorneys or trial counselors "ghost drafting" legal documents should, wherever possible, be strongly discouraged. In re Suda, 11 FSM R. 564, 566 n.1 (Chk. S. Ct. Tr. 2003).

The Model Rules of Professional Conduct apply to all attorneys and trial counselors. Ittu v. Palsis, 11 FSM R. 597, 598 (Kos. S. Ct. Tr. 2003).

The Model Rules of Professional Conduct are adopted pursuant to Kosrae State Code, Section

6.101(f), and applied to all counsel admitted to practice law in Kosrae through GCO 2001-5. Wakuk v. Melander, 12 FSM R. 73, 74 (Kos. S. Ct. Tr. 2003).

A legal services= agency=s request to withdraw based solely upon the agency=s policy, even though in the past the agency has routinely violated its own policy, will be denied. The Model Rules of Professional Conduct, which regulate the conduct of all legal counsel admitted to practice law in the State of Kosrae, as adopted by General Court Order pursuant to sate law, take precedence over the agency=s policy. Wakuk v. Melander, 12 FSM R. 73, 75 (Kos. S. Ct. Tr. 2003).

If the court learns that an attorney is providing legal advice and/or drafting documents for a *pro se* litigant but concealing that fact from the court, the court should consider ordering the attorney to file a formal notice of appearance or be subjected to sanctions. Panuelo v. Amayo, 12 FSM R. 365, 373-74 (App. 2004).

When the plaintiff=s letter specified that the defendant was given until March 31, 2004 to complete its remaining obligation to fill, spread and compact fill on the plaintiff=s land, or face legal action and when despite the letter=s deadline, the plaintiff did not wait to take legal action, but on February 25, 2004, only seven days after the letter=s date, the plaintiff, through his counsel, filed a small claim, the plaintiff=s failure to wait until the end of March 2004 to take legal action, contrary to his February 18 letter, raises the issue of the plaintiff=s and his counsel=s good faith. Counsel, in compliance with the Model Rules of Professional Conduct, is expected to abide by his own offers made on his client=s behalf. Esau v. Malem Mun. Gov=t, 12 FSM R. 433, 436 (Kos. S. Ct. Tr. 2004).

Good faith conduct is expected in matters filed in the Kosrae State Court. Esau v. Malem Mun. Gov=t, 12 FSM R. 433, 436 (Kos. S. Ct. Tr. 2004).

Any person admitted to practice law in the State of Kosrae may, after notice and hearing, be disciplined for violation of the Model Rules and an order may be entered pursuant to the Kosrae State Court's authority to discipline or disbar admitted trial counselors for cause. In re Mongkeya, 12 FSM R. 536, 538 (Kos. S. Ct. Tr. 2004).

When a respondent legal counsel fails to timely respond to an order and notice of disciplinary proceeding and the factual allegations made therein and also fails to request, within the prescribed time, an extension of time to respond either verbally or in writing, the factual allegations made in the order and notice shall be deemed admitted by the respondent for the purpose of the disciplinary proceeding. In re Mongkeya, 12 FSM R. 536, 538, 539 (Kos. S. Ct. Tr. 2004).

The disciplinary system for attorneys and trial counselors is structured not only to protect the public and maintain integrity of the judicial system, but also to inspire confidence in the public that the legal profession is being regulated. Consequently, it is imperative that that disciplinary proceedings be considered and initiated, as appropriate, where there has been allegations of misconduct by legal counsel. In re Mongkeya, 12 FSM R. 536, 539 (Kos. S. Ct. Tr. 2004).

It is implicit in the legal counsel's role as an officer of the court that he owes a duty of candor and honesty to the court. Thus a legal counsel's first duty is to the court and to the proper administration of justice. A legal counsel's duty of candor and honesty to the court applies even when the counsel is acting as a party and not as legal counsel. In re Mongkeya, 12 FSM R. 536, 539 (Kos. S. Ct. Tr. 2004).

No breach of professional ethics or of the law, is more harmful to the administration of justice or more hurtful to the public appraisal of the legal profession than the knowledgeable use by a legal counsel of false testimony and evidence in the judicial process. For this violation of ethics, disbarment is the presumptive penalty. It is appropriate to disbar legal counsel who have submitted documents known to be false with the intent to mislead the court. In re Mongkeya, 12 FSM R. 536, 539 (Kos. S. Ct. Tr. 2004).

Model Rule 3.3 requires legal counsel to take remedial measures when he discovers that false evidence was offered. The false evidence must be disclosed to the court and remedial action must be taken immediately. In re Mongkeya, 12 FSM R. 536, 539 (Kos. S. Ct. Tr. 2004).

Fair competition in the adversary system is secured by prohibition against alteration, destruction and concealment of evidence. Rule 3.4 ensures that litigation is conducted fairly. It prohibits a lawyer from altering a document that has potential evidentiary value. Suspension from the practice of law is appropriate discipline for misrepresentation by counsel. In re Mongkeya, 12 FSM R. 536, 540 (Kos. S. Ct. Tr. 2004).

A legal counsel=s falsification of documents is prohibited under Model Rule 8.4(c). In re Mongkeya, 12 FSM R. 536, 540 (Kos. S. Ct. Tr. 2004).

Model Rule 8.4(d) prohibits legal counsel from engaging in conduct that is prejudicial to the administration of justice. The Rule applies to both personal and professional conduct of legal counsel, encompasses conduct prohibited by other ethics rules, as well as conduct not specifically addressed by other rules. It includes conduct that has an adverse effect upon the administration of justice. In re Mongkeya, 12 FSM R. 536, 540 (Kos. S. Ct. Tr. 2004).

In Kosrae, many persons are not sophisticated in knowledge of the judicial system. Consequently they place complete trust and faith in their legal counsel to properly present their claim and appear before the court. Improper conduct by one legal counsel reflects not only upon himself, but also upon the entire legal profession as a whole. The falsification of evidence and submission of false evidence prejudices the fairness of our legal system and leads to increased mistrust and skepticism by the public in the legal profession and the legal process. In re Mongkeya, 12 FSM R. 536, 540 (Kos. S. Ct. Tr. 2004).

A trial counselor admitted to practice in the State of Kosrae is subject to the Model Rules of Professional Conduct, and violates those rules when he alters and presents those altered checks as evidence in a case in which he is a party. He will be suspended from the practice of law and must notify in writing all clients he represents in any pending matters and any opposing counsel in any pending matters that he has been disqualified by court order to act as legal counsel and the Chief Clerk shall unseal his file and remove his name from the listing of persons admitted to practice law in the State of Kosrae. In re Mongkeya, 12 FSM R. 536, 540-41 (Kos. S. Ct. Tr. 2004).

The FSM Supreme Court=s Disciplinary Rules apply to every attorney and trial counselor who practice before it, including those appearing pro hac vice. Mailo v. Chuuk, 12 FSM R. 597, 601 (Chk. 2004).

Any person may initiate a disciplinary complaint by advising the court of the nature of the charge and indicating the factual basis for the charges. This is done by referring the complaint to the Chief Justice in Pohnpei where the Chief Clerk of the Supreme Court will assign the complaint a disciplinary proceeding docket number and open a file. Mailo v. Chuuk, 12 FSM R. 597, 601 (Chk. 2004).

A civil action is not the proper forum in which to pursue or resolve a disciplinary complaint. A proper forum may be reached through the Chief Justice and the Chief Clerk in Pohnpei. A complaining party should, if it is so advised, file its disciplinary complaint with the Chief Justice and the Chief Clerk in Pohnpei. Mailo v. Chuuk, 12 FSM R. 597, 601 (Chk. 2004).

An attorney's actions in preparing a notice of appeal for filing by the appellant as a pro se litigant, is called "ghostwriting." An attorney's behind-the-scenes document preparation for persons who wish to appear pro se is not viewed favorably by courts. This surreptitious representation results in the litigant representing to the court that he is acting without the assistance of counsel, when this is not true. Importantly, ghostwriting permits an attorney to evade the responsibilities imposed by Civil Rule 11. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27 (Kos. S. Ct. Tr. 2004).

Attorney involvement in drafting pro se court documents constitutes unprofessional conduct and is inconsistent with procedural, ethical and substantive rules of court. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27 (Kos. S. Ct. Tr. 2004).

The Kosrae State Court disapproves of ghostwriting of court documents for pro se litigants by legal counsel admitted to practice law in the State of Kosrae. Counsel may, of course, always refer a pro se litigant to the court for the litigant to review a sample notice of appeal from a decision entered by Kosrae Land Court. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27 (Kos. S. Ct. Tr. 2004).

A counsel's actions in preparing the answer on behalf of a defendant as a pro se litigant, is called "ghostwriting." An attorney's behind-the-scenes document preparation for persons who appear pro se is not viewed favorably by courts. This surreptitious representation results in the litigant representing to the court that he is acting without the assistance of counsel, when this is not true. Importantly, ghostwriting permits an attorney to evade the responsibilities imposed by Rule 11, which requires attorneys to sign documents that they have prepared for filing. Kinere v. Kosrae Land Comm=n, 13 FSM R. 78, 81 (Kos. S. Ct. Tr. 2004).

The Kosrae State Court considers ghostwriting to constitute unprofessional conduct and disapproves ghostwriting of court documents for pro se litigants by legal counsel admitted to practice law in the State of Kosrae. The practice of ghostwriting prejudices the pro se litigant, who may believe that the counsel will continue to assist him throughout the litigation. Kinere v. Kosrae Land Comm=n, 13 FSM R. 78, 81-82 (Kos. S. Ct. Tr. 2004).

Counsel are put on notice that ghostwriting will be considered a violation of ethical and procedural rules of the Kosrae State Court. Counsel may assist pro se litigants in drafting and filing an answer to a summons and complaint, to avoid the entry of default. In cases where counsel assist pro se litigants with drafting and filing an answer, the answer shall reflect the counsel's limited assistance in preparing the answer, and shall sign the answer in that capacity, along with the signature of the pro se litigant. Kinere v. Kosrae Land Comm=n, 13 FSM R. 78, 82 (Kos. S. Ct. Tr. 2004).

Any person may initiate an attorney disciplinary complaint by advising the court of the nature of the charge and indicating the factual basis for the charges. This is done by referring the complaint to the Chief Justice in Palikir, Pohnpei where the Chief Clerk of the Supreme Court will assign the complaint a disciplinary proceeding docket number and open a file. Asugar v. Edward, 13 FSM R. 221, 222 (App. 2005).

A closed appeal case is not the proper forum in which to pursue or resolve a disciplinary complaint. A proper forum may be reached through application to the Chief Justice and the Chief Clerk in Pohnpei. Only in that forum may a movant seek an order requiring the attorney to show cause why he should not be immediately restrained from engaging in the practice of law. No action on a disciplinary proceeding will be taken within a closed appeal. Asugar v. Edward, 13 FSM R. 221, 222 (App. 2005).

The court=s disciplinary procedures remain the means of redress for anyone who believes an FSM attorney has acted unethically. Sipos v. Crabtree, 13 FSM R. 355, 367 (Pon. 2005).

Under Rule 11, the court=s discretion includes the power to impose sanctions on the client alone, solely on counsel, or on both. This is desirable because there are circumstances in which one of these actions is more appropriate than the other two. For example, when the offending conduct relates to work that lies within the counsel=s supposed competence, especially when it is beyond the client=s understanding, it is the former who should be sanctioned, not the latter. Amayo v. MJ Co., 14 FSM R. 355, 362 (Pon. 2006).

When an attorney has been convicted of a felony, Disciplinary Rule 10 places the burden on the

respondent to prove that he or she should not be suspended pending the outcome of the disciplinary proceeding. An interim suspension may be terminated or modified upon showing of extraordinary circumstances. A weaker standard would subvert the purpose of the Rule 10 suspension, which is to protect the public and the integrity of profession from an attorney who has been convicted of serious crime. In re Fritz, 14 R. 563, 564-65 & n.1 (Pon. 2007).

The court is bound by Article XI, Section 11, but when the respondent attorney has not pointed to any custom or tradition that either excuses his actions or provides the extraordinary circumstances necessary to prevent the court from suspending him and when he has been convicted of four felony violations of the Financial Management Act and an element of each of those crimes is that a government official act knowingly and willingly, there is conclusive evidence before the court (Disciplinary Rule 10(b) states that a final conviction is conclusive evidence of the crime) that the respondent attorney acted dishonestly and fraudulently since the legislature has decided that the actions taken by respondent attorney are bad, immoral, and unethical since they are crimes punishable by up to twenty years imprisonment. In re Fritz, 14 R. 563, 565 (Pon. 2007).

Even if the court were to accept as true the respondent attorney=s assertion that his conviction has not adversely affected the public=s views on his integrity, honesty, and untrustworthiness, that conclusion would not end the matter since the court has a duty to protect and advance the public=s trust in the judicial system and therefore in officers of the court and if that trust is in such a state that the public=s perception is not adversely affected when convicted felons are permitted to act as officers of the court, then it may be the court=s duty to help improve the public=s perception. In re Fritz, 14 R. 563, 565 (Pon. 2007).

