COURTS

Secretarial Order 3039, section 2 cleared the way for the assumption of jurisdiction by FSM courts by delegating the judicial functions of the government of the Trust Territory Pacific Islands to the Federated States of Micronesia. Thus, the High Court's previous exclusive jurisdiction under 6 TTC 251 was effectively delegated to the Federated States of Micronesia, insofar as the Constitution of the Federated States of Micronesia authorizes such jurisdiction. Lonno v. Trust Territory (I), 1 FSM R. 53, 57-58 (Kos. 1992).

The language of Secretarial Order 3039, section 5(a) contemplates continued Trust Territory High Court activity pursuant to the "present procedural and jurisdictional provisions of Trust Territory law" only until new functioning courts are established by the constitutional governments, and recognizes that the jurisdictional provisions of Trust Territory law will necessarily be revised when those courts have been established. Lonno v. Trust Territory (I), 1 FSM R. 53, 59 (Kos. 1982).

Interpretation of Secretarial Order 3039 as acquiescing in FSM Supreme Court jurisdiction over suits against the Trust Territory does not conflict with any residual United States obligation to oversee activities of the FSM courts pending termination of the Trusteeship Agreement nor does this interpretation imperil any interest the United States government may have in protecting the Trust Territory government against unfair or overreaching actions by courts of the new constitutional governments. Lonno v. Trust Territory (I), 1 FSM R. 53, 64 (Kos. 1982).

Trust Territory High Court appellate division jurisdiction by writ of certiorari over appeals from the courts of last resort of the respective jurisdictions of the Federated States of Micronesia, the Marshall Islands, and Palau eliminates any possible risk which might otherwise be posed to the United States or its interests or responsibilities here by the full exercise of constitutional jurisdiction by the courts of the constitutional government. Lonno v. Trust Territory (I), 1 FSM R. 53, 64-65 (Kos. 1982).

Until the state courts are established, the Trust Territory High Court retains that portion of its exclusive jurisdiction formerly held under 6 TTC 251 which does not fall within the constitutional jurisdiction of the FSM Supreme Court. Lonno v. Trust Territory (I), 1 FSM R. 53, 68 (Kos. 1982).

State courts, rather than national courts, should normally resolve probate and inheritance issues especially where interests in land are at issue. In re Nahnsen, 1 FSM R. 97, 97 (Pon. 1982).

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

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

The FSM Supreme Court is empowered to exercise authority in probate matters where there is an independent basis for jurisdiction under the Constitution. In re Nahnsen, 1 FSM R.

97, 104 (Pon. 1982).

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

It would be contrary to the desire of the framers of the Constitution that local officials retain control over local matters if the FSM Supreme Court were to relinquish jurisdiction over issues involving local and state powers to the Trust Territory High Court, which is the least local tribunal now existing in the Trust Territory. In re Nahnsen, 1 FSM R. 97, 110 (Pon. 1982).

The Constitution contemplates that decisions affecting the people of the Federated States of Micronesia will be decided by courts appointed by the constitutional governments of the Federated States of Micronesia. This in turn requires an expansive reading of the FSM Supreme Court's jurisdictional mandate while we await establishment of functioning state courts. In re Nahnsen, 1 FSM R. 97, 111 (Pon. 1982).

The FSM Supreme Court has inherent constitutional power to issue all writs; this includes the traditional common law writ of mandamus. 4 F.S.M.C. 117. Nix v. Ehmes, 1 FSM R. 114, 118 (Pon. 1982).

The FSM Supreme Court is not bound by decisions of United States courts; however, careful consideration should be given to United States decisions regarding court policies as the FSM national courts are modeled on those of the United States. Nix v. Ehmes, 1 FSM R. 114, 119 (Pon. 1982).

Any power the Trust Territory High Court, the District Courts and the Community Courts may have to exercise judicial powers within the Federated States of Micronesia is to be exercised not as that of autonomous foreign states but as integral parts of the domestic governments. Those courts continue to exercise trial court functions in Ponape only on an interim basis, until the State of Ponape establishes its own courts, either under its present state charter or under any constitution which Ponape may adopt. In re Iriarte (I), 1 FSM R. 239, 244 (Pon. 1983).

The FSM Supreme Court's constitutional jurisdiction to consider writs of habeas corpus is undiminished by the fact that the courts whose actions are under consideration, the Trust Territory High Court and a Community Court, were not contemplated by the Constitution of the Federated States of Micronesia. In re Iriarte (I), 1 FSM R. 239, 244, 246 (Pon. 1983).

The exercise of governmental powers by the Trust Territory High Court, the District Courts and the Community Courts must be carried out in a manner consistent with constitutional self-government and are subject to the safeguards erected by the Constitution for citizens of the Federated States of Micronesia. In re Iriarte (I), 1 FSM R. 239, 245 (Pon.1983).

Preservation of a fair decision-making process, and even the maintenance of a democratic system of government, requires that courts and individual judges be protected against unnecessary external pressures. In re Iriarte (I), 1 FSM R. 239, 246 (Pon. 1983).

The FSM Supreme Court should not intrude unnecessarily in the efforts of the Trust Territory High Court to vindicate itself and other judges through court proceedings within the

Trust Territory system. In re Iriarte (I), 1 FSM R. 239, 254 (Pon. 1983).

The Trust Territory High Court is an anomalous entity operating on an interim basis adjacent to a constitutional framework and consisting of judges appointed by officials of the United States Department of Interior. These and other considerations point toward the propriety and necessity of vigilance by the FSM Supreme Court to uphold the constitutional rights of FSM citizens. In re Iriarte (II), 1 FSM R. 255, 267 (Pon. 1983).

The FSM Supreme Court is entitled and required to assure that the Trust Territory High Court, exercising governmental powers within the Federated States of Micronesia, does not violate the constitutional rights of its citizens. In re Iriarte (II), 1 FSM R. 255, 268 (Pon. 1983).

The Trust Territory High Court must promote constitutional self-government to satisfy the provisions of the Trusteeship Agreement to which it is subject. In re Iriarte (II), 1 FSM R. 255, 268 (Pon. 1983).

Transfer of a case not in active trial in the Trust Territory High Court is mandatory unless the legal rights of a party are impaired by the transfer. U.S. Dep't Int. Sec'l Order 3039, § 5(a) (1979). Actouka v. Etpison, 1 FSM R. 275, 277 (Pon. 1983).

The Trust Territory High Court should leave final interpretation of the Constitution and public laws of the Federated States of Micronesia to the Supreme Court. Jonas v. Trial Division, 1 FSM R. 322, 327 & n.1 (App. 1983).

As a general proposition, a court system resolves disputes by considering and deciding between competing claims of two or more opposing parties. In re Sproat, 2 FSM R. 1, 4 (Pon. 1985).

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

By its terms, 1 F.S.M.C. 203 pointing to the *Restatements* as a guide for determining and applying the common law applies only to "courts of the Trust Territory." Since only courts established by the Trust Territory administration existed when the section was issued, it plainly was intended only for those courts at that time. In absence of any persuasive considerations to the contrary, it is logical to conclude that 1 F.S.M.C. 203 applies only to courts of the Trust Territory, not to courts of the Federated States of Micronesia or the various states. Rauzi v. FSM, 2 FSM R. 8, 14 (Pon. 1985).

Since the Trust Territory High Court and District Courts were still active at the time of codification, provisions in the FSM Code referring only to them quite likely were intended only to regulate those courts. Rauzi v. FSM, 2 FSM R. 8, 14 (Pon. 1985).

Statutes governing procedures or decision-making approaches for Trust Territory courts might not apply to constitutional courts. Semens v. Continental Air Lines, Inc. (II), 2 FSM R.

200, 204 (Pon. 1986).

According to Secretarial Order No. 3039, § 5(a), all cases against the Trust Territory of the Pacific Islands and the High Commissioner that were filed in the FSM at the time the Truk State Court was certified will continue to remain within the exclusive jurisdiction of the High Court. Those cases filed after certification are not within the jurisdiction of the High Court. Suda v. Trust Territory, 3 FSM R. 12, 14 (Truk S. Ct. Tr. 1985).

Courts have an affirmative obligation to avoid erroneous rulings and may not be bound by incorrect legal premises upon which even all parties rely. Michelsen v. FSM, 3 FSM R. 416, 419 (Pon. 1988).

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

The transitional actions of the FSM Congress, intended to adopt as law of the Federated States of Micronesia those portions of Secretarial Order 3039 relating to judicial functions within the FSM and permitting the Trust Territory courts to continue functioning within the FSM pending establishment of constitutional courts, were a necessary and proper exercise of Congress' power under the Constitution to provide for a smooth and orderly transition. United Church of Christ v. Hamo, 4 FSM R. 95, 105 (App. 1989).

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

To the extent that Secretarial Order 3039 can be read as permitting the Trust Territory High Court to continue, after the FSM Supreme Court had begun functioning, to control cases assigned by the FSM Constitution to the FSM Supreme Court, that exercise by Congress of the transitional power under the Constitution could run counter to other specific provisions of the Constitution, especially the judiciary article, and to fundamental principles of the separation of powers; any extension by the Trust Territory High Court of the powers assigned to it under Secretarial Order 3039 would violate those same constitutional provisions and principles. United Church of Christ v. Hamo, 4 FSM R. 95, 106 (App. 1989).

Actions of the Trust Territory High Court taken after the establishment of functioning constitutional courts in the Federated States of Micronesia, and without a good faith determination after a full and fair hearing as to whether the "active trial" exception permitted retention of the cases, were null and void, even though the parties failed to object, because the High Court was without jurisdiction to act and its conduct constituted usurpation of power. United Church of Christ v. Hamo, 4 FSM R. 95, 122 (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).

The appellate division of the Supreme Court of the FSM may accept direct filing of a case and an expedited briefing schedule may be established where there is limited time available and prompt resolution of the issues in the case is decidedly in the national interest. Constitutional

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

When the remanding appellate court has not mandated a hearing on remand, it is within the sound discretion of the trial court to decide whether or not to convene a post-remand hearing. FSM v. Hartman (I), 5 FSM R. 350, 351 (Pon. 1992).

Any judicial act, that has been done pursuant to a statute that does not confer the power to do that act, is void on its face. A judgment that is void on its face may be set aside by the court on its own motion. In re Jae Joong Hwang, 6 FSM R. 331, 331-32 (Chk. S. Ct. Tr. 1994).

The Chuuk State Supreme Court is a unified court system with two constitutionally mandated divisions – the trial division and the appellate division. All justices are members of both divisions, but a justice does not serve in the appellate division until he has been designated by the Chief Justice to be the presiding justice on a specific case. The trial division is the state's court of general jurisdiction. Election Comm'r v. Petewon, 6 FSM R. 491, 497 (Chk. S. Ct. App. 1994).

All justices in the trial division have concurrent jurisdiction, but once a case has been assigned to a particular justice, that justice has exclusive jurisdiction over the parties and issues of the case until the case is terminated in the trial division. Election Comm'r v. Petewon, 6 FSM R. 491, 498 (Chk. S. Ct. App. 1994).

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

A court has an interest in insuring that its orders are heeded, and this interest exists apart from any interest the parties may have in the litigation. A court may take whatever reasonable steps are appropriate to insure compliance with its orders. It need not rely on the parties themselves to prescribe the way in which its orders will be carried out, or its judgments executed. Louis v. Kutta, 8 FSM R. 312, 318 (Chk. 1998).

One of our courts' express functions is to apply and interpret the duly enacted and promulgated laws and regulations which lie at the heart of a dispute. Our court system exists to speak to the very issues to which Pohnpeian custom and tradition are silent. In this way, the two systems complement each other. Senda v. Semes, 8 FSM R. 484, 499 (Pon. 1998).

A court has inherent powers to compel submission to its lawful mandates. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 150, 152 & n.1 (Pon. 1999).

Cases pending in a municipal court may be transferred to the Chuuk State Supreme Court trial division upon the request of any party and by order of the Chuuk State Supreme Court trial division. There is no authority for a municipal judge to transfer a case, sua sponte, to the Chuuk State Supreme Court without the request of any party. Phillip v. Phillip, 9 FSM R. 226, 228 (Chk. S. Ct. Tr. 1999).

Rules of court properly promulgated, and not exceeding the limitation of the court's rulemaking power, have the force of law. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 371

(Kos. 2000).

Chuuk state courts have the power to issue all writs for equitable and legal relief, except the power of attachment, execution and garnishment of public property. Kama v. Chuuk, 9 FSM R. 496, 497 (Chk. S. Ct. Tr. 1999).

Title 6, chapter 10, subchapter 1 of the FSM Code is replete with references to officials who either do not exist now or who no longer carry out the functions with which they are identified in the statute, and when confronted with such language in a section thereof, the FSM Supreme Court has generally ruled that the section applies only to the Trust Territory High Court. FSM v. Kuranaga, 9 FSM R. 584, 586 (Chk. 2000).

The witness fees in 6 F.S.M.C. 1011 apply only to the Trust Territory High Court. FSM v. Kuranaga, 9 FSM R. 584, 586 (Chk. 2000).

Only two courts have jurisdiction over the territory of Chuuk – the Chuuk State Supreme Court and the FSM Supreme Court. A mortgage foreclosure on land in Chuuk therefore could not be in any court other than those two. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110 (Chk. 2001).

The Pohnpei Supreme Court is a court of general jurisdiction, not a court whose jurisdiction is limited and confined. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

The FSM Supreme Court trial division has no appellate or supervisory jurisdiction over either division of the Pohnpei Supreme Court, and no appeal lies from the Pohnpei Supreme Court to the FSM Supreme Court trial division. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

In our federal system of government, state courts are not inferior tribunals to the FSM Supreme Court trial division. The national and state court systems are separate systems created by and serving different sovereigns. Neither system is superior to the other. Rather the systems are parallel. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

The FSM Supreme Court trial division is not a superior tribunal to the Pohnpei Supreme Court, although in certain circumstances the FSM Supreme Court appellate division is such a superior tribunal. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

Only one Chuuk State Supreme Court justice may hear or decide an appeal in the appellate division. The other members of the appellate panel must be temporary justices appointed for the limited purpose of hearing the appeal. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 150 (Chk. S. Ct. App. 2001).

The constitutional language does not require that a Chuuk State Supreme Court justice sit on an appellate panel when none is available, only that no more than one can sit under any circumstance. But if there are Chuuk State Supreme Court justices who are not disqualified, one must preside over the panel in order for it to be properly constituted. If needed, a justice,

who is not disqualified, has a professional and constitutional obligation to serve. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 151 (Chk. S. Ct. App. 2001).

The Pohnpei Supreme Court is a court of general jurisdiction, which has subject matter jurisdiction over a landlord/tenant dispute. Pernet v. Woodruff, 10 FSM R. 239, 242 (App. 2001).

Under the Chuuk Constitution, article VII, § 3(c), the Chuuk State Supreme Court has only appellate or review jurisdiction over the Land Commission, and thus a motion for review de novo of matters not raised before the Land Commission must be denied. Enengeitaw Clan v. Shirai, 10 FSM R. 309, 311 (Chk. S. Ct. Tr. 2001).

Where a remedy exists, the FSM Supreme Court has general power under the Judiciary Act of 1979 to effect that remedy. Amayo v. MJ Co., 10 FSM R. 433, 435 (Pon. 2001).

It is the Chuuk State Supreme Court's duty to enforce the constitution and laws of the state and the state's 40 municipalities and to see that the constitutions of the several municipalities are protected against unwarranted interference by any state official, regardless of motivation. In re Oneisomw Election, 11 FSM R. 89, 93 (Chk. S. Ct. Tr. 2002).

The Kosrae State Court has jurisdiction to issue writs and other process. Sigrah v. Speaker, 11 FSM R. 258, 260 (Kos. S. Ct. Tr. 2002).

The Kosrae State Court is given rule making authority that operates only in the limited sphere of the court's inherent authority to determine an orderly process for the disposition of cases that come before it for adjudication. Sigrah v. Speaker, 11 FSM R. 258, 262 (Kos. S. Ct. Tr. 2002).

The Chuuk Chief Justice must promulgate rules of evidence and rules governing the administration of all state courts, the regulation of the judicial profession, and practice and procedure in civil and criminal matters. Kupenes v. Ungeni, 12 FSM R. 252, 257 n.3 (Chk. S. Ct. Tr. 2003).

When acting in his rule making capacity, the Chief Justice acts in a legislative capacity. Rules of court, properly promulgated, and not exceeding the limitation of the rule-making authority, have the force of law. Kupenes v. Ungeni, 12 FSM R. 252, 261 (Chk. S. Ct. Tr. 2003).