That there are no other local private attorneys who are available to provide legal services to the public in Chuuk does not alone constitute extraordinary circumstances that would allow the court to refrain from suspending the respondent attorney. In re Fritz, 14 R. 563, 565-66 (Pon. 2007).

When a respondent attorney is suspended from the practice of law, he is advised to take all actions required of him by the Disciplinary Rules and in particular must perform the actions required by Disciplinary Rule 12. In re Fritz, 14 R. 563, 566 (Pon. 2007).

A term of suspension under Disciplinary Rule 10 runs until the court enters a final order of discipline in or dismisses the disciplinary action. In re Fritz, 14 R. 563, 566 (Pon. 2007).

The Model Rules of Professional Conduct provide rules of reason, which should be interpreted with reference to the purposes of legal representation and of the law itself. The rules are thus partly obligatory and disciplinary and partly constitutive and descriptive. The MRPC does not provide binding rules of law, but the numerous FSM cases addressing the issue of disqualification of government lawyers are binding the court according to the rule of *stare decisis*. Chuuk v. Robert, 15 FSM R. 419, 422 n.1 (Chk. S. Ct. Tr. 2007).

A single justice=s reprimand of a legal services corporation law firm must be reversed where it was based on a factual error that the attorney appearing for the appellants was appearing as a member of the law firm when he was appearing only on his own behalf and his close relatives. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 106-07 (App. 2008).

When, although the notice did not cite any of the Rules of Professional Conduct that the reprimand found that the attorney violated, it was adequate notice because it did state what act or omission of counsel may lead to discipline and cited the relevant appellate rule. The attorney ought to have been aware that he was facing some sort of sanction for not timely filing a brief and that the sanction would be imposed under Rule 46(c). Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 108 (App. 2008).

An attorney can be disciplined for ignoring or tardily responding to repeated court orders to file

documents and briefs, and failure to prosecute an appeal with due diligence is sanctionable under Appellate Rule 46(c). It is not required that the appellate court find intentional conduct in order for an attorney to be disciplined under Rule 46(c). Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 108-09 (App. 2008).

An attorney=s inability to comply with the court=s rules and orders governing the filing of briefs and appendixes within the time deadlines does not excuse the attorney=s failure to comply with such rules and orders. The attorney=s admitted inability to produce an appellate brief in a timely manner would not prevent him from being disciplined under Rule 46(c). Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 109 (App. 2008).

An attorney is the real party in interest for any sanction imposed on him personally. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 107 (App. 2008).

Imposition of Rule 46(c) disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard are the essence of due process. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 107 (App. 2008).

It is the FSM Supreme Court appellate division that, under Rule 46(c), imposes "any appropriate disciplinary action" against one certified to practice before the court. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 109 (App. 2008).

A single justice may entertain and grant or deny any request for relief which under the appellate rules may properly be sought by motion. But "appropriate disciplinary action" is not "relief" that can be properly sought by motion and is thus not within a single justice=s power. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 109 (App. 2008).

Only an appellate panel has the power to impose attorney disciplinary sanctions through the application of Appellate Rule 46(c) (for transgressions committed in the appellate division). A single appellate justice cannot impose Rule 46(c) disciplinary sanctions. The proper procedure is for the appellate division to give notice of possible sanction after disposing of the appeal, or, in a criminal appeal, after the offending attorney has been discharged. The same panel would then rule on, and impose, if necessary, the appropriate sanction. If the appeal is disposed of by a single justice dismissal order, that single justice may give notice of a possible Rule 46(c) sanction, but only an appellate panel may decide whether to impose it. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 110 (App. 2008).

Besides Appellate Rule 46(c), disciplinary sanctions may also be imposed on an attorney through a complaint referred to the Chief Justice and docketed by the Chief Clerk, which then proceeds through the usual disciplinary process in the Disciplinary Rules. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 110 & n.8 (App. 2008).

A single justice reprimand must be reversed since a single justice lacks the power to impose Appellate Rule 46(c) discipline. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 110 (App. 2008).

An attorney is the real party in interest for sanctions imposed on him personally. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 122 (App. 2008).

Imposition of Appellate Rule 46(c) disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard is therefore required. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 123 (App. 2008).

Counsel can certainly be disciplined for ignoring or tardily responding to repeated court orders to file appellate documents and briefs, and failure to prosecute an appeal with due diligence is sanctionable under Appellate Rule 46(c). It is not required that the court find intentional conduct in order for an

attorney to be disciplined under Rule 46(c). Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 124 (App. 2008).

The inability of a law firm or of an attorney to comply with the court=s rules and orders governing the filing of briefs and appendixes within the time deadlines does not excuse the attorney=s or the firm=s failure to comply with such rules and orders. Thus, an attorney=s admitted inability to produce an appellate brief in a timely manner would not prevent him, or his law firm, if it had had notice, from being disciplined under Appellate Rule 46(c). Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 124 (App. 2008).

It is the appellate division, not a single justice, that imposes disciplinary sanctions under Rule 46(c), which may include suspension or disbarment. While a single justice may entertain and grant or deny any request for relief which under the appellate rules may properly be sought by motion, "appropriate disciplinary action" is not "relief" that can be properly sought by motion and is thus not within a single justice=s power. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 125 (App. 2008).

Only an appellate panel has the power to impose attorney disciplinary sanctions through the application of Appellate Rule 46(c). A single justice cannot impose Rule 46(c) disciplinary sanctions. The proper procedure is for the appellate division to give notice of possible sanction after disposing of the appeal, or in a criminal appeal, after the offending attorney has been discharged. The same panel would then rule on, and impose, if necessary, the appropriate sanction. If the appeal is disposed of by a single justice dismissal order, that justice may give notice of possible Rule 46(c) discipline, but only a full appellate panel may decide whether to impose it. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 126 (App. 2008).

Besides Appellate Rule 46(c), disciplinary sanctions may also be imposed on an attorney through a complaint referred to the Chief Justice and docketed by the Chief Clerk, which then proceeds through the usual process in the Disciplinary Rules. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 126 & n.9 (App. 2008).

A single justice reprimand must be reversed since a single justice lacks the power to impose Rule 46(c) discipline. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 126 (App. 2008).

If a party used an expletive in its filing, the court would entertain the imposition of sanctions, but, if the reference to an expletive is a characterization on the other party=s part, that characterization itself may be sanctionable if it departs from zealous advocacy that at the same time remains polite, professional discourse. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 483 n.4 (Pon. 2009).

When the Kosrae State Court is very concerned about a number of possible ethical violations committed by an attorney in handling a case in the FSM Supreme Court appellate division, the Kosrae State Court will not address these ethical rules but has a duty to inform the FSM Supreme Court of the possible violations. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 647 (Kos. S. Ct. Tr. 2009).

A court=s firm and definite statement that an attorney acted unethically (as opposed to a statement that he may have acted unethically) appears to be a reprimand. A reprimand, which can be either public or private, is sanction that a court may impose on an attorney. In re Sanction of George, 17 FSM R. 613, 616-17 (App. 2011).

If a lawyer has knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, the lawyer must inform the Chief Clerk for referral to the Chief Justice. Mori v. Hasiguchi, 19 FSM R. 16, 21 n.3 (Chk. 2013).

Counsel is disingenuous and lacks candor toward the appellate tribunal when the trial court correctly cited and relied on a controlling appellate division decision but she chose to ignore this authority and

deliberately failed to address it in either the brief or during oral argument even though that decision was known to counsel because the trial court cited it and relied on it when it denied the motion for a default judgment. Damarlane v. Damarlane, 19 FSM R. 97, 104 & n.1 (App. 2013).

A sanction against an attorney who is not a party to the underlying case is immediately appealable if the sanctioned attorney proceeds under his or her own name and as the real party in interest. In re Sanction of George, 19 FSM R. 131, 133 (App. 2013).

A writ of prohibition cannot be used as a substitute for a pending appeal of attorney sanctions that is currently being briefed, especially when the sanctions have been stayed while that appeal proceeds. That is an adequate legal remedy for the attorney sanctions. Tilfas v. Aliksa, 19 FSM R. 181, 184 (App. 2013).

Considering the seriousness of an attorney disciplinary proceeding, the service on the attorney should be the same as that required for the service of process. In re Sanction of Sigrah, 19 FSM R. 305, 309 (App. 2014).

The imposition of disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard are the essence of due process. In re Sanction of Sigrah, 19 FSM R. 305, 309 (App. 2014).

In an attorney discipline proceeding the facts must be proven by clear and convincing evidence and not by the lower preponderance-of-the-evidence standard. In re Sanction of Sigrah, 19 FSM R. 305, 312 n.3 (App. 2014).

The practice of "ghostwriting" refers to the conduct of an attorney who prepares pleadings and provides substantial legal assistance to a pro se litigant, but does not enter appearance or otherwise identify himself or herself in the litigation. Ghostwriting or drafting filings for a pro se litigant without that fact being disclosed violates an attorney=s ethical obligation of candor toward the tribunal. The rationale for court disapproval of ghostwriting is that courts liberally construe pro se pleadings precisely because they were drafted without professional help and if a pro se litigant falsely appears to be without professional assistance, that litigant gains an unfair advantage. In re Sanction of Sigrah, 19 FSM R. 305, 312 (App. 2014).

The imposition of disciplinary sanctions is subject to due-process scrutiny. An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on her whether that sanction is imposed on her under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

An attorney relying on others, even non-attorneys, to do the research or drafting is not sanctionable since a lawyer is not prohibited from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. By signing a filing, the signer retains or assumes responsibility for the work. In re Sanction of Sigrah, 19 FSM R. 305, 313-14 (App. 2014).

A nonparty attorney who is held in contempt or otherwise sanctioned by the court in the course of litigation may appeal from the order imposing sanctions, either immediately or as part of the final judgment in the underlying case. Mori v. Hasiguchi, 19 FSM R. 414, 417-18 (App. 2014).

When the then disciplinary counsel failed to serve a formal complaint on the respondent attorney at the end of 2007 or in 2008 even though the respondent attorney=s address and workplace were known, this weighs in the favor of dismissal of a disciplinary action still pending in 2014 when a complaint was finally served. In re Attorney Disciplinary Proceeding, 19 FSM R. 576, 578 (Pon. 2014).

To dismiss a disciplinary complaint for the long delay in prosecuting it, needs a showing that the prejudice created by the delay is actual or specific prejudice; that is, the respondent attorney must show that because of the passage of time certain specific favorable witnesses are now unavailable or that certain evidence is no longer available. Prejudice is not shown when the defendant does not state that any one particular witness now has an impaired memory or is no longer available, or what that witness would testify to if his or her memory were not impaired. In re Attorney Disciplinary Proceeding, 19 FSM R. 576, 578 (Pon. 2014).

Even when the monetary discovery sanctions imposed on the respondent attorney=s client and the client=s eventual compliance with all discovery orders in that case serve as the full and final resolution of the discovery dispute from which a disciplinary referral case arose, this does not mean that an attorney cannot be disciplined if there is a pattern of discovery abuse by that attorney in a number of cases even if the clients in all of those cases were sanctioned and complied. In re Attorney Disciplinary Proceeding, 19 FSM R. 576, 578-79 (Pon. 2014).

A disciplinary complaint may be dismissed when the disciplinary complaint arose from a single case in which the respondent attorney abused the discovery process; since the attorney=s duty is to zealously represent clients; since comprehensive discovery sanctions were imposed on the respondent attorney=s client; and since there was long delay in contacting and serving the respondent attorney once the respondent attorney had been located in the United States. In re Attorney Disciplinary Proceeding, 19 FSM R. 576, 579 (Pon. 2014).

The FSM Supreme Court cannot impose reciprocal discipline on an attorney for the failure to pay annual bar dues in CNMI because this would not constitute misconduct in this jurisdiction since there are no annual bar dues in the FSM Supreme Court. The court cannot impose reciprocal discipline when the conduct disciplined in the other jurisdiction does not constitute misconduct in this jurisdiction. In re Buckingham, 19 FSM R. 582, 583 n.1 (Pon. 2014).

An attorney convicted in the Northern Marianas of use of public supplies, services, time, and personnel for campaign activities, use of the name of a government department or agency to campaign for a candidate running for public office, three counts of misconduct in public office, theft of services, and conspiracy to commit theft of services and suspended from the practice of law in the Northern Marianas and Colorado, will be suspended from the practice of law in the Federated States of Micronesia and may apply for reinstatement once his right to practice law has been reinstated in both the State of Colorado and the Commonwealth of the Northern Mariana Islands or once five years has elapsed, whichever is sooner. In re Buckingham, 19 FSM R. 582, 583-84 (Pon. 2014).

When an attorney=s actions raise serious questions as to the attorney=s ability to comply with the Chuuk Rules of Professional Conduct, the court is left with no other option than to refer the matter for a disciplinary action hearing on the matter on the attorney=s conduct. Governor v. Chuuk House of Senate, 21 FSM R. 428, 438 (Chk. S. Ct. Tr. 2018).