Acts in excess of a court's jurisdiction are void. Hartman v. Chuuk, 12 FSM R. 388, 399 (Chk. S. Ct. Tr. 2004).

The State of Kosrae's judicial power is vested in the State Court and such inferior courts as may be created by law. The Kosrae Land Court was established as an inferior court within the Kosrae State Court system. The State Court has jurisdiction to review all decisions of inferior courts. The Kosrae Constitution does not specify which division of the State Court is required to review decisions of inferior courts. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 420 (Kos. S. Ct. Tr. 2004).

The term "appellate court" is defined as the FSM Supreme Court appellate division. Kosrae State Court decisions may be appealed to the FSM Supreme Court appellate division. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 420 (Kos. S. Ct. Tr. 2004).

Since the Kosrae Constitution provides that appeals from the State Court trial division may be made to the State Court appellate division, as shall be prescribed by law, enabling legislation is required to implement appeals from the trial division to the State Court appellate division, and when no such legislation has been passed by the Legislature and signed into law, no constitutional or statutory authority exists to authorize appeals from trial division to the State Court appellate division. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 420 (Kos. S. Ct. Tr. 2004).

The Kosrae State Court has jurisdiction to review all decisions of inferior courts. Neither the Kosrae Constitution nor state law requires that Land Court decisions be appealed to the State Court appellate division. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 421 (Kos. S. Ct. Tr. 2004).

The State Court has the power to make rules and orders, and do all acts, not inconsistent with law or rule, required for the due administration of justice. It is specifically authorized to govern appeal procedures for appeals from the Land Court and procedures for Land Court appeals to the State Court are established in the Kosrae Rules of Appellate Procedure. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 421 (Kos. S. Ct. Tr. 2004).

The Kosrae State Court trial division has jurisdiction to review all decisions of inferior courts, including decisions entered by the Kosrae Land Court. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 421 (Kos. S. Ct. Tr. 2004).

A later general court order supersedes an earlier one. Goya v. Ramp, 13 FSM R. 100, 105 n.2 (App. 2005).

Any case over which the trial division has jurisdiction may be heard by any of the justices as assigned by the Chief Justice. Once a case has been assigned to a particular justice, that justice has jurisdictional priority over the parties and issues of the case to the exclusion of all other trial division justices. This exclusive jurisdiction continues until the case is terminated in the trial division. While the case is pending, the priority extends to any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. Nikichiw v. O'Sonis, 13 FSM R. 132, 138 (Chk. S. Ct. App. 2005).

When the parties are identical in two civil actions and the plaintiffs sought the same relief in both civil actions – that the contents of certain ballot boxes not be counted and tabulated because of election irregularities and when the only difference in the later civil action was that the plaintiffs were contesting only two of the five boxes they contested in the first civil action and that the irregularities alleged in the later case were discovered during and in the course of the litigation of the first civil action (that is, during the counting and tabulating ordered by the judge in the first civil action), such irregularities would be expected to be brought immediately before the judge on the case in which they were discovered. When they were not, but were instead filed as a separate case, once the trial judge on the first case became available, the case should have been left to him to act upon. Therefore the second trial judge's presiding over the second civil action was in excess of his jurisdiction since the first trial division justice had jurisdictional priority over the parties and the issues in that case to the exclusion of all other trial division justices. Nikichiw v. O'Sonis, 13 FSM R. 132, 138 (Chk. S. Ct. App. 2005).

The appellate court cannot fault a judge for acting on a temporary restraining order

application when it was filed since the assigned special trial justice was unavailable in the outer islands and the request for a temporary restraining order needed prompt action, but once the special trial justice again became available, the case should have been left to the special trial justice to act upon. Nikichiw v. O'Sonis, 13 FSM R. 132, 138 (Chk. S. Ct. App. 2005).

Under the doctrine of *stare decisis,* once a point of law has been established by a court, that point of law will be followed by all courts of lower rank in subsequent cases where the same legal issue is raised. Kosrae v. Sikain, 13 FSM R. 174, 177 (Kos. S. Ct. Tr. 2005).

When our nation's highest court, the FSM Supreme Court appellate division, interprets a constitutional provision in a case before it, that interpretation is to be given full effect in all cases still open on direct review, and as to all events, regardless of when they occurred. Once it announces a new rule of law, the integrity of judicial review requires application of the new rule to all similar cases pending on review. Kosrae v. Sikain, 13 FSM R. 174, 177 (Kos. S. Ct. Tr. 2005).

New constitutional rules affecting procedures in criminal cases apply only to those cases which are pending on direct review or which are not yet final when the new rules are announced. Thus a new constitutional rule announced in a January, 2004 decision will apply to a May 2003 case still pending at that time. Kosrae v. Sikain, 13 FSM R. 174, 177 (Kos. S. Ct. Tr. 2005).

When, contrary to the requirements of GCO 2002-13, the presiding justice questioned the claimants instead of the land assessor and the same series of questions were not asked of each unrepresented claimant, which is required by GCO 2002-13 in order to provide an equal opportunity to each claimant to present his or her claim and the reasons therefor, the non-compliance jeopardizes the fairness of the proceeding by providing one claimant better opportunity, through specified questions, to present his or her claim. Edmond v. Alik, 13 FSM R. 413, 416 (Kos. S. Ct. Tr. 2005).

Courts have inherent power and obligation to monitor the conduct of parties and to enforce compliance with procedural rules. Edmond v. Alik, 13 FSM R. 413, 416 (Kos. S. Ct. Tr. 2005).

Anyone is entitled to attend the Kosrae Land Court hearings on a parcel, whether or not they were provided personal notice for the hearing. All hearings at the Land Court are open to the public, as a basic cornerstone of the constitutional protections provided by our democratic government. Thus, even if persons had not been provided personal notice of the hearing on the parcel, and had received only public notice provided through posting or broadcast, they were still entitled to attend the hearing, and, if they were claimants they were permitted to present testimony at the hearing. Kun v. Heirs of Abraham, 13 FSM R. 558, 561 (Kos. S. Ct. Tr. 2005).

Violation of the statutory deadline to issue a Land Court decision does not affect the decision's validity. Its late issuance only serves as grounds for the issuing justice's removal or other discipline. Kun v. Heirs of Abraham, 13 FSM R. 558, 561 (Kos. S. Ct. Tr. 2005).

Enforcement of a Chuuk municipal court judgment is properly sought from that court or from the Chuuk State Supreme Court, which has supervisory powers over the municipal courts, not from the FSM Supreme Court. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

The Kosrae Land Court should ensure the distribution to one or more heirs of the General

Court Orders that one (or more) persons represent a group of heirs if they are not represented by legal counsel, and that govern the questioning of claimants not represented by legal counsel, so that they may receive notice and comply with the requirements before the hearing date. Heirs of Weilbacher v. Heirs of Luke, 14 FSM R. 99, 101 (Kos. S. Ct. Tr. 2006).

Because the Kosrae State Court only has the authority to hear appeals from Land Court and it cannot act until the Land Court has adjudicated the matter and an appeal has been filed, a case concerning a claim of title to land filed in the Kosrae State Court will be dismissed without prejudice to allow the plaintiffs to file their claim in the Land Court, whose jurisdiction includes all matters concerning the title of land and any interests therein. Alanso v. Pridgen, 14 FSM R. 479, 480 (Kos. S. Ct. Tr. 2006).

The Land Court took over the Land Commission's responsibilities and is required by statute to give effect to determinations issued by the Land Commission. It does not have the discretion to ignore a Land Commission determination because it is handwritten or because it has not yet been served on the parties. The Land Court's duty is to take over, or "succeed" to the Land Commission's responsibilities, not re-hear matters previously decided by it. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

When creating the Land Court, the Kosrae Legislature provided for the transition of cases from the Land Commission to the Land Court and the Land Court succeeded to all Land Commission responsibilities, registers, properties and assets and Land Commission land determinations and registrations are equivalent to Land Court title determinations and registrations. Heirs of George v. Heirs of Dizon, 14 FSM R. 556, 558 (Kos. S. Ct. Tr. 2007).

Since The Land Court took over the Land Commission's responsibilities and is required by statute to give effect to Land Commission determinations, it does not have the discretion to ignore a Land Commission determination even when the Commissioners signed an adjudication to indicate their decision rather than issue a separate document. The Land Court does not have the discretion to ignore a Land Commission determination because it has not yet been served on the parties. The Land Court's duty is to take over, or "succeed" the Land Commission's responsibilities, not re-hear matters previously decided by them. Heirs of George v. Heirs of Dizon, 14 FSM R. 556, 559 (Kos. S. Ct. Tr. 2007).

That the Land Commission determination was not timely served on the parties since it was signed in 1990 and not served until the Land Court took action to complete the matter in January 2006, is not a ground to set aside the determination or to ignore the record made by the Land Commission because Kosrae Code § 11.616 requires that the Land Court treat the Land Commission's determinations as equivalent to its own determinations and there is no language setting a time restriction on this requirement. Despite the extended delay in service, the Land Court correctly gave force and effect to the Land Commission's determination. Heirs of George v. Heirs of Dizon, 14 FSM R. 556, 559 (Kos. S. Ct. Tr. 2007).

The Chuuk State Supreme Court trial division has jurisdiction to review the actions of any state administrative agency, board, or Commission, as may be provided by law and the appellate division has jurisdiction to review all decisions of the trial division, of inferior state courts, and of the municipal courts. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 589 (Chk. S. Ct. App. 2007).

The Kosrae Land Court is statutorily created as an inferior court within the State Court. It

was created for specific purposes – title investigation, title determination, and the registration of interests in lands within Kosrae and to provide one system of filing all recorded interests in land. Thus, it is a court granted specific, limited jurisdiction. It is not a court of general jurisdiction. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 662 (Kos. S. Ct. Tr. 2008).

Since the Land Court's jurisdiction includes all matters concerning the title to land and any interests therein, that would necessarily include whether *kewosr* was a tradition affecting land tenure when the alleged transfer took place and whether a *kewosr* did in fact occur. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 375 (Kos. S. Ct. Tr. 2009).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. The rule, however, is not absolute, but is a principle of sound judicial administration that the first-filed suit should have priority absent special circumstances. Mori v. Hasiguchi, 16 FSM R. 382, 384 (Chk. 2009).

The court with jurisdiction over the first-filed case may exercise its discretion to stay proceedings, under the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. The first-filed rule is neither absolute nor mechanically applied but advances the inherently fair concept that the party that commenced the first suit generally ought to be the party to obtain its choice of venue. Mori v. Hasiguchi, 16 FSM R. 382, 384 (Chk. 2009).

When this suit and a later-filed suit were both filed in the FSM Supreme Court trial division but in different venues, the first in Chuuk and the second in Pohnpei; when the defendants are all present in Chuuk but have adopted a position analogous to an interpleader in that they are subject to competing claims for the same property and will comply with any court determination about its ownership; when the central issue to be resolved before any final judicial order is whether a bill of sale is enforceable or should be rescinded or reformed; and when this central issue is directly joined in the Pohnpei suit where the stock transfer and the events surrounding it took place, where the transferor and transferee both reside, and where the evidence and witnesses are present, this, at least to resolve this crucial central issue, would (based on judicial economy and economy of time and effort for counsel and for the litigants) favor a Pohnpei venue if it can be resolved there without undue delay. Since, even though complete relief for all the parties in this case cannot be granted in the Pohnpei suit, the Pohnpei suit should expeditiously resolve this suit's central issue without imposing hardship on the parties and leave this court to dispose of the peripheral issues, adjudication of this first-filed action will be stayed pending the resolution of the later-filed FSM Supreme Court suit in Pohnpei. Mori v. Hasiguchi, 16 FSM R. 382, 385-86 (Chk. 2009).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if one is filed later before a court that could also take jurisdiction. The rule, although not absolute, is a principle of sound judicial administration under which the first-filed suit should have priority absent special circumstances. This salutary principle avoids unseemly conflicts that might arise between courts if they could, at the same time, make inconsistent or contradictory decisions relating to the same dispute and it protects litigants from the expense and harassment of multiple litigation. Setik v. Pacific Int'l, Inc., 17 FSM R. 277, 280 (Chk. 2010).

The FSM Supreme Court trial division has no authority to tell the Chuuk State Supreme Court whether and how it should enforce its own ruling when the case in which the ruling was made is not currently before the FSM Supreme Court. Narruhn v. Chuuk, 17 FSM R. 289, 300 (App. 2010).

The general rule is that the first-filed lawsuit has priority over any other case involving the same parties and issues, even if one is filed later before a court that could also take jurisdiction. This rule, although not absolute, is a principle of sound judicial administration under which the first-filed suit should have priority absent special circumstances. This salutary principle avoids unseemly conflicts that might arise between courts if they could, at the same time, make inconsistent or contradictory decisions relating to the same dispute and it protects litigants from the expense and harassment of multiple litigation. Setik v. Pacific Int'l, Inc., 17 FSM R. 304, 306 (Chk. 2010).

When there is a prior Chuuk State Supreme Court case that deals with the ownership issue and in which the alleged trespasser may soon be joined, and when the state court, unlike Chuuk Land Commission, has the power to issue monetary awards, the later-filed FSM Supreme Court trespass case will be dismissed without prejudice. Setik v. Pacific Int'l, Inc., 17 FSM R. 304, 307 (Chk. 2010).

The Chuuk State Supreme Court has the authority to issue a writ of mandamus in a proper case. The Chuuk Judiciary Act gives all state courts the power to issue all writs for equitable and legal relief. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

The Chuuk State Judiciary Act gives each Chuuk court the power to issue all writs for equitable an legal relief; except the power of attachment, execution and garnishment of public property. Kama v. Chuuk, 18 FSM R. 326, 334 (Chk. S. Ct. Tr. 2012).

The Kosrae State Court has original jurisdiction in all cases except those within the exclusive and original jurisdiction of inferior courts and it has jurisdiction to review all decisions of inferior courts. Since no inferior court is assigned original jurisdiction over state employee grievances, the Kosrae State Court has jurisdiction over state employees' claims for pay once they have exhausted their administrative remedies. Kosrae v. Edwin, 18 FSM R. 507, 513 (App. 2013).

The Kosrae State Court Chief Justice is not acting in excess of his jurisdiction by appointing himself to sit as a temporary judge on a Land Court case when all the Land Court judges are disqualified when the Land Court is an inferior court within a unified state court system and since there is no constitutional impediment to a Kosrae statute authorizing a Kosrae State Court justice to sit as a temporary justice in another (inferior) court within the unified Kosrae state court system. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 194-95 (App. 2013).

One FSM Supreme Court trial division justice does not have subject matter jurisdiction to set aside orders entered in another separate trial division case, nor does he hold subject matter jurisdiction to grant injunctive relief against another trial division justice. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257 (Pon. 2014).

Since the Kosrae Constitution provides that appeals from the State Court trial division may be made to the State Court appellate division, as shall be prescribed by law, enabling legislation

is required to implement appeals from the trial division to the State Court appellate division, and when no such legislation has become law, no constitutional or statutory authority exists to authorize appeals from the Kosrae State Court trial division to the non-existent Kosrae State Court appellate division. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 301 (App. 2014).

By statute, the Kosrae State Court can, if appropriate, order a rehearing in the Land Court for only a part of a case. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 303 (App. 2014).

The Pohnpei Supreme Court trial division does not have appellate jurisdiction over Pohnpei municipal or local courts, and therefore the Pohnpei Supreme Court appellate division lacks jurisdiction over a petition for a writ of mandamus directed to a municipal court. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 402 (App. 2014).

The Chuuk Land Commission is not a court as that word is used in the Chuuk Constitution. It is an administrative agency that functions as a quasi-judicial tribunal. Aritos v. Muller, 19 FSM R. 612, 613 (Chk. S. Ct. App. 2014).

The Chuuk Legislature, by statute, has determined that a land case in a declared land registration area must first go through the Land Commission procedure before it can become a land case in the Chuuk State Supreme Court trial division. Aritos v. Muller, 19 FSM R. 612, 613 (Chk. S. Ct. App. 2014).

The constitutional grant of original court jurisdiction does not prevent the Legislature from prescribing by statute that certain land cases must first go to an administrative agency, the Chuuk Land Commission, before the trial court can exercise its original jurisdiction over them. Aritos v. Muller, 19 FSM R. 612, 613 (Chk. S. Ct. App. 2014).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that would also have jurisdiction, but when the court has already ordered that the two cases be consolidated, the issue has become moot. Salomon v. Mendiola, 20 FSM R. 138, 142 (Pon. 2015).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. Carius v. Johnson, 20 FSM R. 143, 146 (Pon. 2015).

While limited, the Kosrae Land Court's subject-matter jurisdiction is broad enough to encompass factual determinations of fraud and misrepresentation to the extent that they affect the validity of titles or conveyances of land. Indeed, that is the Land Court's very purpose. Waguk v. Waguk, 21 FSM R. 60, 73 (App. 2016).

When the Kosrae Land Court itself is implicated in the allegations of fraud, that court is not competent to adjudicate the subject matter. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

A court has no more right to decline the exercise of jurisdiction which is given, than it does to usurp that which is not given. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

The Kosrae State Court has the power to issue all writs and other process, and may entertain a petition for a writ of mandamus. Tilfas v. Kosrae, 21 FSM R. 81, 93 (App. 2016).

"Forum-shopping" is the practice of choosing the most favorable jurisdiction or court in which a claim might be heard. Forum shopping thus presupposes that more than one court could have jurisdiction over the "claim" being "forum-shopped." FSM v. Siega, 21 FSM R. 291, 299 (Chk. 2017).

A statute takes precedence over the procedural rules because, while the Chief Justice has the power to promulgate procedural rules, those rules may be amended by statute, and because the Chief Justice does not have the power to amend a statute, a Congressionally enacted procedural rule is valid. Setik v. FSM Dev. Bank, 21 FSM R. 505, 517 (App. 2018).

In order to be "controlling law," the precedent must be a binding precedent. A binding precedent is a precedent that a court must follow. For example, a lower court is bound by an applicable holding of a higher court in the same jurisdiction. Setik v. Mendiola, 21 FSM R. 537, 560-61 (App. 2018).

While trial division decisions are precedents, they are not binding precedents since they are only trial court decisions. They are thus not "controlling law." Setik v. Mendiola, 21 FSM R. 537, 561 (App. 2018).

The Kosrae Land Court's statutory jurisdiction includes all matters concerning the title of land and any interest therein. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 578 (App. 2018).

Although the Kosrae Legislature did not vest exclusive jurisdiction in the Kosrae Land Court, it did create the Land Court as the court with original jurisdiction over land matters, and reserved appellate jurisdiction in the Kosrae State Court. Alik v. Heirs of Alik, 21 FSM R. 606, 623 (App. 2018).

When the proper place for a suit to have started was the Kosrae Land Court, but it was filed on the Kosrae State Court, the Kosrae State Court should have dismissed the Kosrae Land Court and the Kosrae state government as parties and, since it is the superior court in a unified court system, transferred the case from its docket to the Land Court's docket. Alik v. Heirs of Alik, 21 FSM R. 606, 623 (App. 2018).

It is a well established principle of law that a court's jurisdiction does not extend beyond the boundaries of the state of its creation. This is because the authority of every tribunal is necessarily restricted by the territorial limits of the state in which it is established, and any attempt to exercise authority beyond those limits would be deemed in every other forum an illegitimate assumption of power. Setik v. Mendiola, 21 FSM R. 624, 626 (App. 2018).

In the interest of judicial economy, efficiency, and past precedent, the FSM Supreme Court can, in appropriate cases, request that parties submit a draft order for its consideration. The court may or may not, at its discretion, adopt the contents, or parts of the contents, of the draft order, in order to formulate a decision with a legal basis, based on legal reasoning. FSM Dev. Bank v. Carl, 21 FSM R. 640, 642 (Pon. 2018).

An order is not void simply because it was prepared by a litigant and signed by the court rather than drafted by the court itself. FSM Dev. Bank v. Carl, 21 FSM R. 640, 642 (Pon. 2018).

Fraud upon the court is the most egregious misconduct directed to the court itself, such as

bribery of a judge or fabrication of evidence by counsel, which must be supported by clear, unequivocal and convincing evidence. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 12 (Pon. 2018).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 12 (Pon. 2018).

When the Pohnpei state probate case was the first filed lawsuit and that case can afford a complete resolution of the issues between the parties; when the later-filed FSM Supreme Court case could, at best, afford only a partial resolution and certainly lacks jurisdiction to enforce a state court interlocutory order; and when the Pohnpei Supreme Court is perfectly competent to enforce its own orders and judgments and to take any further needed steps in the probate case pending before it, it is appropriate that that forum resolve the issues. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 13 (Pon. 2018).

A court may abuse its judicial discretion by an unexplained, lengthy delay or by the failure to exercise its discretion within a reasonable time because the failure to exercise discretion is an abuse of the discretion. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 67 (Pon. 2018).

A court may take judicial notice of its own files in related cases. Setik v. Perman, 22 FSM R. 105, 117 (App. 2018).

Upon the filing of a registration area with the court, courts cannot entertain any action with regard to interests in land within that registration area without a showing of special cause why action by a court is desirable before it is likely that the land commission can determine the matter. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 576 (Chk. S. Ct. App. 2020).

– Judges

Preservation of a fair decision-making process, and even the maintenance of a democratic system of government, requires that courts and individual judges be protected against unnecessary external pressures. In re Iriarte (I), 1 FSM R. 239, 247 (Pon. 1983).

Judges on the FSM Supreme Court are bound by the American Bar Association Code of Judicial Conduct incorporated into law by 4 F.S.M.C. 122. Andohn v. FSM, 1 FSM R. 433, 444 (App. 1984).

The Judiciary Act of 1979, in Title 4 of the FSM Code, and the Judiciary Article, article XI of the Constitution of the Federated States of Micronesia govern the structure and powers of the FSM Supreme Court, and make no provision for appointment of special judges to sit with a justice of the FSM Supreme Court trial division. 5 F.S.M.C. 514 has no application to proceedings before the FSM Supreme Court. In re Raitoun, 1 FSM R. 561, 564-65 (App. 1984).

Where an appellate court has held that a trial judge is under a clear and non-discretionary duty to step aside from presiding over a case and the petitioner has a constitutional right to obtain compliance with that duty, all documents issued after the date of the appellate decision are null and void and shall be expunged from the record and the judge shall be enjoined from

taking any further action as a judge in the case. Etscheit v. Santos, 5 FSM R. 111, 113 (App. 1991).

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

In order for a Congressional statute to give the court valid authority in those areas which the Constitution grants the Chief Justice rule-making powers the Chief Justice does not first have to promulgate a rule before Congress may legislate on the same subject. Hartman v. FSM, 6 FSM R. 293, 297 (App. 1993).

Pursuant to the Chuuk Judiciary Act judges in Chuuk are required to adhere to the standards of the Code of Judicial Conduct of the American Bar Association which require judges to resign from judicial office upon becoming a candidate for a non-judicial office. In re Failure of Justice to Resign, 7 FSM R. 105, 108 (Chk. S. Ct. App. 1995).

Pursuant to the Chuuk Judiciary Act judges in Chuuk have a clear ministerial, non-discretionary duty to resign from judicial office upon becoming a candidate for a non-judicial office. A writ of mandamus is the specific remedy to compel the performance of such a legally required ministerial act. In re Failure of Justice to Resign, 7 FSM R. 105, 110 (Chk. S. Ct. App. 1995).

Judges, faithful to their oath of office, should approach every aspect of each case with a neutral and objective disposition and understand their duty to render decisions upon a proper record and to disregard earlier judicial contacts with a case or party. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 9 (App. 1997).

Compensation of Kosrae State Court justices is prescribed by law. Compensation may not be increased or decreased during their terms of office, except by general law applying to all state government employees. Cornelius v. Kosrae, 8 FSM R. 345, 348 (Kos. S. Ct. Tr. 1998).

The phrase "all State Government employees" means employees whose compensation is determined by statute, and does not include those employees who have individual contracts with Kosrae. Therefore a state law reducing state public service system employees' pay can constitutionally be applied to a Kosrae State Court justice's pay. Cornelius v. Kosrae, 8 FSM R. 345, 352 (Kos. S. Ct. Tr. 1998).

Trial judges are expected to suggest the desirability of possible settlement. That is a normal part of their job. Bualuay v. Rano, 11 FSM R. 139, 148 (App. 2002).

The prohibition against compelling a judge's testimony is reflected in a long-standing principle that a court speaks only through its orders. This ban on judges testifying has limits. Those limits are that a judge must be acting as a judge, and that it is information regarding his or her role as a judge that is sought. FSM v. Wainit, 11 FSM R. 424, 430 (Chk. 2003).

No one is eligible to serve as the Chuuk Chief Justice or as an associate justice unless at least 35 years of age, was a born Chuukese, has been a resident of the State of Chuuk for at least 25 years, is an FSM citizen, and has never been convicted of a felony. Other qualifications may be prescribed by statute. Kupenes v. Ungeni, 12 FSM R. 252, 256 n.1 (Chk.

S. Ct. Tr. 2003).

The Chief Justice of the Chuuk State Supreme Court is the administrative head of the state judicial system, and he may appoint and prescribe duties of other officers and employees of the state judicial system. He is also obligated to promulgate rules governing the administration of all state courts, the regulation of the judicial profession, and practice and procedure in civil matters. Kupenes v. Ungeni, 12 FSM R. 252, 261 (Chk. S. Ct. Tr. 2003).

When acting in his rule making capacity, the Chief Justice acts in a legislative capacity. Rules of court, properly promulgated, and not exceeding the limitation of the rule-making authority, have the force of law. Kupenes v. Ungeni, 12 FSM R. 252, 261 (Chk. S. Ct. Tr. 2003).

The ABA Code of Judicial Conduct (1984 ed.) is the judicial ethics provision in effect in Kosrae today. Anton v. Cornelius, 12 FSM R. 280, 285-86 (App. 2003).

The Constitution provides that a Supreme Court justice may be removed from office for treason, bribery, or conduct involving corruption in office by a _ vote of the members of Congress. When a justice of the Supreme Court is removed, the decision must be reviewed by a special tribunal composed of one state court judge from each state appointed by the state chief executive. The Constitution draws no distinction between permanent justices or specially assigned justices for purposes of removal. Urusemal v. Capelle, 12 FSM R. 577, 586 (App. 2004).

No Chuuk state justice may hear or decide an appeal of a matter heard by the justice in the trial division, but the issuance of a stay is a procedural matter that does not require the justice issuing it to hear or decide the appeal. Ruben v. Petewon, 13 FSM R. 383, 389 (Chk. 2005).

A judge's failure to rule, that is, his failure to exercise his discretion is itself an abuse of the judge's discretion because a court may abuse its discretion by an unexplained, lengthy delay or by failure to exercise its discretion within a reasonable time. Ruben v. Petewon, 13 FSM R. 383, 390 n.2 (Chk. 2005).

When an oral motion to disqualify one of the panel members was made, the other two members constitute the deciding majority in an appellate case and can decide a motion to disqualify the third member. Ruben v. Petewon, 14 FSM R. 141, 143-44 & n.1 (Chk. S. Ct. App. 2006).

A writ of prohibition directed to a Chuuk State Supreme Court trial division justice is not a matter that the justice is barred from hearing when it was not heard by such justice in the Chuuk State Supreme Court trial division, and in an FSM Supreme Court case, the justice was careful not to decide anything on the merits. Not having expressed an opinion on the merits or done more than issue a preliminary injunction, a justice is not precluded from sitting on a panel considering a petition for writ of prohibition. Ruben v. Petewon, 14 FSM R. 141, 145 (Chk. S. Ct. App. 2006).

If the Chief Justice is removed or disqualified, then the most senior associate justice who has not been removed or disqualified from the case will appoint the temporary justices, but if all Chuuk State Supreme Court justices are disqualified and there is no associate justice that could appoint a panel in the Chief Justice's stead and there is no provision for the Chief Justice to

appoint a temporary justice to make the appointments, then the rule of necessity, in this limited circumstance, allows the Chief Justice to make the panel appointments. Ruben v. Petewon, 14 FSM R. 146, 148 (Chk. S. Ct. App. 2006).

When the trial judge's original appointment as chief justice established his qualifications for the office and the trial judge physically possessed the office of chief justice on February 28, 2006 and on that day discharged the duties of the office and when the trial judge's color of authority stems from his original appointment as chief justice, the dispute relates not to the fact of the trial judge's appointment to the bench but rather concerns the exact length of the trial judge's appointment as chief justice. Tulensru v. Kosrae, 15 FSM R. 122, 129 (App. 2007).

When the only relevant evidence in the record on appeal supports the conclusion that the judge's appointment extended through the day of February 28, 2006, as he was clearly acting under the color of authority vested with him by his original appointment as chief justice and not as an unknown usurper attempting to wrestle authority from its appropriate guardian, and when an additional source for the trial judge's color of authority is derived from the fact that he presided over the trial in this matter and twice scheduled the sentencing hearing to take place before February 28, 2006, all acts which he undertook without protest from any party, this is the type of situation contemplated by the de facto principle as a safeguard against the unnecessary interruption of public governance. Thus, even if it were true that the trial judge's tenure with the court officially ended before February 28, 2006, the sentencing order of February 28, 2006 would remain valid as the act of a judge de facto. Tulensru v. Kosrae, 15 FSM R. 122, 129 (App. 2007).

A party may seek the addition of supplemental findings to a judgment within ten days of the judgment being entered. Such action should only be taken by the judge who presided over the proceedings and who entered the judgment and while the facts underlying the proceedings are fresh within the presiding judge's mind. A motion for amended judgment or supplemental findings under Rule 52(b), nearly two decades after entry of judgment and with a new presiding judge, is untimely and inappropriate. Salik v. U Corp., 15 FSM R. 534, 539 (Pon. 2008).

If by reason of the disability of the judge before whom an action was been tried, the judge is unable to perform the court's duties after findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties unless the other judge is satisfied that such other judge cannot perform those duties because such other judge did not preside at the trial or for any other reason the other judge may in his or her discretion grant a new trial. Salik v. U Corp., 15 FSM R. 534, 539 (Pon. 2008).

When interpreting FSM Civil Rule 63 and applying it to a matter, it is appropriate to consider the treatment of similar rules of procedure as they are found in American jurisdictions. Salik v. U Corp., 15 FSM R. 534, 539 (Pon. 2008).

A successor judge may not make findings of fact and conclusions of law and enter judgment solely upon the record developed by his predecessor except upon agreement of the parties, and a second judge is prohibited from making factual determinations as to a first judge's intent when he interprets an order issued by the first judge. Salik v. U Corp., 15 FSM R. 534, 539 (Pon. 2008).

Kosrae state judges are subject to the 2000 version of the American Bar Association Code

of Judicial Conduct as the basis for judicial ethics and disqualification because the State Code adopted by reference and applied to Kosrae judges the 1984 edition of the ABA Code of Judicial Conduct but allowed the Kosrae Chief Justice, by rule, to make the judicial conduct requirements stricter or to establish other standards consistent with the Code of Judicial Conduct, which was done through Kosrae General Court Order 2003-02 adopting the 2000 version of the ABA Code of Judicial Conduct. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503 & n.1 (App. 2011).

If the Kosrae Chief Justice sits on a case in the Land Court and his decision is later appealed to the Kosrae State Court, the Chief Justice must then have no involvement in the case in the Kosrae State Court and the Kosrae State Court appeal would necessarily be handled by another justice. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 195 (App. 2013).

The only procedure available to seek restraint of or injunctive relief against an FSM Supreme Court Trial Division justice is to be found in Rule 21 of the FSM Rules of Appellate Procedure. It is established in this jurisdiction that a writ of prohibition must be directed to a court or tribunal inferior in rank to the one issuing the writ. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257 (Pon. 2014).

The structure of the FSM Court system dictates that as a practical matter a writ against a trial division court may only be issued by the appellate division. Therefore, a writ of mandamus or prohibition, even if characterized as an "injunction" or "setting aside an order" may not be issued by one trial division justice against another FSM Supreme Court trial division justice. Appellate Rule 21 writs of prohibition are the sole procedure available for seeking restraint of a trial court judge's actions in a pending case. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257-58 (Pon. 2014).

FSM Supreme Court justices, even temporary justices, should be guided by permissible considerations rather than by one party's unsupported supposition that other justices would have ruled differently on a question of first impression. FSM v. Halbert, 20 FSM R. 49, 52 (Pon. 2015).