An attorney who has left the FSM with no future prospect of practice here, may be considered retired. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 449 (Pon. 2018).

When the FSM Supreme Court has not previously construed an aspect of an FSM Model Rule of Professional Conduct, it may look to U.S. sources construing similar or identical rules for guidance in interpreting the rule. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 449 n.1 (Pon. 2018).

A law firm=s name, even if it is a trade name, cannot be materially misleading. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 449 (Pon. 2018).

There is no ethical impropriety in the continued use of a firm name including a retired attorney=s name so long as the retiring attorney=s name was removed from the list of active attorneys on the firm=s

letterhead and in other communications, and, if the retired attorney has instead become "of counsel" – retired, but still regularly available to the firm – that fact should be noted. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 449 (Pon. 2018).

A law firm=s name may contain the name of a former co-owner attorney who has retired, but the law firm=s communications must so indicate. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 449 (Pon. 2018).

Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 449 (Pon. 2018).

When an FSM law firm=s communications do not indicate that an attorney is retired or no longer practices with the firm, the court is forced to conclude that the law firm must, in some form, remain that attorney=s agent for service of FSM process, as he is represented as part of the organization. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 449 (Pon. 2018).

Since an attorney is the real party in interest for any sanction imposed on her personally, the court cannot include the sanction, for which the attorney=s clients are not liable, in the judgment against the clients and will enter the sanction solely against the liable attorney. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 479 (Pon. 2020).

– Disqualification of Counsel

Under Rule 1.11 of the Truk State Code of Professional Responsibility, a lawyer may not represent a private client in connection with a matter in which the lawyer participated "personally and substantially" as a public officer or employee, unless the appropriate government agency consents after consultation. Nakayama v. Truk, 3 FSM R. 565, 570 (Truk S. Ct. Tr. 1987).

For purposes of Rule 1.11, an attorney who, as a government attorney, signs his name to a lease agreement, approving the lease "as to form," is personally and substantially involved. Nakayama v. Truk, 3 FSM R. 565, 571 (Truk S. Ct. Tr. 1987).

Where a member of the office of the public defender has a conflict of interest, based upon his familial relationship with the victim of the crime of which the defendant is accused, but where he is under no traditional obligation to cause harm to the defendant and has done nothing to make other members of the office feel that they are under any such obligation, and where there is no showing that the conflict would have any actual tendency to diminish the zeal of any other members of the office, the conflict of the first counsel is not imputed to the other members of the office. FSM v. Edgar, 4 FSM R. 249, 251 (Pon. 1990).

Although the trial court may grant a public defender=s motion to withdraw as counsel pursuant to FSM Model Rule of Professional Conduct 1.7(b) because the public defender adopted the son of the victim=s nephew, the trial court may deny the same public defender=s motion to relieve the entire staff of the Public Defender=s Office pursuant to Model Rule 1.10(a) because the public defender=s conflict was personal and not imputed to the Public Defender staff. Office of Public Defender v. Trial Division, 4 FSM R. 252, 254 (App. 1990).

The imputed disqualification provision of Rule 1.10(a) of the FSM Model Rules of Professional Conduct is not a *per se* rule and where the other attorneys associated with the attorney who seeks disqualification are able to give full loyalty to the client it is proper for the court to find that the disqualifying condition is not imputed to others. Office of the Public Defender v. FSM Supreme Court, 4 FSM R. 307, 309 (App. 1990).

Under Rule 3.7 of the Model Rules of Professional Conduct, when a party=s counsel believes the

opposing party=s attorney should be required to testify as to information which may be prejudicial to the opposing party, it is appropriate for counsel for the first party to move to disqualify opposing counsel from further representation of the opposing party, but this is not the only procedure which may be followed and counsel who fails to file such a motion may not be sanctioned for his failure in absence of harm to the opposing party or a showing of bad faith. Bank of Guam v. Sets, 5 FSM R. 29, 30 (Pon. 1991).

Prior representation of another party to contractual negotiations is not in and off itself sufficient to create a conflict of interest which would invalidate the negotiated contract unless it can be shown such representation was directly adverse to the other client or materially limited the interests of the present client. Billimon v. Chuuk, 5 FSM R. 130, 135 (Chk. S. Ct. Tr. 1991).

The FSM Attorney General=s Office is not disqualified in an international extradition case where the accused is the plaintiff in a civil suit against one of its members because the Attorney General=s office has no discretion in the matter. It did not initiate nor can it influence the course of the prosecution abroad, and the discretion of whether to extradite a citizen does not repose in the Attorney General=s Office. In re Extradition of Jano, 6 FSM R. 12, 13-14 (App. 1993).

The rules, MRPC 1.10, for vicarious disqualification of attorneys in the same law firm do not apply to government lawyers who are governed by MRPC 1.11(c). MRPC 1.11 does not impute the disqualification of one member of a government office to the other members. In re Extradition of Jano, 6 FSM R. 26, 27 (App. 1993).

An attorney is not disqualified from representing multiple parties against a defendant on the grounds that he did not join as defendants former employees of some of the plaintiffs who would be liable if the defendant is liable. Pohnpei v. Kailis, 6 FSM R. 460, 462-63 (Pon. 1994).

Although an attorney is competent to testify as a witness on behalf of a client, testimony by an attorney representing a party, except in limited circumstances, creates a conflict of interest. An attorney under such a conflict has an ethical duty to withdraw from representation, except in limited cases, including where disqualification would cause an undue hardship to the client. Determining whether a conflict exists is primarily the responsibility of the lawyer involved. Triple J Enterprises v. Kolonia Consumer Coop. Ass=n, 7 FSM R. 385, 386 (Pon. 1996).

A trial counselor who is a member of a plaintiff class that is seeking money damages from the state has a conflict and cannot represent the state and will be allowed to withdraw. Oster v. Bisalen, 7 FSM R. 414, 415 (Chk. S. Ct. Tr. 1996).

Model Rule 1.9 is inapplicable to cases where an attorney is representing two clients at the same time because it applies to a conflict arising from the representation of a former client. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 440 (Chk. 1998).

Model Rule 1.7(b) allows representation of multiple clients if the lawyer reasonably believes his representation will not be adversely affected, and the client consents after consultation. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 440 (Chk. 1998).

Model Rule 1.11(c) contemplates successive private and government employment so long as the lawyer does not participate in a matter in which he participated personally and substantially while in private practice so when steps have been taken to insure that a government lawyer would do no work related to his private employment the Model Rules have been complied with. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 440-41 (Chk. 1998).

Allegations of foul language and intimidation in a settlement conference are alone insufficient grounds for removing an attorney from a case at a late stage of the litigation. Bank of Hawaii v. Helgenberger, 9 FSM R. 260, 262 (Pon. 1999).

Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility. In a criminal case, the court=s inquiry is generally required when a lawyer represents multiple defendants. Nix v. Etscheit, 10 FSM R. 391, 396 (Pon. 2001).

The Model Rules are not designed to be used by one litigant to make prosecuting or defending the action more difficult for his adversary. Therefore, a court considers a motion to disqualify counsel with caution, considering the possibility that the motion is potentially being used as a technique of harassment. Nix v. Etscheit, 10 FSM R. 391, 396 (Pon. 2001).

The test for a lawyer to determine whether a conflict of interest exists in representing more than one client is found in MRPC Rule 1.7. Nix v. Etscheit, 10 FSM R. 391, 396 (Pon. 2001).

Because it is not always against a corporation=s interests to dissolve, it is not necessarily true that because a party wants to dissolve a corporation her interests are adverse to the corporation=s. Nix v. Etscheit, 10 FSM R. 391, 397 (Pon. 2001).

Even if a direct conflict exists between defendants= counsel=s representation of an individual and a two corporations, Rule 1.7 allows a lawyer to represent all of the defendants if the lawyer reasonably believes the representation will not adversely affect the relationship with the other client and each client consents after consultation. Nix v. Etscheit, 10 FSM R. 391, 397 (Pon. 2001).

Disqualification of counsel is not warranted when counsel believes that his representation of all defendants will not adversely affect his representation of any one of the defendants; when the reasons for this belief were provided to all defendants in writing, and all defendants consented after consultation; when the plaintiffs have not introduced any evidence that would lead the court to doubt counsel=s statement; and when the court also finds that his belief that counsel=s representation of all defendants will not adversely affect the representation of any one of the defendants is legitimately reasonable. Nix v. Etscheit, 10 FSM R. 391, 397 (Pon. 2001).

If a corporation=s consent to counsel=s dual representation of it and of its official is required by Rule 1.7, the consent must be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders. There is no requirement that all directors of the corporation must consent. An acting general manager=s consent on the corporation=s behalf is sufficient. Nix v. Etscheit, 10 FSM R. 391, 397 (Pon. 2001).

When a legal organization (such as a corporation) is a client, the general rule is that a lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents. Nix v. Etscheit, 10 FSM R. 391, 397 (Pon. 2001).

An attorney may under certain circumstances represent a corporation at the same time as a director or officer of that corporation if the organization=s consent is given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders. Nix v. Etscheit, 10 FSM R. 391, 397-98 (Pon. 2001).

Most derivative actions are a normal incident of an organization=s affairs, to be defended by the organization=s lawyer like any other suit, but if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer=s duty to the organization and the lawyer=s relationship with the board of directors. In those circumstances, Rule 1.7 governs who should represent the directors and the organization. Nix v. Etscheit, 10 FSM R. 391, 398 (Pon. 2001).

When there are claims of serious misconduct leveled at the plaintiffs, who are corporate directors, and there are no misconduct claims against a defendant director, there is no conflict with the same

attorneys representing the defendant director and the co-defendant corporations. Nix v. Etscheit, 10 FSM R. 391, 398 (Pon. 2001).

A lawyer cannot act as an advocate at a trial in which the lawyer is likely to be a witness except when: 1) the testimony relates to an uncontested issue; 2) the testimony relates to the nature and value of legal services rendered in the case; or 3) disqualification of the lawyer would work substantial hardship on the client. Nix v. Etscheit, 10 FSM R. 391, 398 (Pon. 2001).

Plaintiffs= desire to call opposing counsel as a witness does not represent a basis for opposing counsel=s disqualification when, although counsel may have knowledge of evidence of material matters in the case, the plaintiffs have not established that opposing counsel is the only witness who could testify about such evidence, when the plaintiffs can introduce this evidence by other methods, and when it would constitute a substantial hardship to a defendant to disqualify her attorney of over fifteen years and require her to find another. Nix v. Etscheit, 10 FSM R. 391, 399 (Pon. 2001).

A lawyer who has formerly represented a client in a matter is not disqualified from representing an opposing party in another matter when that matter is not substantially related to the to the previous matter and when the lawyer has received no confidential information from the former client relating to the current matter. Nix v. Etscheit, 10 FSM R. 391, 399 (Pon. 2001).

There is no conflict of interest for Legislative Counsel to represent a Senator challenging a law passed by the Legislature when is not a challenge of the Legislature as an institution because it is the Executive that is charged with the duty of defending challenged laws, not the Legislature, and there is no conflict of interest for Legislative Counsel to represent a Senator asserting legislative privilege when the Senator and the Legislature have similar interests with respect to interpretation of the privilege provided by the Kosrae Constitution. Kosrae v. Sigrah, 11 FSM R. 26, 28 (Kos. S. Ct. Tr. 2002).

Rule 1.7 permits the attorney to continue representation even where the representation is adverse to two or more clients, so long as each client consents after consultation. Kosrae v. Sigrah, 11 FSM R. 26, 28 (Kos. S. Ct. Tr. 2002).

The relevant inquiry when conflicting representation is alleged is whether the subject matter of the two representations is substantially related. If the attorney could have obtained confidential information in representing one party that he could thereafter use in representing the second client, the interests are conflicting and the attorney must be disqualified. In re Nomun Weito Interim Election, 11 FSM R. 458, 460 (Chk. S. Ct. App. 2003).

A party alleging representation of conflicting interests must show that there is a substantial relationship between the subject matters of the representations. This is especially so where the party seeking the disqualification is only a "vicarious" client. In re Nomun Weito Interim Election, 11 FSM R. 458, 460 (Chk. S. Ct. App. 2003).

The principal duty of an attorney appointed as general counsel for a partnership is to the partnership itself, not to the general or limited partners as individuals. In re Nomun Weito Interim Election, 11 FSM R. 458, 460 (Chk. S. Ct. App. 2003).

If each member of the Chuuk Legislature could consider the Legislative Counsel his "personal lawyer," then the Legislative Counsel would have perpetual conflicts of interest which would prevent him from providing legal counsel and advice to his true client, the Legislature as a collective body. The fact that the Legislature retains counsel to serve its collective interests does not entitle every member to assert the disqualification of that counsel in an unrelated matter, where only the member=s personal interests are involved. In re Nomun Weito Interim Election, 11 FSM R. 458, 460 (Chk. S. Ct. App. 2003).