While it is appropriate for a Chief Justice to engage with all the relevant stake-holders in the process of promulgating a general court order, the decision making process is quite different for a justice called upon to render an evidentiary ruling in a criminal case. Even when a party raises a question of first impression, a judge presiding over a criminal case has a responsibility to apply the law to the case's facts, and it would be an abuse of judicial discretion to delay an evidentiary ruling in order to solicit advice from non-parties suggesting what the law should be. This judicial power is curtailed by the process of appellate review. FSM v. Halbert, 20 FSM R. 49, 53 (Pon. 2015).

A signature affixed by a judge by rubber stamp is valid because a signature is a person's name or mark written by that person or at the person's direction, or any name, mark, or writing used with the intent of authenticating a document – also termed a legal signature. George v. Palsis, 20 FSM R. 157, 159 (Kos. 2015).

In the absence of any provision in the FSM Code, Rules of Civil Procedure, or General Court Order, mandating a handwritten signature on an order issued by a justice, an argument that a judge's signature is deficient because it appears to be "rubber-stamped," is devoid of

merit. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 228 (Chk. 2015).

Kosrae State Court judges are constitutionally required to retire upon attaining the age of sixty-five years. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 & n.2 (App. 2016).

In the absence of any provision in the FSM Code, Civil Procedure Rules, or General Court Order, mandating a handwritten signature on an order issued by a justice, arguments that a judge's signature is deficient because it is "rubber-stamped," are devoid of merit. FSM Dev. Bank v. Ehsa, 21 FSM R. 148, 149 (Pon. 2017).

A judge's rubber-stamped signatures are marks used to authenticate the judge's written orders, and are thus valid, original signatures. Contentions that they are fake, or invalid, or not legal signatures, are without merit. FSM Dev. Bank v. Ehsa, 21 FSM R. 148, 150 (Pon. 2017).

All Chuukese judges are required to adhere to the American Bar Association's Code of Judicial Conduct. Selifis v. Robert, 21 FSM R. 344, 346 (Chk. S. Ct. App. 2017).

The Chief Justice is required by statute to give notice to the President and the Congress upon the appointment of any temporary Justice. While the concurrent issuance of a separate order of assignment, filed in the relevant case, is undoubtedly the better practice, no law or rule requires it. Setik v. FSM Dev. Bank, 21 FSM R. 505, 517 (App. 2018).

Often a litigant will not know which judge has been assigned the case until that judge either issues his or her first written order or appears on the bench at the case's first hearing. That is when, if there are grounds for the motion, a litigant would usually move to disqualify the judge. Setik v. FSM Dev. Bank, 21 FSM R. 505, 517 (App. 2018).

A ministerial act is an act performed without the independent exercise of discretion or judgment. Ministerial means of or relating to an act that involves obedience to instructions or laws instead of discretion, judgment, or skill. Setik v. FSM Dev. Bank, 21 FSM R. 505, 521 (App. 2018).

Litigants are not entitled to a judge of their own choosing; they are only entitled to an unbiased judge. Setik v. Mendiola, 21 FSM R. 537, 550 (App. 2018).

Often a litigant will not know which judge will be assigned a case until that judge either issues his or her first written order or appears on the bench for the case's first hearing. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

Kosrae state judges are bound by the 2000 version of the American Bar Association Code of Judicial Conduct, which forms the basis for judicial ethics and disqualification. Heirs of Sigrah v. George, 22 FSM R. 211, 219 (App. 2019).

– Judges – Judges De Facto

If someone constitutionally ineligible for appointment, is appointed a judge then his status is that of a de facto judge. A de facto judge is one who exercises the duties of the judicial office under the color of an appointment thereto. Where there is an office to be filled, and one, acting under color of authority, fills the office and discharges its duties, his actions are those of an

officer de facto, and binding on the public. Hartman v. FSM, 6 FSM R. 293, 298-99 (App. 1993).

Since the acts of a de facto judge are valid against all except the sovereign and generally not subject to collateral attack, the proper method to question a de facto judge's authority is through a quo warranto proceeding brought by the sovereign. Hartman v. FSM, 6 FSM R. 293, 299 (App. 1993).

The view that the de facto doctrine, where applicable, should operate to prevent challenges to the authority of special judges, acting under color of right, by private litigants, in the proceedings before them is better suited for the social and geographical configuration of Micronesia. Hartman v. FSM, 6 FSM R. 293, 299 (App. 1993).

The acts of a judge de facto are generally valid and not subject to collateral attack. Alafanso v. Suda, 10 FSM R. 553, 556 (Chk. S. Ct. Tr. 2002).

The Chuuk State Supreme Court prefers to adopt the majority rule in the United States that a temporary judge cannot be a judge *de facto*, because a temporary judge merely serves for a particular case, whereas a judge *de facto* makes claim to a judicial office under color of authority. This majority rule, in defining a judge *de facto*, requires that a judge *de facto* have all of the qualifications to hold the office which he claims under color of authority, a requirement which cannot, as a matter of definition, apply to temporary judges, who have no claim to the office of judge *de jure*, but rather occupy it on a temporary basis, case by case. Kupenes v. Ungeni, 12 FSM R. 252, 260 (Chk. S. Ct. Tr. 2003).

A judge *de facto* occupies the position under "color of authority," which has been defined in this context as follows: "A de facto officer is one who is in possession of an office, and discharging its duties, under color of authority. By color of authority is meant authority derived from an election or appointment, however irregular or informal, so that the incumbent be not a mere volunteer. Kupenes v. Ungeni, 12 FSM R. 252, 260 (Chk. S. Ct. Tr. 2003).

Even if a special trial justice were not a lawfully appointed judicial officer, that is, a judge de jure, he was a de facto judicial officer since a de facto judge is one who exercises the duties of the judicial office under the color of an appointment thereto. A judge de facto's acts are generally valid and not subject to collateral attack. Ruben v. Hartman, 15 FSM R. 100, 114 (Chk. S. Ct. App. 2007).

A judge de facto must have all the qualifications to hold the office which he claims under color of authority. A de facto officer is one who is in possession of an office, and discharging its duties, under color of authority. By color of authority is meant authority derived from an election or appointment, however irregular or informal, so that the incumbent be not a mere volunteer. Tulensru v. Kosrae, 15 FSM R. 122, 129 (App. 2007).

When the only relevant evidence in the record on appeal supports the conclusion that the judge's appointment extended through the day of February 28, 2006, as he was clearly acting under the color of authority vested with him by his original appointment as chief justice and not as an unknown usurper attempting to wrestle authority from its appropriate guardian, and when an additional source for the trial judge's color of authority is derived from the fact that he presided over the trial in this matter and twice scheduled the sentencing hearing to take place before February 28, 2006, all acts which he undertook without protest from any party, this is the type of situation contemplated by the de facto principle as a safeguard against the unnecessary

interruption of public governance. Thus, even if it were true that the trial judge's tenure with the court officially ended before February 28, 2006, the sentencing order of February 28, 2006 would remain valid as the act of a judge de facto. Tulensru v. Kosrae, 15 FSM R. 122, 129 (App. 2007).

– Judges – Temporary Judges

The Chief Justice has the constitutional authority to make rules for the appointment of special judges, and Congress has the constitutional authority to amend them. Congress has provided the Chief Justice with the statutory authority to appoint temporary justices. Where Congress has acted pursuant to its constitutional authority to provide statutory authority to the court, the court need not have exercised its concurrent rule-making authority. Jano v. King, 5 FSM R. 326, 331 (App. 1992).

The constitutional language does not require that a Chuuk State Supreme Court justice sit on an appellate panel when none is available, only that no more than one can sit under any circumstance. But if there are Chuuk State Supreme Court justices who are not disqualified, one must preside over the panel in order for it to be properly constituted. If needed, a justice, who is not disqualified, has a professional and constitutional obligation to serve. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 151 (Chk. S. Ct. App. 2001).

Temporary Chuuk State Supreme Court justices, appointed for the limited purpose of hearing the appeal, may be a justice of the FSM Supreme Court, a judge of a court of another FSM state, or a qualified attorney in the State of Chuuk. FSM citizenship is not a constitutional requirement to be a temporary Chuuk State Supreme Court appellate justice and the Legislature cannot add it by statute. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 152 (Chk. S. Ct. App. 2001).

When a special trial division justice was appointed by the Chief Justice pursuant to the procedure contained in two 1994 general court orders, the special trial division justice appeared to be a properly installed judicial officer, and even if the special trial division justice were not a lawfully appointed judicial officer, that is, a judge de jure, he was a de facto judicial officer. Alafanso v. Suda, 10 FSM R. 553, 556 (Chk. S. Ct. Tr. 2002).

Where the Chuuk Constitution specifically authorizes the appointment of qualified attorneys in Chuuk as temporary appellate justices on a per case basis and the Constitution's framers therefore must have contemplated that counsel in one appeal may well be a temporary justice on a different appeal, the presence of qualified attorneys on an appellate panel is not a ground to grant a rehearing. Rosokow v. Bob, 11 FSM R. 454, 457 (Chk. S. Ct. App. 2003).

An appellate panel's composition of three temporary justices is proper in the sudden absence of the presiding Chuuk State Supreme Court justice when the other Chuuk State Supreme Court justices were disqualified and the matter could not wait for the original presiding justice's recovery from illness because the court was required by statute to decide on the contested election prior to April 15, 2003 and therefore a third temporary justice had to be appointed immediately. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 473 (Chk. S. Ct. App. 2003).

By general court order, when the other justices are disqualified or have been recused or

there is a special need to have a special justice from outside the court to hear a case to avoid the appearance of impropriety, the Chuuk Chief Justice may appoint special justices (who meet the same requirements for the appointment of an appellate division temporary justice) and assign cases to him. Kupenes v. Ungeni, 12 FSM R. 252, 256 n.2 (Chk. S. Ct. Tr. 2003).

The Chuuk State Supreme Court prefers to adopt the majority rule in the United States that a temporary judge cannot be a judge *de facto*, because a temporary judge merely serves for a particular case, whereas a judge *de facto* makes claim to a judicial office under color of authority. This majority rule, in defining a judge *de facto*, requires that a judge *de facto* have all of the qualifications to hold the office which he claims under color of authority, a requirement which cannot, as a matter of definition, apply to temporary judges, who have no claim to the office of judge *de jure*, but rather occupy it on a temporary basis, case by case. Kupenes v. Ungeni, 12 FSM R. 252, 260 (Chk. S. Ct. Tr. 2003).

The Chuuk State Supreme Court adopts the U.S. majority rule that an special trial justice appointed pursuant to Chuuk GCO 2-94 is a temporary judge, a *judge pro hac vice de jure*, and that if the promulgation of GCO 2-94 is unconstitutional, then all acts of the special trial justice in the cases to which he has been assigned, are void and a nullity. Kupenes v. Ungeni, 12 FSM R. 252, 261 (Chk. S. Ct. Tr. 2003).

Chuuk GCO 2-94 authorizing the appointment of special trial justices is a constitutional exercise of the Chief Justice's rule-making authority since there are no express constitutional limitations on that authority other than that permitting the Legislature to amend rules promulgated by the Chief Justice. Kupenes v. Ungeni, 12 FSM R. 252, 263 & n.10 (Chk. S. Ct. Tr. 2003).

In order to qualify as a temporary justice on a Chuuk State Supreme Court appellate division panel, the temporary justice must be either 1) a justice of the FSM Supreme Court, 2) a judge of a court of another FSM state, or 3) a qualified attorney in the State of Chuuk. Judges of other courts and qualified attorneys, are sufficiently competent in the law to sit as members of a Chuuk State Supreme Court appellate panel, regardless of their nationality or citizenship. Kupenes v. Ungeni, 12 FSM R. 252, 264 (Chk. S. Ct. Tr. 2003).

The Chuuk Constitution provides no guidance, positively or negatively, regarding whether special trial justices are permissible, and if so, what their minimum qualifications must be. Absent any words of limitation in the constitution, the Chief Justice has and should maintain vigorously all the inherent and implied powers necessary to permit the judiciary to function properly and effectively as a separate department in the scheme of government. These inherent and implied powers include the power to adopt general court orders for the appointment of special trial justices and to establish minimum qualifications for those special justices which equal the qualifications for temporary appellate justices under the constitution. Kupenes v. Ungeni, 12 FSM R. 252, 265 (Chk. S. Ct. Tr. 2003).

In appointing a special trial justice, the Chuuk Chief Justice is not appointing a temporary associate justice. A special trial justice, does not make any claim to the office of associate justice. Kupenes v. Ungeni, 12 FSM R. 252, 265 (Chk. S. Ct. Tr. 2003).

Litigants in a case presided over by a specially assigned justice are entitled to a justice who is no less independent than a permanent justice. Urusemal v. Capelle, 12 FSM R. 577, 586 (App. 2004).

If a specially assigned justice may be removed for any reason at Congress's discretion after serving 90 days of service in a case, then the justice is not independent. His rulings are subject to the legislative branch's supervision. The Constitution's framers intended to prevent this result by providing that a justice may only be removed for cause under the procedures set out in Article IX, Section 7. Urusemal v. Capelle, 12 FSM R. 577, 587 (App. 2004).

Congress may not remove at its discretion a justice temporarily assigned to a case any time after that justice has served 90 days because any such resolution and the statute upon which it is based, 4 F.S.M.C. 104(2) violate Article IX, Section 7 of the Constitution. Urusemal v. Capelle, 12 FSM R. 577, 587 (App. 2004).

A trial justice specially assigned to a case by the Chief Justice has no authority to assign that (or any case) to the Chief Justice even if he were not disqualified. FSM v. Kansou, 12 FSM R. 637, 640 (Chk. 2004).

The Chuuk Constitution does not include a provision allowing the Legislature to add further qualifications to those required for temporary appellate justices. FSM citizenship is not a constitutional requirement to be a temporary Chuuk State Supreme Court appellate justice. The Legislature thus cannot add it by statute. When the Constitution sets forth the requirements for office and does not authorize the Legislature to add further requirements, it is barred from doing so. Ruben v. Petewon, 14 FSM R. 141, 144, 145 (Chk. S. Ct. App. 2006).

The Legislature cannot add qualifications for appellate division justices to those found in the Chuuk Constitution, article VII, section 5(b). Thus the statutory requirements that a temporary appellate justice be either a graduate of an accredited law school in that jurisdiction or have at least twenty years experience practicing law, is contrary to the Chuuk Constitution and cannot be enforced. Ruben v. Petewon, 14 FSM R. 141, 145 (Chk. S. Ct. App. 2006).

When all Chuuk State Supreme Court justices have been disqualified from presiding, an appellate panel will have to be constituted without a Chuuk State Supreme Court justice and with a temporarily-appointed justice to preside. Ruben v. Petewon, 14 FSM R. 146, 149 (Chk. S. Ct. App. 2006).

There is no authority that would require the justice making the appointment of temporary Chuuk State Supreme Court appellate division justices to make the appointments of temporary appellate justices in the order of seniority. Ruben v. Petewon, 14 FSM R. 146, 149 (Chk. S. Ct. App. 2006).

It is proper for temporary justices, otherwise meeting the requirements of Chuuk Constitution Article VII, section 5(b), to constitute the full appellate panel and to preside over Chuuk State Supreme Court appeals if Chuuk State Supreme Court justices are disqualified or not readily available. Mori v. Haruo, 16 FSM R. 556, 557 (Chk. S. Ct. App. 2009).

4 F.S.M.C. 124(2) by its own terms serves to disqualify a temporary justice only when the Congress taken an affirmative act of adopting a resolution after the justice has served at least three months, but 4 F.S.M.C. 124(2) cannot serve as a basis for disqualification of a temporary justice because the appellate division has ruled it to be in conflict with the FSM Constitution. FSM v. Halbert, 20 FSM R. 49, 51 (Pon. 2015).

Because the basis for the Urusemal v. Capelle court decision was its concern for safeguarding the independence of judicial decision making as envisioned in the FSM Constitution, the decision's reasoning is equally valid regardless of whether a temporary justice had previously sat on the FSM Supreme Court or is currently a judge of another court. FSM v. Halbert, 20 FSM R. 49, 51-52 (Pon. 2015).

FSM Supreme Court justices, even temporary justices, should be guided by permissible considerations rather than by one party's unsupported supposition that other justices would have ruled differently on a question of first impression. FSM v. Halbert, 20 FSM R. 49, 52 (Pon. 2015).

Since the Chief Justice is statutorily required to give notice to the President and the Congress upon the appointment of any temporary justice, the absence of an "order of assignment" is not improper when a missive from the Acting Chief Justice was duly dispatched to Congress, apprizing that body of his designation of a judge to preside over the matter because Congress has provided the Chief Justice with the statutory authority to appoint temporary justices and Congress acted under its Constitutional authority to provide this statutory authority to the judiciary, the court need not exercise its concurrent rule-making authority; and because there is no pertinent rule which mandates issuance of a separate "order of assignment." FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 227-28 (Chk. 2015).

Since the Chief Justice by rule may give special assignments to retired Supreme Court justices and judges of state and other courts; since judicial rules may be amended by statute; and since a statute already exists setting out the procedure for giving special assignments to retired Supreme Court justices and judges of state and other courts, the Chief Justice must follow that procedure. Setik v. FSM Dev. Bank, 21 FSM R. 505, 517 (App. 2018).

Since the Chief Justice by rule may give special assignments to retired Supreme Court justices and judges of state and other courts; since judicial rules may be amended by statute; and since a statute already exists setting out a procedure for giving special assignments to retired Supreme Court justices and judges of state and other courts, the Chief Justice must follow that procedure. Setik v. Mendiola, 21 FSM R. 537, 550 (App. 2018).

The Chief Justice is required by statute to give notice to the President and the Congress upon the appointment of any temporary justice. While the concurrent issuance of a separate order of assignment, filed in the relevant case, may undoubtedly be the better practice, no law or rule requires it when the Chief Justice has appointed a temporary justice. Setik v. Mendiola, 21 FSM R. 537, 550-51 (App. 2018).

– Judicial Immunity

The FSM Supreme Court is immune from an award of damages, pursuant to 11 F.S.M.C. 701(3), arising from the performance by the Chief Justice of his constitutionally granted rule-making powers. Berman v. FSM Supreme Court (II), 5 FSM R. 371, 374 (Pon. 1992).

The Chief Justice, in making rules, is performing a legislative function and is immune from an action for damages. Berman v. FSM Supreme Court (II), 5 FSM R. 371, 374 (Pon. 1992).

The grant of immunity to the Chief Justice while performing his rule-making authority is to

protect the independence of one exercising a constitutionally granted legislative power. Berman v. FSM Supreme Court (II), 5 FSM R. 371, 374 (Pon. 1992).

A judge is generally granted absolute civil immunity from civil liability for acts done in the exercise of a judicial function. Jano v. King, 5 FSM R. 388, 391 (Pon. 1992).

A judge loses the cloak of judicial immunity in only two instances. A judge is not immune for actions not taken in the judge's judicial capacity, and a judge is not immune for actions, though judicial in nature, taken in the absence of all jurisdiction. Jano v. King, 5 FSM R. 388, 391 (Pon. 1992).

An act performed by a judge does not have to be an adjudicatory act in order for it to be a judicial act. Judges and justices of the courts of the Federated States of Micronesia are protected by the cloak of judicial absolute immunity for judicial functions performed unless they are in complete absence of jurisdiction. Jano v. King, 5 FSM R. 388, 392-93 (Pon. 1992).

Judges and justices of the FSM are protected by the cloak of absolute immunity for judicial functions performed, unless the functions were performed in the complete absence of jurisdiction. Issuance of a search warrant is within the jurisdiction of FSM courts. Therefore it is a judicial act to which immunity attaches. Liwi v. Finn, 5 FSM R. 398, 400-01 (Pon. 1992).

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

A judge is generally granted absolute immunity from civil liability for acts done in the exercise of a judicial function. A judge loses the cloak of judicial immunity in only two events: First, a judge is not immune from non-judicial actions, i.e. actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Bank of Guam v. O'Sonis, 9 FSM R. 106, 112 (Chk. 1999).

The factors determining whether an act by a judge is a judicial one relate to the nature of act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity. The second question in deciding whether immunity exists is whether the judge acted in complete absence of all jurisdiction. Bank of Guam v. O'Sonis, 9 FSM R. 106, 112 (Chk. 1999).

Judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly. A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors. Bank of Guam v. O'Sonis, 9 FSM R. 106, 112 (Chk. 1999).

Judicial immunity does not apply against the imposition of prospective injunctive relief. The right to attorney's fees applies when prospective relief is granted against a judge pursuant to the civil rights statute. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

Judicial immunity protects from liability for punitive damages. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

A judge is generally granted absolute immunity from civil liability for acts done in the exercise of a judicial function. Few doctrines were more solidly established at common law than the immunity of judges for damages for acts committed within their judicial jurisdiction. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 121 (Pon. 2001).

Judges lose their judicial immunity only for non-judicial actions (actions not taken in the judge's judicial capacity), or for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 121 (Pon. 2001).

Two factors, both relating to the nature of act itself, determine whether an act by a judge is a judicial one: whether it is a function normally performed by a judge, and whether the parties dealt with the judge in his judicial capacity. The second question in deciding whether immunity exists is whether the judge acted in complete absence of all jurisdiction. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 121 (Pon. 2001).

Issuance of appellate opinions is a function normally performed by judges, and the timing of a decision is normally, if not always, a judicial decision. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 121 (Pon. 2001).

In order to determine whether a judge is liable for damages for his actions, the court asks whether the judge was performing judicial acts and whether his court had jurisdiction. When the answer to both questions is yes, the judge was not acting in complete absence of all jurisdiction, even when he had clearly acted in excess of his jurisdiction, and the judge was therefore immune from any suit for compensatory or punitive damages for his actions, but that does not end the inquiry. When the plaintiff had obtained permanent prospective injunctive relief against the judge under the civil rights act, it was entitled to the attorney's fees and costs incurred in obtaining that relief in that case, but not for any expenses incurred in the state court case in which the judge had exceeded his jurisdiction even though the FSM Supreme Court had to enjoin him from conducting any further proceedings in it. Ruben v. Petewon, 15 FSM R. 605, 608 (Chk. 2008).

When the defendant state court judge's actions upon which the plaintiffs base this suit were judicial in nature and the state court is a court of general jurisdiction, which would have had the jurisdiction to consider a motion for relief of judgment if one had been filed, the judge did not act in complete absence of jurisdiction. But when he did clearly act grossly in excess of his jurisdiction and when the plaintiffs obtained permanent prospective relief against him in this case, they are entitled to their expenses including attorney's fees and costs under 11 F.S.M.C. 701(3) for bringing this action and are thus entitled to judgment as a matter of law on their civil rights claim for attorney's fees and costs. The costs and fees allowed will be for work in this case and not that for work in the related state court cases. Ruben v. Petewon, 15 FSM R. 605, 608-09 (Chk. 2008).

A judge is generally granted absolute immunity from civil liability for acts done in the exercise of a judicial function. A judge loses the cloak of judicial immunity in only two events: First, a judge is not immune from non-judicial actions, i.e. actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

Few doctrines were more solidly established at common law than the immunity of judges for damages for acts committed within their judicial jurisdiction. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

When analyzing whether a judge was performing judicial acts, the factors determining whether an act by a judge is a "judicial" one relate to the nature of act itself (whether it is a function normally performed by a judge) and to the expectations of the parties (whether they dealt with the judge in his judicial capacity). Issuing eviction orders, denying motions, and the like are all acts or functions normally performed by a judge. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

When the Pohnpei Supreme Court is a court of general jurisdiction and when it is undisputed that the Pohnpei Supreme Court has jurisdiction over cases that the plaintiff filed there since she filed those cases there for the very reason that that court had jurisdiction, the plaintiff cannot allege that a Pohnpei justice acted in complete absence of jurisdiction when he issued orders in her cases even though she clearly alleges that he acted in excess of his jurisdiction. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

Judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction and are alleged to have been done maliciously or corruptly, and a judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

Since a judge is absolutely immune from liability for his judicial acts even if those acts were done maliciously or corruptly or in excess of his jurisdiction or if his exercise of authority was flawed by the commission of grave procedural errors, he is thus immune from a plaintiff's compensatory damages claims. Jacob v. Johnny, 18 FSM R. 226, 233 (Pon. 2012).

Judicial immunity does not prevent a judge from being subject to prospective injunctive relief when the judge has acted, not in complete absence of jurisdiction, but in excess of jurisdiction. Judicial immunity does not apply against the imposition of prospective injunctive relief because no common law precedent ever granted such immunity. Jacob v. Johnny, 18 FSM R. 226, 233 (Pon. 2012).

When a Pohnpei Supreme Court judge is immune from suit and thus from the imposition of compensatory damages, the compensatory damages claims against him must be dismissed. But when the plaintiff's factual allegations against the judge, viewed in the light most favorable to the plaintiff, are claims that the judge acted in excess of his jurisdiction and violated the plaintiff's civil rights in doing so, the court will not dismiss her claims against the judge for injunctive relief and for 11 F.S.M.C. 701(3) reasonable attorney's fees and costs incurred in obtaining that relief, since she alleges sufficient facts which, if proven that the judge acted in excess of his jurisdiction, state a claim for which the FSM Supreme Court can grant her some relief. Jacob v. Johnny, 18 FSM R. 226, 233-34 (Pon. 2012).

Judges are generally granted absolute immunity from civil liability for acts done in the exercise of a judicial function. Few common law doctrines were more solidly established than a judge's immunity for damages for acts committed within his judicial jurisdiction. Helgenberger v. U Mun. Court, 18 FSM R. 274, 283 (Pon. 2012).

A judge loses the cloak of judicial immunity in only two events: first, a judge is not immune from non-judicial actions, i.e. actions not taken in the judge's judicial capacity; and second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. The first question is whether the acts were judicial. Helgenberger v. U Mun. Court, 18 FSM R. 274, 283 (Pon. 2012).

The factors determining whether an act by a judge is a "judicial" one and therefore one for which the judge is immune from civil liability relate to the nature of act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity. The issuance of a bench warrant; the contempt finding; and, under U's constitutional setup, the impeachment trial, the conviction, the denial of the substitution of counsel, and the defendant's removal from office were all judicial acts, taken in a judicial capacity. Helgenberger v. U Mun. Court, 18 FSM R. 274, 283 (Pon. 2012).

The second question in deciding whether judicial immunity exists is whether the judge acted in complete absence of all jurisdiction because judges cannot be held civilly liable for their judicial acts, even when those acts were in excess of their jurisdiction, or are alleged to have been done maliciously or corruptly, and judges are also absolutely immune from civil liability when they committed grave procedural errors in their exercise of authority. Helgenberger v. U Mun. Court, 18 FSM R. 274, 283 (Pon. 2012).

A Pohnpei Supreme Court justice is generally immune from suit and from the imposition of money damages. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 67 (Pon. 2018).

Judges are generally granted absolute immunity from civil liability for acts done in the exercise of a judicial function. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 67 (Pon. 2018).

A judge loses the cloak of judicial immunity in only two events: 1) a judge is not immune from non-judicial actions, – actions not taken in the judge's judicial capacity, and 2) a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 67-68 (Pon. 2018).

A Pohnpei Supreme Court appellate division single justice's failure to rule on a motion for a stay of sentence is an act of a judicial nature and the grant or denial of a stay is an act wholly within the Pohnpei Supreme Court appellate division's jurisdiction. Thus, if the plaintiff were suing the single justice who failed to rule on his motion to stay, that justice would be immune from this suit for money damages, regardless of whether those damages were compensatory, nominal, or punitive. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 68 (Pon. 2018).

A plaintiff, no matter how worthy, cannot avoid the cloak of judicial immunity by suing the court where the judge sits instead of suing the immune judge. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 68 (Pon. 2018).

The FSM Supreme Court would look upon a true negligence suit against the Pohnpei Court of Land Tenure with great disfavor because, when a defendant is found negligent, the remedy is money damages, and because the Pohnpei Court of Land Tenure is a court, and, as a court, it is immune from a suit for money damages for its judicial acts. Setik v. Perman, 22 FSM R. 105, 119 n.12 (App. 2018).

– Records

A court's inherent supervisory power over its own records includes the discretion to seal those records if it determines that the public's right to access is outweighed by legitimate competing needs for privacy and confidentiality. In re Property of Doe, 6 FSM R. 606, 607 (Pon. 1994).

A court will use a three step process designed to protect the public's interest in access to the its files to determine whether the records should be sealed: 1) the court will give the public adequate notice that the judicial records in question may be sealed; 2) the court will give all interested persons an opportunity to object; and 3) if, after considering all objections, the court decides that the records should be sealed, it will seal those records and state on the record the reasons supporting its decision. In re Property of Doe, 6 FSM R. 606, 607 (Pon. 1994).

When the court has posted public notices throughout the state and no member of the public, nor any interested party, objected, and the court has found good cause shown, the records in a case may be sealed. In re Property of Doe, 6 FSM R. 606, 607 (Pon. 1994).

Just as the courts in the judiciary confirm their role in society by adjudicating claims in civil matters, so to must the land commission. When a court fails to provide an adequate record of its proceedings, the role of the judiciary fails. Because claims over land are of no lesser importance than claims in civil matters, the requirement of a full and complete record applies to the land commission. In re Lot No. 014-A-21, 9 FSM R. 484, 493 (Chk. S. Ct. Tr. 1999).

It is the Kosrae State Court's statutory duty to certify Certificates of Live Birth and when the court has information that items on the certificate are incorrect, it will refuse to certify the certificate. In re Phillip, 11 FSM R. 243, 244 (Kos. S. Ct. Tr. 2002).

The subject himself cannot provide the factual basis for the date of his birth, as his knowledge of this information is based upon hearsay only. A person does not have personal knowledge of his date of birth. In re Phillip, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

Notarization of a document does not establish truth to the statements made in the document: notarization only verifies the identity and signature of the person who signed the document. Consequently, notarization of a document by a court employee does not represent any court endorsement or certification of the statements made in the document. In re Phillip, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

The Certificate of Live Birth is a document with critical legal importance. It forms the foundation upon which other important legal documents are issued. Therefore, the Certificate of Live Birth must be issued in accordance with a procedure, based upon credible factual information supporting the person's date of birth and other information entered on the certificate. In re Phillip, 11 FSM R. 301, 302-03 (Kos. S. Ct. Tr. 2002).

In order to protect the validity and reliability of birth certificates issued by the Kosrae state hospital, the hospital is ordered to issue a Certificate of Live Birth when the necessary information is properly authenticated and verified. The subject person of the certificate may not provide the only information that is relied upon by the hospital. The hospital shall review

existing hospital records, other government records and other reliable records to establish the accuracy of information entered into each Certificate of Live Birth. Certificates which do not contain accurate information shall not be certified by the Kosrae State Court. In re Phillip, 11 FSM R. 301, 303 (Kos. S. Ct. Tr. 2002).

In Kosrae small claims, a docket card is kept showing the pleadings, actions of the court, payments, or other reports and this docket card ordinarily constitutes the entire record. The plaintiff may state the nature and amount of the claim to the clerk who notes this on the docket card and the plaintiff signs this which, under the Small Claims Rules, constitutes the complaint. No other written pleading is required unless the court orders otherwise. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 641 (Kos. S. Ct. Tr. 2009).

– Recusal

No judge should sit in a case in which he is personally involved. In re Iriarte (II), 1 FSM R. 255, 262 (Pon. 1983).

Canon 3C of the ABA Code of Judicial Conduct applies in the FSM by virtue of 4 F.S.M.C. 122. There is no hint that Canon 3C as incorporated by the Judiciary Act of 1979, and 4 F.S.M.C. 124, were intended by Congress to have different meanings here. FSM v. Skilling, 1 FSM R. 464, 471 n.2 (Kos. 1984).

One guide to the kinds of facts which could lead a disinterested reasonable observer to harbor doubts about a judge's impartiality is 4 F.S.M.C. 124(2). FSM v. Skilling, 1 FSM R. 464, 475 (Kos. 1984).

4 F.S.M.C. 124(2) prescribes a subjective test under which a judge must disqualify himself if he subjectively concludes that he falls within the statutory provisions. Section 124(1), on the other hand provides an objective standard designed to guard against the appearance of impartiality. FSM v. Skilling, 1 FSM R. 464, 476 (Kos. 1984).

The bar against "public comment" by a judge regarding a case in trial, contained in 4 F.S.M.C. 122 and Canon 3A(6) of the American Bar Association Code of Judicial Conduct, is not violated by a trial court judge's encouraging a representative of the national official newspaper to publish his opinion on a motion for recusal, and such encouragement does not demonstrate partiality requiring recusal. Skilling v. FSM, 2 FSM R. 209, 215 (App. 1986).

The trial judge is justified in denying a motion for recusal on the basis of failure of the moving party to file an affidavit explaining the factual basis for the motion. Skilling v. FSM, 2 FSM R. 209, 216-17 (App. 1986).