A motion to disqualify appellant=s counsel in an election contest will be denied when appellee=s

claim of "vicarious" representation fails due to a complete lack of evidence demonstrating that the counsel provided to the Sixth Chuuk Legislature is substantially related to the issues presented in this election contest, namely the election of a member to the House of Representatives for the Seventh Chuuk Legislature. In re Nomun Weito Interim Election, 11 FSM R. 458, 460-61 (Chk. S. Ct. App. 2003).

When a summary judgment motion is clearly on behalf of two defendants and makes them adverse to a third defendant, it is clear that the third defendant needs to attempt to retain other counsel. Fredrick v. Smith, 12 FSM R. 150, 153 n.1 (Pon. 2003).

The question of disqualification of counsel, including prosecutors, is largely within the trial court=s discretion. FSM v. Wainit, 12 FSM R. 172, 177 (Chk. 2003).

A government lawyer, like any lawyer, cannot represent a client if the representation of that client may be materially limited by the lawyer=s own interests. The lawyer=s own interests may include emotional interests. An emotional interest, in order to be disqualifying, must create a bias or hostility in the government lawyer sufficiently strong to interfere seriously with the lawyer=s exercise of public responsibility. FSM v. Wainit, 12 FSM R. 172, 178 (Chk. 2003).

The court declines to establish a bright line rule that any prosecutor who has some involvement with another case involving the defendant must always be disqualified. To conclude that prosecutors who are allegedly later victims of offenses committed by someone they are prosecuting must always be disqualified from continuing to prosecute would set an unhealthy precedent. It would provide an unwanted incentive for a criminal defendant who sought to disqualify a certain prosecutor to obtain his disqualification through extralegal means. FSM v. Wainit, 12 FSM R. 172, 178-79 (Chk. 2003).

When prosecutors have a special emotional stake or interest in a case, their disqualification from any future involvement with the prosecution is warranted. The current prosecutor will therefore make certain that there is no contact with the former prosecutors about the case and that they have no access to the case file. The current prosecutor may be ordered to file and serve a notice detailing all steps taken to implement this precaution. FSM v. Wainit, 12 FSM R. 172, 179 (Chk. 2003).

Disqualification of all lawyers in a government office when one of them is disqualified is a question within the trial court=s discretion. Unlike private law firms where the disqualification of one member of the firm requires the disqualification of the firm, the disqualification of all government attorneys in an office is not required when one of them is disqualified. FSM v. Wainit, 12 FSM R. 172, 179 (Chk. 2003).

There is no basis to disqualify the current prosecutor and the entire FSM Department of Justice when no member of the department is either an alleged victim or a witness in the case; when the current prosecutor was not a member of the department when the events occurred that ultimately lead to the disqualification of the other assistant attorneys general; when neither of the disqualified attorneys have any supervisory power over the current prosecutor and he is not subordinate to them; and when, if he has not already done so, he can and will be ordered to have no contact with them concerning the case and to keep all case files segregated from all other department files so that no other department employee can obtain access to them. FSM v. Wainit, 12 FSM R. 172, 180 (Chk. 2003).

A lawyer must not represent a client if the representation will be "materially limited" by the lawyer=s responsibilities to another client or to a third person, or by the lawyer=s own interest, unless the lawyer reasonably believes the representation will not be adversely affected, and the client consents after consultation. George v. Nena, 12 FSM R. 310, 318 (App. 2004).

Rule 1.9 is aimed at protecting the former client rather than the current client. It is the former client who is the one who may consent or refuse to consent if the positions are adverse. George v. Nena, 12 FSM R. 310, 318-19 (App. 2004).

When there has been no showing that the appellant=s attorney had an actual conflict, and, even if there was some conflict, the appellant must demonstrate that the trial judge committed plain error by failing to disqualify counsel from representing him. George v. Nena, 12 FSM R. 310, 319 (App. 2004).

An appellant is not entitled to reversal and the trial judge did not commit any plain error when the judge did not inquire into the appellant=s attorney=s potential conflict of interest and when the appellant made no showing that the alleged conflict adversely affected counsel=s performance since the attorney competently presented witnesses, entered evidence and made relevant objections. A conflict of interest is a conflict that affects counsel=s performance – as opposed to a mere theoretical division of loyalties and without such a showing, the appellant cannot demonstrate that his attorney=s connection to previous stages of the proceedings, related to an adjacent land parcel, affected the trial de novo=s fairness or integrity. George v. Nena, 12 FSM R. 310, 319 (App. 2004).

A government lawyer, like any other lawyer, cannot represent the government if the representation of that client may be materially limited by the lawyer=s own interests. A lawyer=s own interests may include emotional interests. An emotional interest, in order to be disqualifying, must create a bias or hostility in the government lawyer sufficiently strong to interfere seriously with the lawyer=s exercise of public responsibility. FSM v. Wainit, 12 FSM R. 360, 363 (Chk. 2004).

Since a government lawyer=s public responsibility involves the exercise of discretion, a prosecutor may be disqualified when the prosecutor suffers from a conflict of interest which might prejudice him against the accused and thereby affect, or appear to affect, his ability to impartially perform the discretionary function of his office. FSM v. Wainit, 12 FSM R. 360, 363 (Chk. 2004).

Since a prosecutor has wide discretion in deciding whether to initiate a particular criminal prosecution, a prosecutor=s emotional interest sufficiently strong to impair the impartial exercise of this discretion will disqualify the prosecutor from any participation in the matter, including filing the information. FSM v. Wainit, 12 FSM R. 360, 364 (Chk. 2004).

When prosecutors filed a case just two months after the frightening events allegedly caused by the defendant, and when it seems reasonable for them to have had emotional interests that would disqualify them from impartially exercising their discretion whether to prosecute the same defendant in any new cases, their failure to disqualify themselves raises an appearance of impropriety. Accordingly, a motion to disqualify those prosecutors will be granted. FSM v. Wainit, 12 FSM R. 360, 364 (Chk. 2004).

When an information was filed by two prosecutors who should have been disqualified from filing it or being involved in their official capacity in the bringing of charges against the defendant, then upon a timely objection, the information will be dismissed. FSM v. Wainit, 12 FSM R. 360, 364 (Chk. 2004).

A lawyer cannot act as advocate in a trial in which the lawyer is likely to be a necessary witness. FSM v. Wainit, 12 FSM R. 376, 380 (Chk. 2004).

A government lawyer cannot represent the government when representation of that client may be materially limited by the lawyer=s own interests. A lawyer=s own interests can include emotional interests. FSM v. Wainit, 12 FSM R. 376, 380 (Chk. 2004).

An emotional interest, in order to be disqualifying, must create a bias or hostility in the government lawyer sufficiently strong to interfere seriously with the lawyer=s exercise of public responsibility. Being the victims in a crime in which force was allegedly used is just such a strong emotional interest to disqualify a government attorney from prosecuting that same crime. A prosecutor who has a conflict of interest cannot administer justice. FSM v. Wainit, 12 FSM R. 376, 380 (Chk. 2004).

A lawyer may act as advocate in a trial in which another lawyer in the lawyer=s firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9. Rules 1.7 and 1.9 deal with

conflicts of interest. FSM v. Wainit, 12 FSM R. 376, 380 (Chk. 2004).

Since a lawyer=s conflicts are usually imputed to all in the lawyer=s office or firm, one member=s disqualification generally requires the entire firm=s disqualification, but unlike private law firms, the disqualification of all government attorneys in an office is not required when one is disqualified. This different treatment for private and government law offices is considered to stem, in part, from government agency attorneys not being bound by a common profit motive as are lawyers in private practice, and in part because a prosecutor=s duty is to seek justice, not merely to convict. FSM v. Wainit, 12 FSM R. 376, 380 & n.2 (Chk. 2004).

One who was the Attorney General when the Governor signed a release of property in a party=s favor, and who in fact signed the release as Attorney General, is clearly barred by the Rules of Professional Conduct from representing a plaintiff in a suit over that property against the state and that party. Hartman v. Chuuk, 12 FSM R. 388, 394 & n.9 (Chk. S. Ct. Tr. 2004).

Since statutes and office policy prohibit a newly-hired assistant attorney general from continuing to represent clients in a suit with the state as a party-defendant, that attorney will be declared disqualified representing either the clients or the state and directed to immediately assist his former clients in obtaining substitute counsel. Hartman v. Chuuk, 12 FSM R. 388, 396 (Chk. S. Ct. Tr. 2004).

A former employee of the now defunct Kosrae State Land Commission who was not employed by the Land Commission in 1984 when the Determination of Ownership was issued for the subject parcel does not have any conflict of interest in this matter. Skilling v. Kosrae State Land Comm=n, 13 FSM R. 16, 18 (Kos. S. Ct. Tr. 2004).

When plaintiffs' counsel admitted that he had signed the verified complaint on behalf of another and that the other had been represented through proxy at a meeting during which the lawsuit was discussed and when, although that other later appeared and testified that he did not consider himself to be counsel=s client for the civil action, that he did not give permission for the complaint to be filed on his behalf, and that he does not want to be involved in this lawsuit but in a deposition did state under oath that he asked the proxy to act on his behalf, the court may conclude that at the time the complaint was filed, plaintiffs's counsel had reasonable basis to accept the proxy's representation of the other and his approval to file the complaint on his behalf and counsel will not be disqualified on that basis. Allen v. Kosrae, 13 FSM R. 55, 57-58 (Kos. S. Ct. Tr. 2004).

Model Rule 7.3 prohibits the solicitation of professional employment from a prospective client with whom the lawyer had no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. But when a person attended and participated in a meeting regarding the subject of this matter and in doing so, expressed his interest in this matter, and when counsel=s later contact with him after the meeting did not involve harassment or duress, counsel=s contact with him does not provide an adequate basis for disqualification of counsel. Allen v. Kosrae, 13 FSM R. 55, 58 (Kos. S. Ct. Tr. 2004).

Plaintiff's counsel=s employee=s disruptive actions at a meeting at which a defendant presided do not provide an adequate basis for disqualification of plaintiffs' counsel because she was also a parent of children who attend Kosrae High School and therefore had adequate reason to attend that meeting as an interested parent and because the defendants did not present sufficient evidence to prove that her actions at that meeting were encouraged or supported by plaintiffs' counsel. Allen v. Kosrae, 13 FSM R. 55, 58 (Kos. S. Ct. Tr. 2004).

Defense counsel=s delayed recognition that the victim was his second cousin, and his delayed notice to the court suggests that counsel=s relationship to the victim does not result in a conflict of interest which would require counsel=s disqualification. The court also retains its authority and discretion to deny withdrawal of counsel in the middle of a criminal proceeding. Kosrae v. Palik, 13 FSM R. 187, 189 (Kos.

S. Ct. Tr. 2005).

When the prosecution of defense counsel for contempt was not in good faith and had the effect of appearing unfair and interfering with the defendants= choice of counsel and when that prosecution was not demonstrated to be harmless, the prosecutor will be disqualified from prosecuting those defendants. FSM v. Kansou, 13 FSM R. 344, 350 (Chk. 2005).

Neither the prosecutor=s search of another private law office on Pohnpei nor defense counsel=s possible fee-forfeiture warrant the prosecutor=s disqualification. Nor does defense counsel=s civil suit against the prosecutor have any bearing on whether the prosecutor should be disqualified. FSM v. Kansou, 13 FSM R. 344, 350 (Chk. 2005).

The court will not establish a principle that the Department of Justice cannot prosecute a defendant accused of committing an offense against Department of Justice personnel. FSM v. Wainit, 13 FSM R. 433, 440 (Chk. 2005).

Under the Model Rules of Professional Responsibility (adopted by FSM GCO 1983-2), a government lawyer=s disqualification is not imputed to the others in that government office. FSM v. Wainit, 13 FSM R. 433, 442 n.5 (Chk. 2005).

Individual rather than vicarious disqualification is the general rule but individual disqualification must be complete and any participation or anything less than complete abstention by a disqualified member of a prosecutor=s office in a supervisory capacity would warrant the entire office=s disqualification. FSM v. Wainit, 13 FSM R. 433, 442 (Chk. 2005).

The entire FSM Department of Justice will not be disqualified (and by implication the information dismissed) because one of its members will be a witness in the case. FSM v. Wainit, 13 FSM R. 433, 443 (Chk. 2005).

A lawyer may act as advocate in a trial in which another lawyer in the lawyer=s firm is likely to be called as a witness unless precluded from doing so by FSM MRPC Rule 1.7 or Rule 1.9. Rules 1.7 and 1.9 deal with conflicts of interest. That members of the prosecutor=s office are witnesses does not disqualify the entire office. FSM v. Wainit, 13 FSM R. 433, 443 (Chk. 2005).

Although a lawyer=s conflicts are usually imputed to all in the lawyer=s office or firm so that one member=s disqualification requires the entire firm=s disqualification, the disqualification of all government attorneys in an office, unlike private law firms, is not required when one is disqualified. This different treatment for private and government law offices stems, in part, from government attorneys not being bound by a common profit motive as are lawyers in private practice, and in part because a prosecutor=s duty is to seek justice, not merely to convict. FSM v. Wainit, 13 FSM R. 433, 443 & n.6 (Chk. 2005).

A lawyer must not represent a client if the representation of that client may be materially limited by the lawyer=s responsibilities to another client unless 1) the lawyer reasonably believes the representation will not be adversely affected; and 2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation must include explanation of the implications of the common representation and the advantages and risks involved. Nena v. Kosrae, 14 FSM R. 73, 79 (App. 2006).

In criminal cases the potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests is proper if the risk of adverse effect is minimal and FSM MRPC R. 1.6(b)=s requirements are met. Nena v. Kosrae, 14 FSM R. 73, 79 (App. 2006).

Rule 44 requires that the trial court inquire into possible conflicts when criminal defendants are charged or tried together and are represented by the same counsel or firm, and unless it appears that there is good cause to believe no conflict of interest is likely to arise, the court must take such measures as may be appropriate to protect each defendant=s right to counsel. Nena v. Kosrae, 14 FSM R. 73, 79-80 (App. 2006).

When the FSM Secretary of Justice approached a defendant to discuss, and did discuss, a possible plea agreement without the presence or prior consent of his attorney, but the incident was short and ended with the defendant saying he wanted to discuss it with his lawyer and when no prejudice was alleged or shown, the Secretary of Justice=s actions did not form any part of the basis of the FSM Department of Justice=s disqualification and the three defendants= severance, but the court had no choice but to refer the matter to the disciplinary process. FSM v. Kansou, 14 FSM R. 171, 174 (Chk. 2006).

The court cannot give any credence to a contention that a prosecutor=s complete disqualification was not required because of the ground for the disqualification. A disqualification is a disqualification. FSM v. Kansou, 14 FSM R. 171, 174 (Chk. 2006).

The general rule is that the recusal or disqualification of an assistant attorney general does not require the recusal of the attorney general or his other assistants. Individual rather than vicarious disqualification is the general rule for prosecutors but individual disqualification must be complete. FSM v. Kansou, 14 FSM R. 171, 175 (Chk. 2006).

The result of a prosecutor=s disqualification from prosecuting three co-defendants is that the government had a choice – it could either move to sever those three defendants and assign a different assistant attorney general to prosecute them and insulate the disqualified prosecutor from that prosecution, or it could have assigned a different assistant attorney general to prosecute all of the co-defendants. A detailed screening order is inappropriate when the government, at least theoretically, had a choice to make – a new prosecutor for the case, or seek severance into two cases. This is a choice that, at least initially, the prosecution, not the court, must make. FSM v. Kansou, 14 FSM R. 171, 175 (Chk. 2006).

Although the court was reluctant to disqualify the FSM Department of Justice from prosecuting three co-defendants and ordering their severance from the trial scheduled to start the same day, when no lesser sanction presented itself and the defendant has met his burden and established that a disqualified (former) prosecutor has assisted the current prosecutors in preparing the case against him and the government did not establish, or try to establish, that the disqualified former prosecutor was effectively screened from the prosecutors in the case, the entire FSM Department of Justice is therefore disqualified. FSM v. Kansou, 14 FSM R. 171, 176 (Chk. 2006).

The court must view with caution any motion to disqualify opposing counsel because such motions can be misused as a technique of harassment. McVey v. Etscheit, 14 FSM R. 207, 210 (Pon. 2006).

If opposing parties are only former clients, then counsel would be disqualified from representing the plaintiffs only if this is the same or a substantially related matter in which the plaintiffs= interests are materially adverse to the former client=s interests unless the former client consents after consultation; or if counsel uses information relating to the representation to the former client=s disadvantage except as FSM MRPC Rule 1.6 would permit with respect to a client or when the information has become generally known. McVey v. Etscheit, 14 FSM R. 207, 211 (Pon. 2006).

If any of the defendants is plaintiffs= counsel=s current client, then he cannot represent the plaintiffs unless he reasonably believes the representation will not adversely affect the relationship with the other client; and each client consents after consultation. McVey v. Etscheit, 14 FSM R. 207, 211, 213 (Pon. 2006).

Counsel remains a client=s attorney in a case when that case has not come to an end and the decision in it was apparently unsatisfactory to the client and since counsel never personally consulted with her after that decision about what further course of action she might want taken or even whether further possible action was desirable and neither took any steps to formally withdraw from that case. Counsel is therefore disqualified from representing the plaintiffs against her because that would adversely affect his relationship with his earlier, and still current, client. McVey v. Etscheit, 14 FSM R. 207, 212 (Pon. 2006).

When a "supplement" to a motion to disqualify a law firm from representing one defendant, seeks to disqualify the law firm from representing any defendant in the case, it is properly considered a separate motion. McVey v. Etscheit, 14 FSM R. 207, 212 (Pon. 2006).

A motion to disqualify an attorney generally must be made at the earliest opportunity. When the motion was not made until shortly after a conflict arose that could support a disqualification motion and since the Model Rules contemplate that a disqualifying conflict may not arise until after representation has been undertaken, under the circumstances, the motion was timely. McVey v. Etscheit, 14 FSM R. 207, 213 (Pon. 2006).

Since loyalty is an essential element in the lawyer=s relationship to a client, if an impermissible conflict of interest exists before representation is undertaken, the representation should be declined, and if such a conflict arises after representation has been undertaken, the lawyer should withdraw from the representation. McVey v. Etscheit, 14 FSM R. 207, 213-14 (Pon. 2006).

When a current client has not consented to a law firm=s adverse representation of another client, this is an impermissible conflict in violation of FSM MRPC R. 1.7(a). When Rule 1.7(a) applies, it commands that a lawyer not represent the clients in question. This means that a lawyer must withdraw if the conflict is discovered after the concurrent representation is undertaken. McVey v. Etscheit, 14 FSM R. 207, 214 (Pon. 2006).

The lawyer must withdraw from even a long-standing, more remunerative client when that representation becomes adverse to another, newer client even if the law firm terminated its representation of the newer client in an attempt to avoid a conflict as soon as it knew that a conflict would arise because generally, an attorney cannot choose to withdraw from representing a client because he might then be able to represent another more desirable client. McVey v. Etscheit, 14 FSM R. 207, 214 & n.10 (Pon. 2006).

If two firms share a common lawyer they will be treated as a single firm for purposes of disqualification. Similarly, for purposes of imputed disqualification under Rule 1.10, the two firms will be considered as one entity. Accordingly, it is incumbent upon the two firms to develop a procedure for screening conflicts of interest which will recognize and respond to the unique circumstance created by sharing an attorney in their respective legal practices. McVey v. Etscheit, 14 FSM R. 207, 215 (Pon. 2006).

The court has not "qualified" an attorney to remain as a party=s counsel in litigation when the court=s order only noted that that counsel remained that party=s counsel because no one had moved to disqualify him as her counsel. McVey v. Etscheit, 14 FSM R. 268, 271 (Pon. 2006).

Whether opposing counsel is disqualified from representing his wife, has no effect on whether moving counsel is disqualified from representing his clients. McVey v. Etscheit, 14 FSM R. 268, 271 (Pon. 2006).

When the court=s alleged errors only raise further grounds to disqualify opposing counsel and that counsel already is disqualified, even if the appellate court were to find the arguments on those alleged

errors persuasive, it could not possibly grant the relief sought – moving counsel=s appearance as counsel for his clients. McVey v. Etscheit, 14 FSM R. 268, 271 (Pon. 2006).

When not only was there never an explicit consent by a client to an adverse representation, but the law firm also never explicitly requested such a consent and the only explicit communication regarding consent came after it became apparent that the representation was becoming very adverse to the client and that client explicitly refused to consent to the representation, the law firm cannot show prejudice from an "original consent" that they cannot show existed. McVey v. Etscheit, 14 FSM R. 268, 271 (Pon. 2006).

When a lawyer was prohibited from representing the clients by Rule 1.7, his disqualification was imputed to his partner because, while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9 or 2.2. McVey v. Etscheit, 14 FSM R. 268, 272 (Pon. 2006).

When attorneys now contend that the consent to the adverse representation was part of a quid pro quo – the adverse client would not object to the representation and in return the attorneys= other clients would not sue the adverse client – but cannot show any explicit request for the adverse client to consent to such a quid pro quo, they thus have not shown a substantial possibility of success on this ground entitling them to a stay. McVey v. Etscheit, 14 FSM R. 268, 272 (Pon. 2006).

A balance-the-equities analysis found in two U.S.cases is not required in attorney disqualification cases involving adverse representation because other cases to the contrary are more persuasive. McVey v. Etscheit, 14 FSM R. 268, 272 (Pon. 2006).

The court obeyed Rule 1.10(a)=s clear command and imputed a lawyer=s disqualification to his partner, rather than trying the law firm=s proposal to erect a Chinese wall between them. Because the law firm is a private firm, motivated by the profit incentive and, unlike government law offices, a "Chinese wall" is not an appropriate remedy for a private law office. The different treatment for private and government law offices is considered to stem, in part, from government agency attorneys not being bound by a common profit motive as are lawyers in private practice; thus, unlike private law firms, the disqualification of all government attorneys in an office is not required when one is disqualified. McVey v. Etscheit, 14 FSM R. 268, 272 (Pon. 2006).

When a law firm was disqualified from representing all of the defendants on other grounds, a claim that the conflict between the corporate defendant and the other defendants was waived does not have a substantial possibility of success entitling a petitioner for a writ of prohibition to a stay because the trial court never ruled on the issue. McVey v. Etscheit, 14 FSM R. 268, 273 (Pon. 2006).

The disqualification of all lawyers in a government office when one of them is disqualified is a question within the trial court=s discretion. FSM v. Kansou, 14 FSM R. 273, 278 (Chk. 2006).

Disqualification of a party=s counsel is not warranted because that counsel approved for legal sufficiency the notice of intent to adopt a regulation that included, unaltered from a previous regulation, the regulatory provision at issue in the action. Ehsa v. Pohnpei Port Auth., 14 FSM R. 505, 508-09 (Pon. 2006).

Since a trial court=s decision to disqualify an attorney from participation in a given case is a decision falling within a trial court=s inherent discretionary powers, and since a petition for a writ of mandamus fails when it seeks appellate review that is explicitly beyond the curative parameters of mandamus or prohibition, the petition will be denied. The trial court had no legal duty to admit an attorney in the case, since the challenged disqualification was wholly within the trial court=s discretion. Etscheit v. Amaraich, 14 FSM R. 597, 601 (App. 2007).

An attempt to use a petition for writ of prohibition or mandamus to obtain a preemptory

disqualification of an attorney not presently involved in the case is misplaced because, given the nature of the remedy of mandamus and prohibition and the caution exercised in affording it, the right sought to be enforced must be clear and certain. There must be an immediate right to have the act in question performed, and such right must be specific, well defined, and complete, so as not to admit of any reasonable controversy. As such, mandamus or prohibition relief cannot be used as a precaution against future events that may never occur. Etscheit v. Amaraich, 14 FSM R. 597, 601 n.1 (App. 2007).

When the Secretary of the FSM Department of Justice is an attorney in good standing with the court, there is no legal authority that would serve as a basis to disqualify the Secretary from participating in a court case on the ground that she might have been referred to the disciplinary process in different case. FSM v. Zhang Xiaohui, 14 FSM R. 602, 613 (Pon. 2007).

Since the Disciplinary Rules provide for the confidentiality of all pending disciplinary matters, and since the defendant=s various motions concerning possible disciplinary action against the Secretary of Justice have no bearing on the case=s substantive outcome, the court, in its discretion, the various filings that refer in any way to a possible disciplinary matter, whether such a matter is pending or not, will be stricken from the record. FSM v. Zhang Xiaohui, 14 FSM R. 602, 613 (Pon. 2007).

The Model Rules of Professional Conduct provide rules of reason, which should be interpreted with reference to the purposes of legal representation and of the law itself. The rules are thus partly obligatory and disciplinary and partly constitutive and descriptive. The MRPC does not provide binding rules of law, but the numerous FSM cases addressing the issue of disqualification of government lawyers are binding the court according to the rule of *stare decisis*. Chuuk v. Robert, 15 FSM R. 419, 422 n.1 (Chk. S. Ct. Tr. 2007).

Except as law may otherwise expressly permit, a lawyer must not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation. When a client is a government agency that agency is treated as a private client for the purposes of the rule if the lawyer thereafter represents another government agency. Chuuk v. Robert, 15 FSM R. 419, 422-23 & n.2 (Chk. S. Ct. Tr. 2007).

No lawyer in a firm with which a former government lawyer is associated may knowingly undertake or continue representation in a matter in which the former government lawyer participated personally and substantially as a public officer or employee unless 1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and 2) written notice is given as soon as practicable in order to give the government agency a reasonable opportunity to ascertain compliance with the rule. Chuuk v. Robert, 15 FSM R. 419, 423 & n.3 (Chk. S. Ct. Tr. 2007).