The trial court judge's act of encouraging publication of his opinion on a motion for recusal in a national official newspaper, taken together with 1) the fining of defense counsel for tardiness, 2) the length of the sentence imposed, 3) the judge's comments about community support for defendant, explaining how that factor was taken into account in sentencing, and 4) the accelerated pace of sentencing proceedings, which was not contemporaneously objected to by defense counsel, do not indicate an abuse of discretion by the judge in denying the motion for recusal. Skilling v. FSM, 2 FSM R. 209, 217 (App. 1986).

The normal situation in which recusal may be required is when a judge's extrajudicial knowledge, relationship or dealings with a party or the judge's own personal or financial interests, might be such as to cause a reasonable person to question whether the judge could preside over and decide a particular case impartially. In re Main, 4 FSM R. 255, 260 (App. 1990).

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

To prevent the "probability of unfairness," a former trial counselor or attorney must refrain from presiding as a trial judge over litigation involving his former client, and many of the same issues, and the same interests and the same land, with which the trial judge has been intimately involved as a trial counselor or attorney. Etscheit v. Santos, 5 FSM R. 35, 45 (App. 1991).

Even when sufficient allegations have not been made, a judge may disqualify himself if he believes sufficient grounds exist. Jano v. King, 5 FSM R. 266, 271 (Pon. 1992).

In order to overturn the trial judge's denial of a motion to recuse, the appellant must show an abuse of discretion by the trial judge. The appellate court will not merely substitute its judgment for that of the trial judge. Jano v. King, 5 FSM R. 326, 330 (App. 1992).

Even if neither party alleges or moves for disqualification a judge may disqualify himself if he believes sufficient grounds exist. Youngstrom v. Youngstrom, 5 FSM R. 385, 387 (Pon. 1992).

Before a judge disqualifies himself from a case he should also consider whether his disqualification will cause considerable delay, require substantial expense and effort, and cause undue disruption in the advancement of the matter. Youngstrom v. Youngstrom, 5 FSM R. 385, 387 (Pon. 1992).

Pursuant to Kosrae statute, judges of the Kosrae State Court are subject to the standards of the Code of Judicial Conduct approved by the American Bar Association. A trial judge who owns one or two shares in the plaintiff credit union must follow these standards in deciding whether to recuse himself. Waguk v. Kosrae Island Credit Union, 6 FSM R. 14, 16-17 (App. 1993).

A justice who was a member of a body that negotiated the Compact and related agreements and who was the one member that signed the Compact and Extradition Agreement is not disqualified from presiding over an extradition proceeding by the circumstance of that participation on the ground that his impartiality might reasonably be questioned. In re Extradition of Jano, 6 FSM R. 93, 97-98 (App. 1993).

In order for a justice to be recused for an interest in the subject matter in controversy not only must the justice have an interest, but also it must be such that the interest could be substantially affected by the outcome of the proceeding. Nahnken of Nett v. United States (I), 6 FSM R. 318, 321 (Pon. 1994).

A litigant's unsupported allegations that the trial judge may have subconscious misgivings is

speculation and is insufficient to support the judge's disqualification. Nahnken of Nett v. United States (I), 6 FSM R. 318, 322 (Pon. 1994).

In order for a writ of prohibition to issue to require a judge to recuse himself it must be an abuse of discretion for the judge not to recuse himself. Where it is not apparent what interest of the judge could be substantially affected by the outcome of the proceeding or that the judge is biased or prejudiced the writ will not issue. Berman v. FSM Supreme Court (I), 7 FSM R. 8, 10 (App. 1995).

Normally a judge will not be disqualified when after the case has been submitted for decision a party files an unrelated lawsuit against the judge. Damarlane v. United States, 7 FSM R. 52, 55 (Pon. S. Ct. App. 1995).

A judge shall disqualify himself where he has served in governmental employment and in such capacity participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy. Fu Zhou Fuyan Pelagic Fishery Co. v. Wang Shun Ren, 7 FSM R. 601, 604 (Pon. 1996).

A judge whose governmental employment ended before the facts arose that gave rise to the case in front of him is not disqualified from the case because he did not act as an adviser to or was a material witness to the agreement at issue. Fu Zhou Fuyan Pelagic Fishery Co. v. Wang Shun Ren, 7 FSM R. 601, 604 (Pon. 1996).

The standard to be applied in reviewing a request for disqualification under 4 F.S.M.C. 124(1) is whether a disinterested reasonable observer who knows all the circumstances would harbor doubts about the judge's impartiality. A motion for disqualification must be supported by an affidavit which clearly sets forth the factual basis for the belief that grounds for disqualification exist. Fu Zhou Fuyan Pelagic Fishery Co. v. Wang Shun Ren, 7 FSM R. 601, 605 (Pon. 1996).

The power of a justice to recuse himself must be exercised conscientiously, and should not be employed merely to accommodate or placate nervous litigants or counsel. A party's speculation about the justice's unconscious frame of mind is insufficient to create a basis for disqualification. Fu Zhou Fuyan Pelagic Fishery Co. v. Wang Shun Ren, 7 FSM R. 601, 605 (Pon. 1996).

A due process challenge to a criminal contempt charge on the ground of the court's or its personnel's actions may be resolved by the judge's recusal and reassignment of the case to a judge whose impartiality has not been questioned. FSM v. Cheida, 7 FSM R. 633, 638-39 (Chk. 1996).

Because a judge has a ministerial, non-discretionary duty to state on the record his reasons for denying a motion to disqualify himself a writ of prohibition may issue to prevent him from proceeding further on a case until he has done so. Ting Hong Oceanic Enterprises v. Trial Division, 7 FSM R. 642, 643 (App. 1996).

A judge whose governmental employment ended before the events occurred that gave rise to the criminal case in front of him is not disqualified from the case because he did not act as an adviser to or was a material witness to the agreement at issue. FSM v. Ting Hong Oceanic Enterprises, 7 FSM R. 644, 649-51 (Pon. 1996).

A trial judge's discretion is limited by the disqualification statute, 4 F.S.M.C. 124, which prescribes under what circumstances he "shall disqualify himself." Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 4 (App. 1997).

A judge who sat on an appellate panel that reversed a criminal conviction on the ground of ineffective assistance of counsel is not necessarily disqualified from presiding over the retrial or a later appeal. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 5 (App. 1997).

Merely because the trial judge was once the sole official whose responsibility it was to sign a fishing agreement that contained similar and identical terms to a later agreement at issue in a case now before him is insufficient ground to disqualify him from trying this case. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 7 (App. 1997).

The general rule is that the disqualifying factors must be from an extrajudicial source. The normal situation in which recusal may be required is when a judge's extrajudicial knowledge, relationship or dealings with a party, or the judge's own personal or financial interests, might be such as to cause a reasonable person to question whether the judge could preside over and decide a particular case impartially. Even so, the judge may be disqualified from presiding further after a reversal if actual bias or prejudice or an appearance of partiality exists. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 7 (App. 1997).

A judge is not required to recuse himself from a retrial of convictions reversed because of ineffective assistance of counsel where one of his factual findings from the first trial relied upon an independent ground as well as arguably inadmissible evidence when the appellate court never ruled that the finding was clearly erroneous. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 8 (App. 1997).

A trial judge's view which the appellate court cannot be said to have been determined to be erroneous or based on evidence that must be rejected will not require his recusal from the retrial. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 9 (App. 1997).

When disqualification is not required in order to insure retrial before an impartial judge the fact that reassignment would entail minor waste and inconvenience would not change the result. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 9 (App. 1997).

A judge who represented a party in an earlier action involving the identical claim is required to recuse himself from the case. Bank of Guam v. O'Sonis, 8 FSM R. 301, 305 (Chk. 1998).

It is a due process violation for a former trial counselor or attorney to preside as a trial judge over litigation involving the same issues and interests he had been intimately involved with as a trial counselor or attorney, particularly where he had represented one of the litigants. Bank of Guam v. O'Sonis, 8 FSM R. 301, 305 (Chk. 1998).

A party has a due process right to a hearing before an unbiased judge and a judge without an interest in the case's outcome. Bank of Guam v. O'Sonis, 8 FSM R. 301, 305 (Chk. 1998).

When all Chuuk State Supreme Court justices have been disqualified from presiding, an appellate panel will have to be constituted without a Chuuk State Supreme Court justice and with a temporarily-appointed justice to preside. Cholymay v. Chuuk State Election Comm'n, 10

FSM R. 145, 151 (Chk. S. Ct. App. 2001).

A justice's power to recuse himself must be exercised concientiously, and should not be used merely to accommodate nervous litigants or counsel. Kosrae State Code, § 6.1202 establishes the standards of conduct for Kosrae state justices, which includes the Code of Judicial Conduct of the American Bar Association. Kosrae v. Sigrah, 10 FSM R. 654, 657 (Kos. S. Ct. Tr. 2002).

Even if a judge has commented on certain issues of law when he was a government employee, the judge is not disqualified, so long as he has not prejudged the particular case before him. Kosrae v. Sigrah, 10 FSM R. 654, 657 (Kos. S. Ct. Tr. 2002).

The power of a justice to recuse himself must be exercised conscientiously, and should not be used merely to accommodate nervous litigants or counsel. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 133, 136 (Kos. S. Ct. Tr. 2002).

A justice is not required to recuse himself due to his former position as governor at the time that the plaintiff was moved into the teacher position in question. Tolenoa v. Kosrae, 11 FSM R. 179, 184-85 (Kos. S. Ct. Tr. 2002).

When a motion is included with an alternative motion to recuse the judge it is proper to consider the motion to recuse first even though the motion to recuse is termed an "alternative" because, except for purely procedural or housekeeping matters, once a motion to recuse has been filed, it must be ruled on and reasons given before the judge may proceed further. FSM v. Wainit, 11 FSM R. 424, 429 (Chk. 2003).

Generally, neither counsel nor a party may seek recusal of a judge by announcing that they intend to call the judge as a witness. The general rule is that since a court speaks only through its journal, a judge cannot testify about the meaning or intent of his decision in a case or explain aspects of the decision further. Nor can a judge be called to testify as to secret or unexplained reasons which led him to decide a case in a certain manner. FSM v. Wainit, 11 FSM R. 424, 429 (Chk. 2003).

Attempts to disqualify judges by indicating that the judge will be called as a witness are not favored and are rarely granted. Such an easy method of disqualifying a judge should not be encouraged or allowed. FSM v. Wainit, 11 FSM R. 424, 430 (Chk. 2003).

The prohibition against compelling a judge's testimony is reflected in a long-standing principle that a court speaks only through its orders. This ban on judges testifying has limits. Those limits are that a judge must be acting as a judge, and that it is information regarding his or her role as a judge that is sought. FSM v. Wainit, 11 FSM R. 424, 430 (Chk. 2003).

When it is the judge's actions as a judge issuing a search warrant that a party would have the judge testify about, the judge is not a potential witness concerning his issuance of a search warrant, and thus this cannot be a ground to grant the recusal motion. FSM v. Wainit, 11 FSM R. 424, 430 (Chk. 2003).

A Kosrae State Court judge's failure to disqualify himself, even though he was not asked to, does not constitute plain error requiring the appellate court to vacate and remand the matter to the Kosrae State Court when the case was not the same controversy as the case in which the

judge had earlier acted as counsel because that case involved different land and different parties and its only apparent connection with this case was a will, but that will is inapplicable in this case and the prior case was dismissed on res judicata grounds without ever reaching any issues concerning the will. Anton v. Cornelius, 12 FSM R. 280, 286 (App. 2003).

Unsolicited letters from the public, expressing their views or requests on matters pending before the court, without anything more, cannot form the basis for disqualification of the justice to whom the letter was addressed. Unsupported allegations that the presiding judge may be influenced by an unsolicited letter is speculation and is insufficient to support the judge's disqualification. Allen v. Kosrae, 13 FSM R. 55, 59 (Kos. S. Ct. Tr. 2004).

When the trial judge is an unnamed member of a plaintiff class in another case, represented by the same counsel as the plaintiff in this case and defendant's counsel had notice of that more than one year before making a motion to recuse under 4 F.S.M.C. 124(1), and since a basis for a motion brought under section 124(1) is subject to waiver under section 4 F.S.M.C. 124(5), the basis for the judge's recusal was waived. Amayo v. MJ Co., 13 FSM R. 242, 248-49 (Pon. 2005).

Kosrae Land Court justices are required to adhere to the provisions of the Code of Judicial Conduct of the American Bar Association, which specifies that a justice is required to disqualify himself in all proceedings in which the justice's impartiality might reasonably be questioned. Isaac v. Saimon, 14 FSM R. 33, 35 (Kos. S. Ct. Tr. 2006).

That the judge has other criminal cases pending which he has not completed, and has granted continuances in other cases are meritless grounds to recuse the judge from sentencing the defendant on his final day as a judge when those matters are unrelated to this case and trial had been completed and the only action left is the imposition of sentence. Kosrae v. Tulensru, 14 FSM R. 115, 126-27 (Kos. S. Ct. Tr. 2006).

For the purpose of a recusal motion, a temporary justice is considered an FSM justice to whom 4 F.S.M.C. 124 applies. Goya v. Ramp, 14 FSM R. 303, 304 n.1 (App. 2006).

For the purpose of a recusal motion, a temporary justice is considered an FSM justice to which 4 F.S.M.C. 124 applies. Goya v. Ramp, 14 FSM R. 305, 308 n.3 (App. 2006).

Kosrae state judges are subject to the 2000 version of the American Bar Association Code of Judicial Conduct as the basis for judicial ethics and disqualification because the State Code adopted by reference and applied to Kosrae judges the 1984 edition of the ABA Code of Judicial Conduct but allowed the Kosrae Chief Justice, by rule, to make the judicial conduct requirements stricter or to establish other standards consistent with the Code of Judicial Conduct, which was done through Kosrae General Court Order 2003-02 adopting the 2000 version of the ABA Code of Judicial Conduct. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503 & n.1 (App. 2011).

If a presiding Land Court judge fails to recuse himself when he is required to, it is a due process violation and the matter must be remanded to the Kosrae Land Court with instructions and guidance for re-hearing the matter. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503-04 (App. 2011).

If the Kosrae Chief Justice sits on a case in the Land Court and his decision is later

appealed to the Kosrae State Court, the Chief Justice must then have no involvement in the case in the Kosrae State Court and the Kosrae State Court appeal would necessarily be handled by another justice. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 195 (App. 2013).

The general rule is that the disqualifying factors must be from an extrajudicial source, and the normal situation in which a judge's disqualification may be required is when a judge's extrajudicial knowledge, relationship or dealings with a party, or the judge's own personal or financial interests, might be such as to cause a reasonable person to question whether the judge could preside over and decide a particular case impartially. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 195 (App. 2013).

A motion to disqualify a judge based on the judge's health is not a motion based on any of the grounds for disqualification listed in 4 F.S.M.C. 124, the FSM disqualification statute. George v. Palsis, 20 FSM R. 157, 159 (Kos. 2015).

All motions to disqualify a judge under 4 F.S.M.C. 124 must be filed before the trial or hearing unless good cause is shown for filing it at a later time. George v. Palsis, 20 FSM R. 157, 159 (Kos. 2015).

When a judge's health issues and physical limitations have been widely known or apparent for some time, including to the movant's counsel, a motion to disqualify a judge made only after an adverse final judgment has been rendered must be denied. George v. Palsis, 20 FSM R. 157, 159-60 (Kos. 2015).

A reasonable disinterested observer would require more evidence than that the judge and staff stayed at the same hotel as a defendant and his counsel and speculation concerning the defendant's activities. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

The mere fact that a presiding justice happens to be a "Palau Justice," ruling on a matter in the FSM, is inconsequential, and an unsupported allegation that the jurist may not be privy to supposed peculiar nuances of FSM law, constitutes rank speculation and is insufficient to support the justice's disqualification. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 229 (Chk. 2015).

When the movants have not shown a factual basis for an appearance of impropriety, in terms of the judge overseeing two separate cases involving the same party or shown a lack of competency to rule on FSM matters and as a result, the motion to disqualify the judge will be denied. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 229 (Chk. 2015).

Disqualification of a Supreme Court trial division justice is governed by 4 F.S.M.C. 124, which in § 124(1) requires disqualification if the justice's impartiality could reasonably be questioned, and in § 124(2) requires a justice's disqualification if the justice concludes that he falls within the statutory provisions, and in § 124(2)(a) requires disqualification when the justice has a personal bias or prejudice concerning a party or his counsel, or personal knowledge of disputed evidentiary facts concerning the proceeding. Halbert v. Manmaw, 20 FSM R. 245, 248 (App. 2015).