The policy behind the waiver and screening provisions are intended to provide a means for government lawyers to continue in public service by not unduly restricting changes in their employment. Thus the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government since the government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. The provisions for screening and waiver are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. Thus, in the case of government lawyers, the notice and screening provisions provide a favored means to prevent the vicarious, or imputed, disqualification of an entire office when one of its lawyers has a conflict. Chuuk v. Robert, 15 FSM R. 419, 423 (Chk. S. Ct. Tr. 2007).

The disqualification of all lawyers in a government office when one of them is disqualified is a question within the trial court=s discretion. Chuuk v. Robert, 15 FSM R. 419, 423 (Chk. S. Ct. Tr. 2007).

In deciding a motion to disqualify, the court must render its decision in a manner consistent with the

FSM=s social and geographical configuration. While the FSM is a nation of large geographical distances, it has a small land base, a small population, and limited resources and it also has a small government legal office and few other lawyers available. Thus the court, consistent with the FSM=s social and geographical configuration, should not order the government to go outside its office for an attorney unless it is absolutely necessary. Chuuk v. Robert, 15 FSM R. 419, 423 (Chk. S. Ct. Tr. 2007).

The rules for vicarious disqualification of attorneys in the same law firm do not apply to government lawyers; disqualification of one government office member is not imputed to the other members. With respect to cases involving a disqualified supervising attorney, individual rather than vicarious disqualification is the general rule but individual disqualification must be complete and any participation or anything less than complete abstention by a disqualified member of a prosecutor=s office in a supervisory capacity would warrant disqualification of the entire office. Thus, unless the court is satisfied that a supervising attorney has not participated in and has completely abstained from a legal matter, the supervising attorney=s entire office warrants disqualification. Chuuk v. Robert, 15 FSM R. 419, 424 (Chk. S. Ct. Tr. 2007).

Since cases where vicarious disqualification of government attorneys is warranted often are predicated on the supervising attorney=s personal or emotional interest, bias, or involvement in the case and consequent issues regarding the supervising attorney=s attempt to influence the case=s outcome, when the disqualified Chief Public Defender did not have any actual communication with the FSM Public Defender=s Office Chuuk branch regarding the substance of the case and the only contact he had with the Chuuk Branch Public Defender=s Office was to assign the case according to the defendant=s request; when there is no suggestion that he had a personal or emotional interest that would lead him to attempt to influence its outcome and the court is unable to discern that he had done anything other than completely abstain from any participation in the action; when the Chuuk branch is in a separate office hundreds of miles from the Chief Public Defender=s Office in Pohnpei, which in effect creates a natural screen from any accidental disclosures between the FSM Public Defender=s Office and its Chuuk branch office regarding the case=s substance although they are part of the same "office" for MRPC and vicarious disqualification purposes, and since the policy behind Rule 1.11 is to ensure the continuing service of government attorneys when they change employment and to disqualify them only if it is absolutely necessary, disqualification of the entire FSM Public Defender=s Office, including the Chuuk office, is not warranted since the court found no evidence the Chief Public Defender participated in handling the defense. Chuuk v. Robert, 15 FSM R. 419, 424 & n.5 (Chk. S. Ct. Tr. 2007).

A counsel=s affidavit used to establish probable cause places counsel in the position of being called as a witness in the case and detracts from the evidence=s reliability because it merely adds another layer of hearsay. In that instance, counsel would be in apparent violation of Model Rule of Professional Conduct 3.7 (1983), which, subject to limited exceptions, prohibits counsel from being an advocate at a trial in which counsel is likely to be called as a witness. Chuuk v. Chosa, 16 FSM R. 95, 99 (Chk. S. Ct. Tr. 2008).

Model Rule 1.7(b) allows representation of multiple clients if the lawyer reasonably believes his representation will not be adversely affected, and the client consents after consultation. When a joint notice of appeal has already been filed, the trial court will merely note the potential for conflict with respect to the substantive issues on appeal and leave for the appellate court any further resolution of a potential conflict of interest arising from counsel=s joint representation. Chuuk v. William, 16 FSM R. 149, 152 (Chk. S. Ct. Tr. 2008).

If there is a present lawyer-client relationship with an adverse party, the perceived conflict would be analyzed under provisions of Model Rule of Professional Conduct 1.7, and if the law firm does not have a present lawyer-client with the adverse party but has represented the adverse party in the past, the adverse party is a former client and the perceived conflict would be analyzed under the provisions of Rule 1.9. The issue regarding whether a lawyer-client relationship existed is a question of fact. Weilbacher v.

Taulung, 16 FSM R. 318, 321 (Kos. S. Ct. Tr. 2009).

An individual whose initial intake interview ended when the attorney advised the individual that the law firm was not going to assist him was neither a past nor present client of the law firm but was a prospective client seeking legal help that was turned down. Weilbacher v. Taulung, 16 FSM R. 318, 321 (Kos. S. Ct. Tr. 2009).

Prospective clients receive some protection. The issues of confidentiality and conflicts of interest are intertwined in determining whether a lawyer is disqualified from representing a client as a result of preliminary discussions with the other side. A duty of confidentiality exists and applies whenever a lawyer agrees to consider whether to take a prospective client=s case. Weilbacher v. Taulung, 16 FSM R. 318, 321 (Kos. S. Ct. Tr. 2009).

Prospective clients should receive some, but not all, the protections given to a client because a lawyer=s discussions with a prospective client are often limited in the time and depth of exploration, do not reflect full consideration of the prospective client=s problems, and leave both prospective client and lawyer free (and sometimes required) to proceed no further. Weilbacher v. Taulung, 16 FSM R. 318, 321 (Kos. S. Ct. Tr. 2009).

Anything a lawyer learns during a consultation must be kept confidential and a determination of whether a lawyer-client relationship has been formed is undertaken. In determining whether this initial interview formed a client-lawyer relationship it is essential to know how much was disclosed in the initial meeting. Weilbacher v. Taulung, 16 FSM R. 318, 322 (Kos. S. Ct. Tr. 2009).

It is necessary for prospective clients to reveal information to attorneys during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer wants to undertake. The attorney has a duty not to use any information learned during this initial intake even if the attorney does not proceed with representation. Weilbacher v. Taulung, 16 FSM R. 318, 322 (Kos. S. Ct. Tr. 2009).

Initial intakes are vital in determining if a firm can represent a client or not and receiving this information is not, in itself, enough to trigger disqualification. Disqualification should not occur unless extensive or sensitive information about the potential representation was revealed. Only if the consultation involves information that could be significantly harmful to the person who consulted the lawyer will the lawyer be disqualified from representing someone else in the matter. Weilbacher v. Taulung, 16 FSM R. 318, 322 (Kos. S. Ct. Tr. 2009).

When the movant did not show that the information he told the law firm was of significant use or critical to the case and when the law firm did an effective screening job to prevent any conflict from occurring since no significantly harmful information was revealed, no conflict of interest exists and the law firm should not be disqualified, but anything the law firm did learn in the initial intake is confidential and it is under an obligation to keep it confidential. Weilbacher v. Taulung, 16 FSM R. 318, 322 (Kos. S. Ct. Tr. 2009).

Model Rule of Professional Conduct 1.9(a) prohibits an attorney who has represented a person from representing another person in a same or substantially related matter in which that person=s interests are materially adverse to the former client=s interests unless the former client consents after consultation. Doone v. Chuuk State Election Comm=n, 16 FSM R. 459, 461 (Chk. S. Ct. App. 2009).

An attorney is not disqualified from representing the real parties in interest in a 2009 state election contest brought by a former client who he had represented in the former client=s attempt to be added to the ballot for the 2006 FSM congressional race since the issues are not the same or substantially related to the attorney=s former representation. Doone v. Chuuk State Election Comm=n, 16 FSM R. 459, 461

(Chk. S. Ct. App. 2009).

Disqualification for an emotional interest because it causes a conflicting interference with the lawyer=s exercise of public responsibility is limited to prosecutors since prosecutors are held to a higher standard. Marsolo v. Esa, 17 FSM R. 480, 484 n.1 (Chk. 2011).

Courts must view with caution any motion to disqualify opposing counsel because such motions can be misused as a harassment technique. Marsolo v. Esa, 17 FSM R. 480, 484 (Chk. 2011).

Resolving conflict-of-interest questions is primarily the responsibility of the lawyer undertaking the representation, but a court may, in civil litigation, raise the question when there is reason to infer that the lawyer has neglected the responsibility. Marsolo v. Esa, 17 FSM R. 480, 484 (Chk. 2011).

When an FSM court has not previously construed an FSM ethical rule, such as the issue of standing to move to disqualify opposing counsel for violating a Model Rule which is identical or similar to a U.S. rule, it may consult U.S. sources for guidance. Marsolo v. Esa, 17 FSM R. 480, 484 n.2 (Chk. 2011).

Although generally only a client or a former client has standing to move to disqualify counsel in a civil case on the basis of a conflict of interest, even then a non-client may seek disqualification when the ethical breach so infects the litigation in which disqualification is sought that it impacts the moving party=s interest in a just and lawful determination of her claims since she may have the constitutional standing needed to bring a motion to disqualify based on a third-party conflict of interest. Marsolo v. Esa, 17 FSM R. 480, 484-85 (Chk. 2011).

Opposing counsel may have standing to seek counsel=s disqualification even though they are not representing an aggrieved client or former client because bar members have an ethical obligation and are authorized to report any ethical violations in a case. Marsolo v. Esa, 17 FSM R. 480, 485 (Chk. 2011).

No sound basis is apparent for disqualifying the Chuuk Attorney General=s Office from representing the State of Chuuk when it has a statutory duty to represent the state and when the state asserts an absolute right to possession (at least temporarily) of certain funds that the national government has held and is disbursing. That the state also holds a particular view about which of the competing rivals is the duly elected mayor of Tolensom does not alter this since the case is not an election contest or an action in the nature of a petition for a writ of quo warranto challenging the right of a person to hold a particular office. The same principles apply to a suit by the Chuuk Governor in his official capacity since a claim against a government officer in his official capacity is, and should be treated as, a claim against the entity that employs the officer, thus a claim by a government officer in his official capacity is, and should also be treated as, a claim by the entity that employs the officer. Marsolo v. Esa, 17 FSM R. 480, 485 (Chk. 2011).

A lawyer cannot represent multiple clients with conflicting or potentially conflicting interests in the same matter unless the lawyer reasonably believes the representation will not be adversely affected and the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation must include explanation of the implications of the common representation and the advantages and risks involved. Marsolo v. Esa, 17 FSM R. 480, 486 (Chk. 2011).

Even though the Chuuk Attorney General=s Office followed the proper procedure and had a consultation with all the plaintiffs and after the consultation, they all consented to the multiple representation, the court can still conclude that it must disqualify the Chuuk Attorney General=s Office from representing two of the plaintiffs because, while the interests of all the plaintiffs are certainly aligned on what, in their view, constitutes the lawful Tolensom municipal government, it is by no means clear that their interests could be aligned on the pivotal issue of whether the lapsed CIP funds must pass through the Chuuk state general fund and the Chuuk appropriation process before arriving in the Tolensom municipal coffers and with the existence of a rival Tolensom municipal government, it is even less clear

that the Chuuk Attorney General=s Office is statutorily authorized to represent as plaintiffs one rival Tolensom mayor and government. Marsolo v. Esa, 17 FSM R. 480, 486 (Chk. 2011).

A party-plaintiff represented in his official capacity by the Chuuk Attorney General would need separate counsel to defend against a counterclaim when he is sued in his individual capacity since the Chuuk statute does not authorize the Chuuk Attorney General=s Office to represent officials in their individual capacities or to litigate their personal interests and because the Chuuk Attorney General=s brief asserts that his office only represents the party in his official capacity as Tolensom mayor. Marsolo v. Esa, 17 FSM R. 480, 486 n.3 (Chk. 2011).

When the statute authorizes the Chuuk Attorney General=s representation of Chuuk subdivisions only when appropriate; when it is unclear whether two plaintiffs even qualify as a Chuuk subdivision or that the representation would be appropriate; and when to rule that they do would be to implicitly decide (in the plaintiffs= favor) one of the two major issues of the case before the adversary process has gotten underway, the fairness of the proceeding could reasonably be questioned if the Chuuk Attorney General=s Office continued to represent a rival plaintiff Tolensom mayor and municipal government. Since the Chuuk Attorney General=s Office will remain counsel for the state plaintiffs, it will not be precluded from raising any issues, introducing any evidence, or advancing any arguments that it would otherwise have been able to do. The matter=s timely disposition would also not be delayed. Marsolo v. Esa, 17 FSM R. 480, 486-87 (Chk. 2011).

Without a former client=s consent, a lawyer cannot represent another person in a matter adverse to the former client when the lawyer represented the former client in the same matter or a substantially related matter. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 390 (Pon. 2012).

Unless the former client has consented after consultation, counsel would be disqualified from appearing in the same or a substantially related matter in which the client=s interests are materially adverse to a former client=s interests when an opposing party is a former client, but a lawyer who has formerly represented a client is not disqualified from representing an opposing party in another matter when that matter is not substantially related to the previous matter and when the lawyer has not received any confidential information from the former client relating to the current matter. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 390-91 (Pon. 2012).

Two concerns underlie the substantial relationship test – the duty to preserve confidences and the duty of loyalty to a former client. The existence of the duty of loyalty means that the substantial relationship test is not solely concerned with the adverse use of confidential information. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 391 (Pon. 2012).

Since the substantial relationship test is concerned with both a lawyer=s duty of confidentiality and his duty of loyalty, a lawyer who has given advice in a substantially related matter must be disqualified whether or not he has gained confidences. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 391 (Pon. 2012).

Once the matters are shown to be substantially related, the former client is entitled to a conclusive presumption that confidences and secrets were imparted to the former attorney. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 391 n.4 (Pon. 2012).

In order to disqualify a former attorney, the former client need show no more than that the matters embraced within the pending suit wherein his former attorney appears on behalf of his adversary are substantially related to the matters or the cause wherein the attorney previously represented him, the former client. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 391 (Pon. 2012).

When considering disqualification under the substantial relationship test, more general legal representation can be relevant to a later litigation, but only if the later litigation fairly puts in issue the entire background of the movant. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 391 (Pon. 2012).

A court must be cautious when considering a motion to disqualify counsel because of the possibility that the motion may be abused as a technique of harassment. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 391 (Pon. 2012).

Since an attorney=s disqualification is in the public interest, the court cannot act contrary to that interest by permitting a party=s delay in moving for disqualification to justify the continuance of a breach of legal ethics. The court has a duty, in accordance with the Model Rules of Professional Conduct, to regulate the conduct of the attorneys who practice before it, and this duty cannot be defeated by a private party=s laches, although in an extreme case it may be given some weight. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 392 (Pon. 2012).

Since, generally, a lawyer must not act as advocate at a trial in which the lawyer is likely to be a necessary witness, it follows that a party should not be able to potentially disqualify another litigant=s advocate by making the other litigant=s lawyer into a witness by noticing that advocate=s deposition. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41d (Pon. 2015).

The test for a lawyer to determine whether a conflict of interest exists in representing more than one client is found in FSM MRPC Rule 1.7. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 169, 172 (Pon. 2015).

A lawyer cannot represent a client if the representation of that client will be directly adverse to another client, unless the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and each client consents after consultation. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 169, 172 (Pon. 2015).

When, during a hearing, counsel argued against the State in defense of his attempt to depose the State=s Assistant Attorney General and when counsel argues that a conflict of interest exists between the Governor and the Attorney General=s Office because the Attorney General=s Office is admitting liability on the State=s behalf, and imputed that liability upon counsel=s client, a tenant of the State, this issue of imputing liability from the State to counsel=s client clearly shows a conflict of interest which would bar counsel from transferring his representation between the two defendants. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 169, 172-73 (Pon. 2015).

When counsel=s representation of the State would be materially adverse to his current client=s interest and no evidence was provided that would show otherwise and when there is no proof of consent by each of the defendants after consultation, counsel=s motion to withdraw from his client will be denied and his notice of entry of appearance on the State=s behalf will be stricken from the record as will his other filings on the State=s behalf. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 169, 173 (Pon. 2015).

As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client without that client=s consent. Thus, a lawyer ordinarily may not act as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 169, 173 n.3 (Pon. 2015).

Under Model Rule of Professional Conduct 1.11, a lawyer must not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation. Jacob v. Johnny, 20 FSM R. 612, 615 (Pon. 2016).

To be disqualified, a former government lawyer=s participation must have been personal and substantial. "Indirectly involved" is not equivalent to "participated personally and substantially." Jacob v.

Johnny, 20 FSM R. 612, 615 (Pon. 2016).

A former government lawyer may represent a private party when the appropriate government agency has consented during a hearing. Jacob v. Johnny, 20 FSM R. 612, 615 (Pon. 2016).

A court must be wary when considering a motion to disqualify opposing counsel because of the possibility that the motion may be abused as a harassment technique, and because court resources are sorely taxed by the increasing use of disqualification motions as harassment and dilatory tactics. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 451 (Pon. 2018).

Although a corporation may appear only through licensed counsel, there is no requirement that such licensed attorney must not be an employee of the corporation that he or she represents. The licensed attorney may be an employee of the corporation. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 451 (Pon. 2018).

When a law firm is a party to litigation, one of its member attorneys may represent it. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 451-52 (Pon. 2018).

When an attorney is representing himself or herself, or the attorney=s law firm is representing the attorney, the Rule 3.7(a) prohibition of being an advocate in a proceeding in which he or she is also a witness, does not apply. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 452 (Pon. 2018).

As a party litigant, a lawyer can represent himself if he so chooses. Implicit in the right of self-representation is the right of representation by retained counsel of one=s choosing. A party litigant does not lose this right merely because he is a lawyer. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 452 (Pon. 2018).

When it is a party litigant, a law firm may chose to be represented by one of its member attorneys, just as any other business entity or corporation could be represented by one of its employees if that employee is a licensed attorney. The law firm does not lose that right merely because the business it engages in is the practice of law or because its members are subject to the FSM Model Rules of Professional Conduct. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 453 (Pon. 2018).

That the plaintiffs had to hire and pay an attorney to pursue the suit while the law firm defendant will represent itself, and will not incur legal expenses as a result, does not constitute prejudice, or at least the type of prejudice that would require the court to disqualify opposing counsel. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 453 (Pon. 2018).

A major factor in determining whether there is potential for adverse effect requiring counsel=s disqualification is the likelihood that actual conflict will arise and the likely prejudice to the client from the conflict if it does arise. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 453 (Pon. 2018).

The moving party bears the burden of proving facts that establish the necessary factual prerequisite for disqualification. Counsel will not be disqualified simply because the opposing party alleges the possibility of differing interests. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 453 (Pon. 2018).

A lawyer who formerly represented a client in a matter must not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the former client=s interests unless the former client consents after consultation. When lawyers are associated in a firm, none of them can knowingly represent a client if any one of them practicing alone would be prohibited from doing so. A legal services organization is considered one such firm. Peter v. Gouland, 22 FSM R. 404, 407 (Chk. S. Ct. Tr. 2019).

A motion for disqualification of counsel solely because the client is a wealthy senator whose income exceeds the income level of a person that the legal services organization may represent is improper. A more proper remedy is to complain to the legal services organization=s executive director instead. Peter v. Gouland, 22 FSM R. 404, 407 (Chk. S. Ct. Tr. 2019).

A litigant qualifies as a former client when he spoke with two different counselors from the firm, handed over papers, discussed his case=s merits, and shared confidential information which may have resulted in an internal discussion before he was referred to another law firm. Thus, when the litigant approached the firm about representing him as a plaintiff in the very same trespass action in which the firm now defends two persons with positions adverse to him and he objects to the firm=s representation of one of the defendants, the court need not ponder the reasons behind the litigant=s objection because the firm=s continued representation of that defendant violates Rule 1.9, which prohibits a lawyer from knowingly representing a client against a former client in the same matter if the clients= interests are adverse and if the former client has not consented after consultation. Peter v. Gouland, 22 FSM R. 404, 407-08 (Chk. S. Ct. Tr. 2019).

Conflicts of interest regarding former clients are imputed to all the lawyers within a law firm. Thus, even if the former client spoke with two of the firm=s counsel without their sharing any information with the lawyer currently representing an adverse party in the matter, those conflicts are still imputed onto the current counsel since he is part of the same legal services organization. Even if current counsel lacked prior knowledge of the former client=s interactions with the firm, once he knows of this circumstance, it is unethical for him to continue to represent the adverse party in the case. Peter v. Gouland, 22 FSM R. 404, 408 (Chk. S. Ct. Tr. 2019).

When a former client has consented on the record to the law firm=s continued representation of one adverse co-defendant, the current representation of that party does not appear to violate the Model Code, although, under at least one possible future circumstance, that continued representation might do so, even after its withdrawal from representing the other adverse co-defendant. The court will therefore give counsel time to determine whether, after withdrawing from representing that client=s co-defendant, he can continue to represent that client in compliance with the code of conduct after which counsel will either file a motion to withdraw from that representation as well or do nothing and remain the counsel of record. Peter v. Gouland, 22 FSM R. 404, 408 (Chk. S. Ct. Tr. 2019).

– Legal Malpractice

Although certain consequences flow from the failure to file a brief, appellees= attorneys are not otherwise under an obligation to the court to file briefs, but may be under a professional ethical obligation to their clients to do so, or may be subject to malpractice liability if an appellee is in the end prejudiced by his attorney=s failure to file. In re Sanction of Woodruff, 9 FSM R. 414, 415 (App. 2000).

When a case has been dismissed for the plaintiff=s failure to prosecute, the plaintiff=s possible remedies are either to appeal the dismissal or a Rule 60(b) motion for relief from judgment (the more viable, quicker, and usual remedy) if he wishes to have the dismissal set aside. (Filing a new case when there has been a dismissal on the merits is not a possible remedy.) Success by either method would reinstate the case at the point it was dismissed. If neither of these routes is taken successfully, the plaintiff, depending on his ability to prove that he would have succeeded at trial, may have a cause of action against his counsel. Kishida v. Aizawa, 13 FSM R. 281, 284 (Chk. 2005).

Dismissal for an attorney=s inexcusable neglect in failing to file an opening brief is handled differently in civil and criminal appeals. Appellate courts are much more reluctant to dismiss a criminal appeal for an attorney=s inexcusable neglect because a criminal defendant has no other remedy. In a civil appeal, when the appeal is dismissed for inexcusable neglect in prosecuting the appeal, if the party whose appeal is thus dismissed is thereby aggrieved, his remedy will be against his attorney. A criminal appellant has

no such remedy. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114 (App. 2008).

Dismissal for an attorney=s inexcusable neglect in failing to file an opening brief must be handled differently in civil and criminal appeals. Appellate courts are much more reluctant to dismiss a criminal appeal for an attorney=s inexcusable neglect because a criminal defendant has no other remedy. When a civil appeal is dismissed for inexcusable neglect in prosecuting the appeal, if the party whose appeal is thus dismissed is thereby aggrieved, his remedy will be against his attorney. A criminal appellant has no such remedy. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 129-30 (App. 2008).

Legal malpractice is a generic term for at least three distinct causes of action available to clients who suffer damages because of their lawyers= misbehavior. Clients wronged by their lawyers may sue for damages based on breach of contract, breach of fiduciary duty, or negligence. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009).

Regardless of whether the cause of action is based on negligence, breach of contract, or breach of fiduciary duty, the central purpose of the law of legal malpractice is to guard against and to remedy exploitation of the power lawyers possess over their clients= lives and property. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009).

An attorney has a duty to provide competent legal advice and representation. An action against an attorney for malpractice may be brought in contract or in tort because when the attorney was chargeable with negligence or unskillfulness, his contract was violated. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009).

When the plaintiffs suing their appellate attorney are seeking to recover damages in the amount they paid their attorney to handle their appeal and are not seeking to recover the amount of the land that was at issue in the appeal, the plaintiffs= claim is one for breach of contract and not legal malpractice. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009).

When the court is not looking at negligence in handling the case or the manner in which the brief was written as there was no brief written or submitted to the FSM Supreme Court appellate division and when the attorney did not guarantee a specific result, promise, warrant or specify an outcome in the appeals case, the case is a "do nothing" case where the promisor-attorney had promised to perform a certain activity, to represent the plaintiffs in handling of an appeal, and the failure to complete that action exposed the promisor-attorney to liability for breach of contract. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644-45 (Kos. S. Ct. Tr. 2009).

The most frequent attorney error that may be the subject of a successful legal malpractice action is the attorney=s failure to comply with a statute of limitation. Aunu v. Chuuk, 18 FSM R. 467, 469 n.2 (Chk. 2012).

Merely neglecting to calendar deadlines as well as maintain control over files created for undertaking client representation does not constitute excusable neglect. Instead, such actions reflect a level of activity that falls below the standards imposed upon members of the legal profession. Samuel v. Kolonia Town, 22 FSM R. 397, 399 (Pon. 2019).

– Withdrawal of Counsel

Although the trial court may grant a public defender=s motion to withdraw as counsel pursuant to FSM Model Rule of Professional Conduct 1.7(b) because the public defender adopted the son of the victim=s nephew, the trial court may deny the same public defender=s motion to relieve the entire staff of the Public Defender=s Office pursuant to Model Rule 1.10(a) because the public defender=s conflict was personal and not imputed to the Public Defender staff. Office of Public Defender v. Trial Division, 4 FSM R. 252, 254 (App. 1990).

Although an attorney is competent to testify as a witness on behalf of a client, testimony by an attorney representing a party, except in limited circumstances, creates a conflict of interest. An attorney under such a conflict has an ethical duty to withdraw from representation, except in limited cases, including where disqualification would cause an undue hardship to the client. Determining whether a conflict exists is primarily the responsibility of the lawyer involved. Triple J Enterprises v. Kolonia Consumer Coop. Ass=n, 7 FSM R. 385, 386 (Pon. 1996).