In order for the Supreme Court to issue an extraordinary writ of prohibition overruling a trial judge's denial of a motion to disqualify, the trial judge's ruling must be an abuse of discretion. Halbert v. Manmaw, 20 FSM R. 245, 248, 250 (App. 2015).

When a party moves to disqualify a trial judge, the party is attacking that judge's perceived bias or conflict of interest. Halbert v. Manmaw, 20 FSM R. 245, 249 (App. 2015).

A petitioner seeking a writ of prohibition to disqualify a trial judge must show an abuse of discretion, as the appellate court will not merely substitute its judgment for that of the trial judge. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

A petition for a writ of prohibition to disqualify a trial judge will be denied when it neither meets the burden of showing the that the judge harbors bias or prejudice nor shows that any disqualifying knowledge was derived from an extrajudicial source since the mere fact that the judge made an adverse evidentiary ruling and declared a mistrial does not mean the judge's impartiality might reasonably be questioned. Halbert v. Manmaw, 20 FSM R. 245, 251 (App. 2015).

A defendant whose trial ended in a mistrial is entitled to a new trial, but not a new judge. Halbert v. Manmaw, 20 FSM R. 245, 251 (App. 2015).

The applicable recusal statute requires that a Supreme Court justice disqualify himself in any proceeding in which his impartiality might reasonably be questioned. In re Estate of Setik, 20 FSM R. 604, 606 (Chk. S. Ct. Tr. 2016).

The standard for disqualification in a proceeding is whether a disinterested reasonable person, knowing all the circumstances, would harbor doubts about a judge's impartiality. There is a presumption that judicial officers are unbiased and the burden of proof rests with the party asserting an unconstitutional bias to demonstrate otherwise. In re Estate of Setik, 20 FSM R. 604, 606 (Chk. S. Ct. Tr. 2016).

A typical situation where recusal may be required is when a sitting judge's extrajudicial knowledge, relationship, or dealings with a party or the judge's own personal or financial interests might be such as to cause a reasonable person to question whether the judge could impartially preside over and decide a particular case. In re Estate of Setik, 20 FSM R. 604, 606 (Chk. S. Ct. Tr. 2016).

In an issue of first impression, U.S. court decisions about judicial disqualification can be used for guidance. In re Estate of Setik, 20 FSM R. 604, 607 (Chk. S. Ct. Tr. 2016).

A writ of prohibition clearly should not be granted based on a judge's adverse ruling that did not even remain adverse when the justice changed her mind and on factors that arose as part of the give and take during a contentious oral hearing on a controversial topic. Peterson v. Anson, 20 FSM R. 657, 659 (App. 2016).

Under 4 F.S.M.C. 124(1), a Supreme Court justice must disqualify himself in any proceeding where his impartiality might reasonably be questioned. The standard for disqualification is whether a disinterested reasonable person, knowing all the circumstances, would harbor doubts about a judge's impartiality. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 45 (App. 2016).

Accepting a loan from a lending institution in its regular course of business on the same terms available to the general public, is fully consistent with a judge's obligation to conduct

personal activities so as to minimize the risk of conflicts that would result in frequent disqualifications. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 49 (App. 2016).

When a consumer loan was issued to the judge well before he was appointed to the appellate panel; when the bank does not aver any special circumstances necessitating the judge's disqualification since the loan was issued on standard terms available to the general public and were negotiated before his designation to the panel; and when the loan is current and not in default or delinquent nor at risk thereof, and is not currently being negotiated for extension, restructuring, or refinancing, the bank has not overcome the presumption that a judicial official is unbiased. Without more, a judge's consumer loan and the mere relationship between the bank and the judge as creditor-debtor, is insufficient to require the judge's disqualification. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 50 (App. 2016).

The Chuuk State Judiciary Act prohibits justices from presiding over matters when there is a general concern that his or her impartiality might reasonably be questioned, and it also sets forth more specific disqualifying circumstances including where the justice has a personal bias or prejudice concerning a party, or his counsel, or personal knowledge of dispute evidentiary facts concerning the proceeding. Selifis v. Robert, 21 FSM R. 344, 346 (Chk. S. Ct. App. 2017).

Often a litigant will not know which judge has been assigned the case until that judge either issues his or her first written order or appears on the bench at the case's first hearing. That is when, if there are grounds for the motion, a litigant would usually move to disqualify the judge. Setik v. FSM Dev. Bank, 21 FSM R. 505, 517 (App. 2018).

Although 4 F.S.M.C. 124 and the ABA Code of Judicial Conduct as made applicable to the FSM Supreme Court by 4 F.S.M.C. 122 define the circumstances that mandate the disqualification of FSM Supreme Court justices, those provisions neither prescribe nor prohibit any particular remedy for a violation of that duty. Setik v. FSM Dev. Bank, 21 FSM R. 505, 521 (App. 2018).

A conclusion that a violation of the recusal statute occurred does not end the inquiry. As in other areas of the law, there is surely room for harmless error, and there need not be a draconian remedy for every violation. Setik v. FSM Dev. Bank, 21 FSM R. 505, 521 (App. 2018).

A disqualified judge may perform purely ministerial tasks. An act is ministerial when the law requires that a duty be performed and leaves nothing to the exercise of discretion or judgment. Discretionary acts are those in which one has the right to determine between two or more courses of action. Simply put, an act which one must perform is ministerial, while an act which one may perform is discretionary. Setik v. FSM Dev. Bank, 21 FSM R. 505, 521 (App. 2018).

A disqualified judge is not prevented from making orders that are purely formal in character and may also issue housekeeping orders. Setik v. FSM Dev. Bank, 21 FSM R. 505, 521 (App. 2018).

When an order transferring title was in the nature of a ministerial or a housekeeping act because the justice did not have the discretion not to issue it since its prompt issuance once the successful qualified bidder had paid in full was mandated by an earlier order in aid of judgment that an order issue to transfer title so that the Pohnpei Court of Land Tenure could then perform its duties; and when, if another judge had been presented with the motion, the resulting order would not differ, the disqualified justice's order will not be vacated. Setik v. FSM Dev. Bank, 21

FSM R. 505, 521-22 (App. 2018).

A disqualified judge may perform purely ministerial tasks. An act is ministerial when the law requires that a duty be performed and leaves nothing to the exercise of discretion or judgment. Discretionary acts are those in which one has the right to determine between two or more courses of action. Simply put, an act which one must perform is ministerial, while an act which one may perform is discretionary. Setik v. Mendiola, 21 FSM R. 537, 559 (App. 2018).

A disqualified judge is not thereby prevented from making orders that are purely formal in character, including issuing housekeeping orders. Setik v. Mendiola, 21 FSM R. 537, 559 (App. 2018).

When a judge has sat in violation of an express statutory standard for disqualification, the usual remedy is that the disqualified judge's rulings are, on appeal, to be vacated. Setik v. Mendiola, 21 FSM R. 537, 560 (App. 2018).

A party's delay cannot, by itself, create a ground for that party to move for judicial disqualification. Setik v. Perman, 22 FSM R. 105, 111 n.3 (App. 2018).

The appellate court will disregard a contention that the appellants believe that the same FSM Supreme Court law clerk, who worked on their other trial court cases, worked on this case in the trial court when they do not explain how this would entitle them to any relief and when they do not point to any reason that disqualified this particular law clerk from assisting the FSM Supreme Court trial judge in this case. Setik v. Perman, 22 FSM R. 105, 118 (App. 2018).

A motion to disqualify the judge should be addressed first. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 180 (Pon. 2019).

A statement that something is "likely" is speculation. Allegations, that are purely speculative, are insufficient to support a judge's disqualification. Macayon v. FSM, 22 FSM R. 317, 320 n.1 (Chk. 2019).

Law clerks are generally bound by the same ethical rules as the judges they serve. The clerk is forbidden to do all that is prohibited to the judge. Panuelo v. Sigrah, 22 FSM R. 341, 363 (Pon. 2019).

– Recusal – Bias or Partiality

Determination of a judge's bias, prejudice or partiality should be made on the basis of conduct or information which is extrajudicial in nature. FSM v. Jonas (II), 1 FSM R. 306, 317-18 (Pon. 1983).

The fact that answers given by the victim-witness in response to questions posed by the judge happened to strengthen the government's case did not, by itself, indicate that the judge was impermissibly helping the prosecution, or that he was biased against the defendant. Andohn v. FSM, 1 FSM R. 433, 446 (App. 1984).

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

There is a presumption that a judicial or quasi-judicial official is unbiased. The burden is placed on the party asserting the unconstitutional bias. The presumption of neutrality can be rebutted by a showing of conflict of interest or some other specific reason for disqualification. When disqualification occurs, it is usually because the adjudicator has a pecuniary interest in the outcome or has been the target of personal abuse or criticism from the party before him. Suldan v. FSM (II), 1 FSM R. 339, 362-63 (Pon. 1983).

A judge has a duty to disqualify himself from presiding in a proceeding in which he entertains a bias or prejudice against a party. Andohn v. FSM, 1 FSM R. 433, 444 (App. 1984).

Questioning a judge's impartiality, under 4 F.S.M.C. 124(1), brings into issue possible favoritism, bias or some other interest of the judge for or against a party. This affords no basis, however, for disqualifying a judge because of his general attitudes, beliefs, or philosophy, even where it is apparent that those do not augur well for a particular litigant. FSM v. Skilling, 1 FSM R. 464, 472-73 (Kos. 1984).

In order that a judge's impartiality might reasonably be questioned there must be facts or reasons which furnish a rational basis for doubting the judge's impartiality. Reasonableness is to be considered from the perspective of a disinterested reasonable person. FSM v. Skilling, 1 FSM R. 464, 475 (Kos. 1984).

The test for determining if a judge's impartiality in a proceeding might reasonably be questioned is whether a disinterested reasonable person, knowing all the circumstances, would harbor doubts about the judge's impartiality. FSM v. Skilling, 1 FSM R. 464, 475 (Kos. 1984).

4 F.S.M.C. 124(2) prescribes a subjective test under which a judge must disqualify himself if he subjectively concludes that he falls within the statutory provisions. Section 124(1), on the other hand provides an objective standard designed to guard against the appearance of impartiality. FSM v. Skilling, 1 FSM R. 464, 476 (Kos. 1984).

4 F.S.M.C. 124(1) was designed to cover contingencies not foreseen by the draftsmen who set out specific grounds for disqualification in section 124(2). Despite its "catch all" nature, however, it remains necessary to show a factual basis, not just wide-ranging speculation or conclusions, for questioning a judge's impartiality. FSM v. Skilling, 1 FSM R. 464, 476-77 (Kos. 1984).

Courts normally adhere to the rule that any alleged judicial bias and prejudice, to be disqualifying, must stem from an extrajudicial source. FSM v. Skilling, 1 FSM R. 464, 483 (Kos. 1984).

Where a trial justice is asked to recuse himself rather than continue to sit on remaining counts after receiving testimony concerning stricken counts, the issue presented is whether there exists either actual bias, or prejudice, or appearance of partiality. Jonas v. FSM, 2 FSM R. 238, 239 (App. 1986).

To apply a standard of judicial ethics established by statute in 1982 to prevent a judge in 1989 from presiding over a case because his conduct prior to 1982 suggests that he now may be biased against the party seeking recusal would be inappropriate, in the nature of an ex post facto violation, and would be contrary to "the policy favoring prospective application of court decisions [which] also applies to statutes." Adams v. Etscheit, 4 FSM R. 237, 240 (Pon. S. Ct.

Tr. 1989).

Recusal of a trial judge from presiding over a criminal trial, because he has presided over a failed effort to end the case through a guilty plea, is not automatic, since bias, to be disqualifying, generally must stem from an extrajudicial source. In re Main, 4 FSM R. 255, 260 (App. 1990).

In determining whether a judge's impartiality might reasonably be questioned, the test is whether a disinterested reasonable person who knows all the circumstances would harbor doubts about the judge's impartiality. A reasonable disinterested observer would require more evidence than that one of the parties was seen at hotel where the judge had checked in. Jano v. King, 5 FSM R. 266, 270 (Pon. 1992).

In order for a judge's personal bias or prejudice to be disqualifying it must stem from an extrajudicial source or conduct, not from information learned or events occurring during the course of a trial. Youngstrom v. Youngstrom, 5 FSM R. 385, 387 (Pon. 1992).

Even where the circumstance does not give rise to a reasonable person questioning the justice's impartiality, if there is evidence of actual partiality disqualification would follow. In re Extradition of Jano, 6 FSM R. 93, 98 (App. 1993).

Where trial justice resides in housing rented by the national government and assigned to the trial justice as a statutory part of his compensation and the party before the court only seeks a monetary award for the alleged loss of the land upon which the trial justice resides the trial justice has no interest which might be substantially affected by any of the relief requested. It is therefore not an abuse of the trial justice's discretion to deny a motion to recuse for interest or bias. Nahnken of Nett v. Trial Division, 6 FSM R. 339, 340 (App. 1994).

For the questioning of a judge's impartiality to be reasonable it must be grounded upon facts or reasons which furnish a rational basis for doubting the judge's impartiality, and such reasonableness is not to be considered from the perspective of the litigant or of the judge, but of the disinterested reasonable observer. Damarlane v. United States, 7 FSM R. 52, 54 (Pon. S. Ct. App. 1995).

A judge's impartiality cannot reasonably be questioned when the judge had been chairman of an agency while it concluded an agreement with a party to a case now before him where only a later agreement is at issue and he had no part in negotiating the first agreement. Fu Zhou Fuyan Pelagic Fishery Co. v. Wang Shun Ren, 7 FSM R. 601, 605 (Pon. 1996).

Statements and rulings made by a judge in the course of judicial proceedings do not provide grounds for disqualification under 4 F.S.M.C. 124(1). There is a presumption that judicial officials are unbiased, and the burden of proof is on the party asserting an unconstitutional bias to demonstrate otherwise. A party requesting recusal on retrial must establish that actual bias or prejudice exists that comes from an extrajudicial source. FSM v. Ting Hong Oceanic Enterprises, 7 FSM R. 644, 649 (Pon. 1996).

Because a judicial official is presumed to be unbiased, a judge will not be required to recuse himself where the party seeking his recusal relies on presumptions and has not established a sufficient factual basis. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 6 (App. 1997).

A charge of appearance of partiality must first have a factual basis. Recusal is then appropriate only if a disinterested reasonable person who knows all the circumstances would harbor doubts about the judge's impartiality. The facts must provide what an objective, knowledgeable member of the public would find to be a reasonable basis for doubting the judge's impartiality. The trial judge has a range of discretion in making this determination. But a trial judge is not to use the standard of mere suspicion. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 6-7 (App. 1997).

There may be times when each of the grounds raised are insufficient to reasonably question the trial judge's impartiality, but the combination of all would cause a reasonable, disinterested person to harbor doubts about the judge's impartiality. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 10 (App. 1997).

A justice whose extrajudicial statements exhibit a bias towards a party's counsel must disqualify himself under Pohnpei statute, and failure to do so is a denial of due process. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 27-28 (App. 1997).

The type of partiality at which 4 F.S.M.C. 124(1) is aimed is extrajudicial bias, or bias resulting from information received by the judge outside of the judicial proceeding or proceedings in which the judge has participated. Hartman v. Bank of Guam, 10 FSM R. 89, 96 (App. 2001).

It is not unusual for the same judge to hear interrelated matters involving one or more parties in common, and the fact that the same judge hears different cases involving the same party or parties and related issues does not automatically result in an appearance of partiality under 4 F.S.M.C. 124(1). Hartman v. Bank of Guam, 10 FSM R. 89, 97 & n.5 (App. 2001).

In the absence of a showing of any actual partiality or extrajudicial bias under 4 F.S.M.C. 124(1), a judge properly meets his obligation to hear the case. Hartman v. Bank of Guam, 10 FSM R. 89, 98 (App. 2001).

Claims that a trial justice has shown disfavor toward intervenors' counsel, or bias in rulings in the instant case or other cases can be dismissed as failing to provide valid grounds for disqualification. Kristoph v. Emin, 10 FSM R. 650, 654 (Chk. S. Ct. Tr. 2002).

A party is entitled to an unbiased judge, not to a judge of their choosing. A party is not permitted to use a motion to disqualify a judge as a means of forum shopping. Kosrae v. Sigrah, 10 FSM R. 654, 657 (Kos. S. Ct. Tr. 2002).

The Code of Judicial Conduct requires that a judge disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned. Kosrae v. Sigrah, 10 FSM R. 654, 658 (Kos. S. Ct. Tr. 2002).