A trial counselor who is a member of a plaintiff class that is seeking money damages from the state has a conflict and cannot represent the state and will be allowed to withdraw. Oster v. Bisalen, 7 FSM R. 414, 415 (Chk. S. Ct. Tr. 1996).

A court cannot allow defense counsel to withdraw so that the defendant can seek new counsel to resume trial when the trial is well into the defendant=s case-in-chief and when that new counsel was not present during trial and has not heard either the prosecution=s witnesses= testimony or that of the defense witnesses who have already testified. FSM v. Jano, 9 FSM R. 470a, 470b (Pon. 2000).

Defense counsel cannot, in the middle of a criminal trial, precipitously accept other employment, without making the acceptance of employment conditional, commit himself to begin work "immediately," and then move for withdrawal because defense counsel is under an ethical obligation to continue as counsel until the criminal trial ends, even if that means postponement of his departure for new employment. FSM v. Jano, 9 FSM R. 470a, 470b (Pon. 2000).

When ordered to by a tribunal, defense counsel is ethically obligated to continue the representation even if good cause to withdraw is present. Should the criminal trial end in a conviction, new counsel may be obtained for sentencing. FSM v. Jano, 9 FSM R. 470a, 470b (Pon. 2000).

Denying withdrawal of counsel in the middle of a criminal trial is within the court=s discretion, and as long as counsel is providing effective assistance, a criminal defendant has the choice of either continuing with that counsel or representing himself pro se. FSM v. Jano, 9 FSM R. 470a, 470b (Pon. 2000).

An attorney=s motion to withdraw after advising his clients at depositions will be denied because the record contains no evidence that defendants discharged him at the depositions= end, or withdrew their authorization for him to represent them in all aspects of this proceeding; because a client=s failure to contact counsel has no effect on representation especially when counsel has provided no evidence of his efforts to contact the client; because counsel=s failure to secure a fee agreement between himself and his clients is not a basis for terminating representation; and because the case is ready for trial, and withdrawal of counsel at this juncture would materially compromise defendants= interests. Beal Bank S.S.B. v. Salvador, 11 FSM R. 349, 350 (Pon. 2003).

When the court has not been notified on the record at the representation=s start that counsel=s representation was limited, counsel then must seek the court=s permission to withdraw when he believes his representation has come to an end. He then remains counsel of record until, and if, the court grants him permission to withdraw. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

Counsel=s failure to follow the rules in withdrawing from a case can come back to haunt him. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

Counsel=s merely relying on his hope that verbally informing the clerk that he was no longer counsel would be sufficient to withdraw as counsel is not enough. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

When a trial counselor defendant is still considered plaintiff=s counsel since he has not withdrawn

from the plaintiff=s land matter, he should inform the plaintiff in writing of his withdrawal if he should seek to withdraw from representing the plaintiff based upon the parties= inability to work together. Ittu v. Palsis, 11 FSM R. 597, 599 (Kos. S. Ct. Tr. 2003).

When counsel who signed an answer to the amended complaint on behalf of both defendants and appeared for both defendants, only withdrew from representing one defendant, they remain counsel for the other. Jackson v. Pacific Pattern, Inc., 12 FSM R. 18, 19 (Pon. 2003).

Under the Model Rules of Professional Conduct, which regulates conduct of legal counsel admitted to practice law in the State of Kosrae, Rule 1.7 prohibits a counsel from representing a client if representation of that client may be materially limited by the counsel=s responsibilities to a third person or the counsel=s own interests. A counsel may not represent the state in prosecuting a criminal action, if the counsel=s prosecution will be materially limited by his personal relationship to the defendant. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 2003).

A prosecutor=s duty is to zealously and diligently prosecute criminal charges which are supported by probable cause, in the public interest, and, in his position as a public servant, to serve the public interest, consistent with the Model Rules of Professional Conduct. If the prosecutor cannot fulfill his prosecutorial duties in a particular case due to a conflict, including a personal relationship to the defendant, then the prosecutor is obligated to withdraw from the case. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 2003).

Counsel may withdraw from representation of a client if it could be accomplished without material adverse effect on the interests of the client or if: 1) the client continues conduct that the counsel believes is criminal or fraudulent, or 2) the client has used counsel=s services to commit a crime or fraud; or 3) the client fails to substantially fulfill an obligation to the counsel regarding counsel=s services and has been given warning (i.e. non-payment of fees, no cooperation in discovery); or 4) the client insists upon pursuing an objective that counsel believe is repugnant or imprudent; or 5) the representation will result in an unreasonable financial burden on the counsel, or 6) when other good cause exists. Wakuk v. Melander, 12 FSM R. 73, 74 (Kos. S. Ct. Tr. 2003).

A motion to withdraw as counsel will be denied when withdrawal from representation will have material adverse effect on the client=s interests because the matter is pending for hearing and withdrawal is sought right before the hearing, and when counsel has failed to cite to, or provide any grounds under Model Rule of Professional Conduct 1.16 as the basis for withdrawal. Wakuk v. Melander, 12 FSM R. 73, 74-75 (Kos. S. Ct. Tr. 2003).

When ordered to do so by a tribunal, a lawyer must continue representation notwithstanding good cause for terminating the representation. Dereas v. Eas, 12 FSM R. 629, 631 (Chk. S. Ct. Tr. 2004).

That an appointed lawyer is busy is insufficient to permit his withdrawal since lawyers are generally busy and because one cause of this, the lawyer=s status as a state constitutional convention delegate, is of limited duration and will end before this case progresses much further. FSM v. Kansou, 13 FSM R. 157, 158 (Chk. 2005).

That a criminal defendant is not comfortable with an appointed attorney because most of the counsel=s experience was with civil cases and has asked counsel assist him in finding an attorney or attorneys with a criminal background is insufficient to permit withdrawal of counsel since every defendant facing prosecution would like an attorney with the most criminal experience possible and with more experience than the one they have got. But none are available that the court can appoint since the amount of legal talent available in the Federated States of Micronesia and admitted to practice before the FSM Supreme Court is limited. FSM v. Kansou, 13 FSM R. 157, 158 (Chk. 2005).

Defense counsel=s delayed recognition that the victim was his second cousin, and his delayed notice

to the court suggests that counsel=s relationship to the victim does not result in a conflict of interest which would require counsel=s disqualification. The court also retains its authority and discretion to deny withdrawal of counsel in the middle of a criminal proceeding. Kosrae v. Palik, 13 FSM R. 187, 189 (Kos. S. Ct. Tr. 2005).

Since, upon termination of representation, a lawyer must surrender papers and property to which the client is entitled and may retain papers as security for a fee only to the extent permitted by law, when an attorney does not contend that the parties owe him money and that he is retaining the files as security for his fee, he has no ground for retaining those files if the parties are former clients and they have asked for the files= return. Counsel may retain copies (not the originals) of any part of the files needed for future reference. McVey v. Etscheit, 14 FSM R. 207, 211-12 (Pon. 2006).

Merely mailing a client a copy of a decision is not enough to constitute a withdrawal. Something more must be done; otherwise she therefore remains his client. McVey v. Etscheit, 14 FSM R. 207, 212 (Pon. 2006).

Withdrawal does not immunize counsel from Rule 11 sanctions. Amayo v. MJ Co., 14 FSM R. 355, 363 n.4 (Pon. 2006).

When defense counsel files an answer for all defendants and then "withdraws" from representing one of the defendants because that defendant had never consulted with or consented to defense counsel=s representation, the better view is that defense counsel had never represented that defendant. Albert v. O=Sonis, 15 FSM R. 226, 230 & n.1 (Chk. S. Ct. App. 2007).

If counsel seeks to terminate representation after trial but before the appeal, steps must be taken to ensure the client=s rights are protected to the extent reasonably practicable and, even then, notwithstanding good cause for withdrawal, the court may order counsel to continue representation. Chuuk v. William, 16 FSM R. 149, 151 (Chk. S. Ct. Tr. 2008).

Counsel may not simply refuse to pursue an appeal, without taking any further action to protect the client=s rights. If counsel concludes that an appeal would not be meritorious, but the client still wishes to pursue the appeal, any withdrawal is conditioned upon the court=s approval. Such approval may be conditioned on counsel=s filing of an AAnders brief@ referring to anything in the record that may arguably support appeal, whereupon the court should only grant withdrawal if it finds the appeal to be frivolous. Counsel may withdraw without the court=s permission only if counsel was appointed solely to act as trial counsel. Chuuk v. William, 16 FSM R. 149, 152 (Chk. S. Ct. Tr. 2008).

When the public defender is the attorney of record in this case, unless and until the court recognizes his withdrawal, neither counsel nor his office is relieved of the duty of ensuring adequate representation for the client=s appeal. The trial court may leave to the appellate court any ruling on whether the Public Defender=s office may withdraw its representation of an appellant and what additional steps, if any, may be required before such withdrawal is approved. Chuuk v. William, 16 FSM R. 149, 152 (Chk. S. Ct. Tr. 2008).

Counsel may be permitted to withdraw once they have fulfilled the conditions set by the court. Kuch v. Mori, 18 FSM R. 337, 338 (Chk. S. Ct. App. 2012).

The court does not have to permit counsel=s withdrawal if the client will be left in a position where the client=s interests are impaired or where there is a material adverse effect on him. Lee v. FSM, 18 FSM R. 558, 562 (Pon. 2013).

The FSM ethical rules governing attorney conduct when seeking to withdraw provide that, except when ordered by a tribunal to continue representation notwithstanding good cause for terminating the

representation, a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the client=s interests, or if the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 571 (Kos. 2013).

When a lawyer is permitted to withdraw because maintaining the litigation has become too costly, finding substitute counsel may well prove to be difficult or even impossible. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 571 (Kos. 2013).

The court will deny an attorney=s motion to withdraw for financial reasons when substitute counsel certainly cannot be found in time for the pre-judgment possession hearing or the depositions and the pre-judgment possession cannot and will not be delayed because it is statutorily an expedited proceeding. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 571-72 (Kos. 2013).

An attorney=s motion to withdraw as counsel may be denied when the legal issue before the court is difficult for a pro se litigant to adequately address. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 572 (Kos. 2013).

Although the financial burden on counsel=s law firm may constitute good cause, a court may order that he continue the representation and that he will not be permitted to withdraw because, given the statutorily-required expedited nature of the proceedings, counsel=s withdrawal cannot be accomplished without material adverse effect on the defendants, but with this in mind, counsel may renew his motion to withdraw at a later date if the situation warrants. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 572 (Kos. 2013).

The withdrawal of counsel from the legal representation of a client is governed by FSM MRPC Rule 1.16. Bank of Hawaii v. Helgenberger, 19 FSM R. 584, 585 (Pon. 2014).

When the court has not been notified on the record at the representation=s start that counsel=s representation was limited, counsel then must seek the court=s permission to withdraw when he believes his representation has come to an end. Bank of Hawaii v. Helgenberger, 19 FSM R. 584, 586 (Pon. 2014).

FSM MRPC Rule 1.16(d) is a nonexclusive list of steps that an attorney must take to protect a client=s interests before the court will grant the withdrawal. The reasonably practicable efforts to protect a client=s interests have been persuasively interpreted by our state courts to include assisting the client in obtaining substitute counsel. Bank of Hawaii v. Helgenberger, 19 FSM R. 584, 586 (Pon. 2014).

When counsel has represented a married couple who are now divorcing; when the clients are no longer cooperating or communicating with counsel nor have they paid any attorney fees; and when the husband has obtained new counsel of record who cannot represent the wife, counsel must continue to represent the wife until substitute counsel is found or counsel is otherwise released by the court since in such circumstances, the court usually requires the attorney to assist the client in finding substitute counsel or demonstrate why this is not reasonably practical to do so before granting the withdrawal. Bank of Hawaii v. Helgenberger, 19 FSM R. 584, 586-87 (Pon. 2014).

An attorney=s withdrawal will not be permitted when he has not submitted any evidence to show that the client wishes to terminate his legal service in the matter and there is no indication that he has met the requirements under FSM MRPC R. 1.16(d) to protect the client=s interest upon withdrawal. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 169, 172 (Pon. 2015).

When, during a hearing, counsel argued against the State in defense of his attempt to depose the State=s Assistant Attorney General and when counsel argues that a conflict of interest exists between the Governor and the Attorney General=s Office because the Attorney General=s Office is admitting liability on the State=s behalf, and imputed that liability upon counsel=s client, a tenant of the State, this issue of imputing liability from the State to counsel=s client clearly shows a conflict of interest which would bar counsel from transferring his representation between the two defendants. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 169, 172-73 (Pon. 2015).

When counsel=s representation of the State would be materially adverse to his current client=s interest and no evidence was provided that would show otherwise and when there is no proof of consent by each of the defendants after consultation, counsel=s motion to withdraw from his client will be denied and his notice of entry of appearance on the State=s behalf will be stricken from the record as will his other filings on the State=s behalf. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 169, 173 (Pon. 2015).