In the absence of a showing of any actual partiality or extrajudicial bias, a judge properly meets his obligation to hear the case. Kosrae v. Sigrah, 10 FSM R. 654, 658-59 (Kos. S. Ct. Tr. 2002).

A party is entitled to an unbiased judge, not to a judge of their choosing. A party is not permitted to use a motion to disqualify a judge as a means of judge shopping. Jackson v.

Kosrae State Election Comm'n, 11 FSM R. 133, 135-36 (Kos. S. Ct. Tr. 2002).

The Code of Judicial Conduct requires that a judge disqualify himself in a proceeding in which the judge's impartiality must reasonably be questioned. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 133, 136 (Kos. S. Ct. Tr. 2002).

Even when a judge has had prior opinions regarding a legal issue, this alone does not disqualify a judge, and even if a judge has commented on certain issues of law when he was a government employee, the judge is not disqualified so long as he has not prejudged the particular case before him. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 133, 137 (Kos. S. Ct. Tr. 2002).

In the absence of a showing of any actual partiality or extrajudicial bias, a judge properly meets his obligation to hear the case. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 133, 137 (Kos. S. Ct. Tr. 2002).

The applicable recusal statute requires that a Supreme Court justice disqualify himself in any proceeding in which his impartiality might reasonably be questioned. FSM v. Wainit, 11 FSM R. 424, 430 (Chk. 2003).

Ex parte applications are allowed (and are usual) for warrant applications or motions to file under seal. No inference of a judge's partiality may be drawn from them. FSM v. Wainit, 11 FSM R. 424, 431 (Chk. 2003).

The type of partiality at which 4 F.S.M.C. 124(1) is aimed is extrajudicial, that is, resulting from information received by the judge outside of the judicial proceeding or proceedings in which the judge has participated. FSM v. Wainit, 11 FSM R. 424, 431 (Chk. 2003).

When the communications in question were not extrajudicial, the court's impartiality cannot be reasonably questioned because the government made *ex parte* applications it is allowed to make under the applicable law. This therefore cannot be a ground for recusal. FSM v. Wainit, 11 FSM R. 424, 431-32 (Chk. 2003).

A charge of appearance of partiality must first have a factual basis and recusal is then appropriate only if a disinterested reasonable person who knows all the circumstances would harbor doubts about the judge's impartiality. The facts must provide what an objective, knowledgeable member of the public would find to be a reasonable basis for doubting the judge's impartiality. While the trial judge has a range of discretion in making this determination, he cannot use a standard of mere suspicion. FSM v. Wainit, 11 FSM R. 424, 432 (Chk. 2003).

When a party has not shown a factual basis to reasonably question the judge's impartiality, but only raised a mere suspicion, and when he has not shown a factual basis for a claim of bias or prejudice; and when he cannot call the current judge as a witness to testify about his judicial acts; and when even the combination of these would not cause a reasonable, disinterested person to harbor doubts about the judge's impartiality, the court can find no basis upon which to grant the motion to recuse. FSM v. Wainit, 11 FSM R. 424, 432 (Chk. 2003).

The fact that the same judge hears different cases involving the same party or parties or related issues does not automatically result in an appearance of partiality under 4 F.S.M.C. 124(1). FSM v. Wainit, 11 FSM R. 424, 432 (Chk. 2003).

In the absence of a showing of any actual partiality or extrajudicial bias under 4 F.S.M.C. 124(1), a judge properly meets his obligation to hear the case. FSM v. Wainit, 11 FSM R. 424, 432 (Chk. 2003).

The standard to be applied when a judge's recusal is sought on the ground a judge's impartiality might reasonably be questioned is whether a disinterested reasonable observer who knows all the circumstances would question the judge's impartiality. Adams v. Island Homes Constr., Inc., 12 FSM R. 181, 183 (Pon. 2003).

Litigants are not entitled to a judge of their own choosing; they are only entitled to an unbiased judge. FSM v. Kansou, 12 FSM R. 637, 640 (Chk. 2004).

A charge of appearance of partiality must first have a factual basis. The standard to be applied is whether an objective, knowledgeable member of the public would find to be a reasonable basis for doubting the judge's impartiality. The standard of "mere suspicion" is inadequate to support disqualification. Allen v. Kosrae, 13 FSM R. 55, 59 (Kos. S. Ct. Tr. 2004).

The applicable statute requires that a Supreme Court justice must disqualify himself in any proceeding in which his impartiality might reasonably be questioned. FSM v. Wainit, 13 FSM R. 293, 294 (Chk. 2005).

Disqualification of a Land Court Justice is required when the justice's impartiality might reasonably be questioned. One specific basis for disqualification is where the justice has a personal bias or prejudice concerning a party, or has personal knowledge of disputed evidentiary facts concerning the proceeding. Edmond v. Alik, 13 FSM R. 413, 416 (Kos. S. Ct. Tr. 2005).

Adjudicatory decisions affecting property rights, such as ownership, are subject to due process requirements of the state constitution. Due process demands impartiality on the part of the adjudicators, including a Land Court Presiding Justice. Edmond v. Alik, 13 FSM R. 413, 416 (Kos. S. Ct. Tr. 2005).

The test for determining if a judge's impartiality in a proceeding might by reasonably be questioned is whether a disinterested reasonable person, knowing all the circumstances, would harbor doubts about the judge's impartiality. There may be a time when each of the actions is insufficient to reasonably question the judge's impartiality, but the combination of all would cause a reasonable disinterested person to harbor doubts about the judge's impartiality. Edmond v. Alik, 13 FSM R. 413, 417 (Kos. S. Ct. Tr. 2005).

Since a judge must disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned, when the presiding justice's failure to recuse himself from the proceeding resulted in a violation of the appellant's due process rights, the decision determining ownership must be vacated and the matter remanded for further proceedings. Edmond v. Alik, 13 FSM R. 413, 417 (Kos. S. Ct. Tr. 2005).

The test for determining whether a justice's impartiality in a proceeding might reasonably be questioned is whether a reasonable disinterested person, who knows all the circumstances, would have doubts about the justice's impartiality, and the general rule is that the disqualifying factors must be from an extrajudicial source. Isaac v. Saimon, 14 FSM R. 33, 35 (Kos. S. Ct. Tr. 2006).

When a justice excluded counsel from a chambers conference in a Pohnpei Supreme Court case where counsel was trying to appear to represent a different client, her exclusion from that conference is inadequate to, and cannot, show personal bias by that justice toward counsel since, typically, only the judge and court personnel, the parties, and their counsel are permitted to attend a chambers conference and that counsel was not admitted to practice before the Pohnpei Supreme Court and her motion to appear pro hac vice in that case had not been granted. A petition for writ of prohibition will therefore be denied. Goya v. Ramp, 14 FSM R. 303, 304-05 (App. 2006).

An "incident" involving a justice's exclusion of counsel from a chambers conference in a Pohnpei Supreme Court case where counsel was trying to appear to represent a different client is inadequate to, and cannot, show personal bias toward counsel by that justice because typically, only the judge and court personnel, the parties, and their counsel are permitted to attend a chambers conference and since counsel is not admitted to practice before the Pohnpei Supreme Court and her motion to appear pro hac vice in that case had not been granted, her exclusion from that chambers conference is not a ground to disqualify the justice. Goya v. Ramp, 14 FSM R. 305, 308 (App. 2006).

In the absence of a showing of any actual partiality or extrajudicial bias under 4 F.S.M.C. 124(1), a judge properly meets his obligation to hear the case. The type of partiality at which 4 F.S.M.C. 124(1) is aimed is extrajudicial bias, or bias resulting from information received by the judge outside of the judicial proceeding or proceedings in which the judge has participated. Damarlane v. Pohnpei Legislature, 14 FSM R. 582, 584 (App. 2007).

A justice whose extrajudicial statements exhibit a bias towards a party's counsel must disqualify himself. Damarlane v. Pohnpei Legislature, 14 FSM R. 582, 584 (App. 2007).

While a trial judge has a range of discretion in making his determination about whether he will disqualify himself, he cannot use a standard of mere suspicion. A charge of appearance of partiality must first have a factual basis. Disqualification is then appropriate only if a disinterested reasonable person who knows all the circumstances would harbor doubts about the judge's impartiality. The facts must provide what an objective, knowledgeable member of the public would find to be a reasonable basis for doubting the judge's impartiality. Damarlane v. Pohnpei Legislature, 14 FSM R. 582, 584-85 (App. 2007).

A party requesting disqualification must establish that actual bias or prejudice exists that comes from an extrajudicial source. A litigant's unsupported allegations that the trial judge may have subconscious misgivings is purely speculation, and is insufficient to support the judge's disqualification. Damarlane v. Pohnpei Legislature, 14 FSM R. 582, 585 (App. 2007).

When there is simply no evidence – beyond mere speculation – that a justice might harbor some element of partiality towards the appellant or his counsel, as such, and without any evidence beyond mere speculation as to my purported partiality, the justice must deny the appellant's request under 4 F.S.M.C. 124(1) to disqualify himself from participating in the matter, but recusal may be granted on other grounds. Damarlane v. Pohnpei Legislature, 14 FSM R. 582, 585 (App. 2007).

A Supreme Court Justice must disqualify himself in any proceeding in which his impartiality might reasonably be questioned. Berman v. Rosario, 15 FSM R. 337, 340, 341 (Pon. 2007).

In the absence of a showing of any actual partiality or extrajudicial bias under 4 F.S.M.C. 124(1), a judge properly meets his obligation to hear the case. Berman v. Rosario, 15 FSM R. 337, 341 (Pon. 2007).

The type of partiality at which 4 F.S.M.C. 124(1) is aimed is extrajudicial bias, or bias resulting from information received by the judge outside of the judicial proceeding or proceedings in which the judge has participated. A justice whose extrajudicial statements exhibit a bias towards a party's counsel must disqualify himself. On the other hand, while a trial judge has a range of discretion in making his determination about whether he will disqualify himself, he cannot use a standard of mere suspicion. Berman v. Rosario, 15 FSM R. 337, 341 (Pon. 2007).

A charge of appearance of partiality must first have a factual basis. Disqualification is then appropriate only if a disinterested reasonable person who knows all the circumstances would harbor doubts about the judge's impartiality. The facts must provide what an objective, knowledgeable member of the public would find to be a reasonable basis for doubting the judge's impartiality. Berman v. Rosario, 15 FSM R. 337, 341 (Pon. 2007).

A party requesting disqualification must establish that actual bias or prejudice exists that comes from an extrajudicial source. A litigant's unsupported allegations that the trial judge may have subconscious misgivings is purely speculation, and is insufficient to support the judge's disqualification. Berman v. Rosario, 15 FSM R. 337, 341 (Pon. 2007).

A determination of a judge's bias should be made on the basis of conduct or information which is extrajudicial in nature. FSM v. Halbert, 20 FSM R. 49, 52 (Pon. 2015).

Since it is in the very nature of our system of justice that judges must rule in favor of one party and against another, a judge does not engage in extrajudicial behavior merely by ruling in favor of one party and against another. FSM v. Halbert, 20 FSM R. 49, 52 (Pon. 2015).

The thesis that an adverse ruling from the bench can constitute extrajudicial behavior that warrants disqualification must be rejected. FSM v. Halbert, 20 FSM R. 49, 52 (Pon. 2015).

Courts adhere to the rule that any alleged judicial bias and prejudice, to be disqualifying, must stem from an extrajudicial source, and that a judge's adverse rulings in a case do not create grounds for disqualification from that case. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

The fact that the same judge hears different cases involving the same party or parties or related issues, does not automatically result in an appearance of partiality under 4 F.S.M.C. 124(1). FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 229 (Chk. 2015).

Information that a judge learned or events that occurred during the course of a judicial proceeding cannot disqualify the judge on the grounds that the events or information now cause him to be biased or prejudiced or create an appearance of impropriety. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

In determining whether a judge's impartiality might reasonably be questioned, the test is whether a disinterested reasonable person who knows all the circumstances would harbor doubts about the judge's impartiality. Pohnpei Transfer & Storage, Inc. v. Shoniber, 20 FSM R.

492, 495 (Pon. 2016).

The normal situation in which recusal may be required is when a judge's extrajudicial knowledge, relationship, or dealings with a party or the judge's own personal or financial interests, might be such as to cause a reasonable person to question whether the judge could preside over and decide a particular case impartially. Pohnpei Transfer & Storage, Inc. v. Shoniber, 20 FSM R. 492, 495 (Pon. 2016).

A justice with an outstanding bank loan can also decide for himself whether to recuse himself if the issue of impartiality arises. In re Estate of Setik, 20 FSM R. 604, 608 (Chk. S. Ct. Tr. 2016).

Factors disqualifying a justice for bias or prejudice generally must be established as coming from an extrajudicial source. Peterson v. Anson, 20 FSM R. 657, 659 (App. 2016).

Judicial officers are presumed to be unbiased and the burden of proof rests with the party asserting an unconstitutional bias to demonstrate otherwise. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 45 (App. 2016).

When unusual circumstances exist, questions about impartiality may arise. For example, if a judge were presently appealing to the bank for a loan or an extension for or restructuring of a loan, or if the loan is currently in default and is presently or soon will be litigated, there would exist a real question about the appearance of impropriety. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 49 (App. 2016).

The mere fact of a relationship between a judge and a financial institution as borrower/lender or mortgagor/mortgagee does not give rise to an inference that the judge's impartiality might reasonably be questioned. Something more than an ordinary financial transaction between the judge and financial institution must be present for disqualification to be necessary as when the financial relationship affords the judge services and benefits not generally available to the public. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 49 (App. 2016).

Merely because a justice presided over a different case, involving the same parties or related issues, does not, *ipso facto*, reflect an appearance of partiality, which would necessitate recusal. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 314 (App. 2017).

In order to objectively determine whether a judge may be impartial, the effective test requires the court to determine whether a disinterested reasonable person, knowing all the circumstances, would harbor doubts about the judge's impartiality. Selifis v. Robert, 21 FSM R. 344, 346 (Chk. S. Ct. App. 2017).

When, given the loose familial ties between counsel and the justice, it is hard to find a sufficient familial or political connection between the justice and appellee's counsel that would warrant a disinterested, reasonable individual to doubt the justice's impartiality. Selifis v. Robert, 21 FSM R. 344, 347 (Chk. S. Ct. App. 2017).

When the Attorney General's affidavit did not provide any basis for the belief that the justice and his family did not like his promotion to Chuuk State Supreme Court Associate Justice; when neither the motion nor its accompanying affidavit consider that being a Chuuk State Supreme

Court justice has the effect of prohibiting the justice from having anything to do with the Attorney General outside of the courtroom for fear of the appearance of impropriety; when nothing in the arguments or affidavit shows that any specific transgressions occurred between the two; and when, based on the arguments, the justice would be wholly prohibited from presiding over any matter in which Chuuk was a party for the remainder of the Attorney General's tenure (a dangerous precedent to set on so little evidence), there was not a sufficient showing of personal bias between the justice and the Attorney General that would warrant a disinterested, reasonable individual to doubt the justice's impartiality. Selifis v. Robert, 21 FSM R. 344, 347-48 (Chk. S. Ct. App. 2017).

When the trial court justice should have known that her uncle had a substantial interest that might be affected by future rulings; and when she should also have realized that by then her impartiality might reasonably be questioned, she should have recused herself and not ruled on a motion to reconsider, and when she did not, that order will be vacated. Setik v. FSM Dev. Bank, 21 FSM R. 505, 522 (App. 2018).

Litigants are not entitled to a judge of their own choosing; they are only entitled to an unbiased judge. Setik v. Mendiola, 21 FSM R. 537, 550 (App. 2018).

When the justice would, or should, have first known – had actual knowledge – that a person in close relationship to her, her uncle, could be substantially affected by further substantive proceedings involving the property, there was now a conflict. Only then did her disqualification become an issue. It was also when her impartiality might first reasonably be questioned. Setik v. Mendiola, 21 FSM R. 537, 559 (App. 2018).

A disqualified justice should recuse herself rather than rule on a Rule 11 motion because it is neither a housekeeping nor a ministerial matter, and because her impartiality might reasonably be questioned even though the Rule 11 motion could not substantially affect her uncle's interest. Setik v. Mendiola, 21 FSM R. 537, 560 (App. 2018).

Merely because a justice presided over a different case, involving the same parties or related issues, does not, by itself, create an appearance of partiality that would necessitate the justice's recusal under 4 F.S.M.C. 124(1). Setik v. Perman, 22 FSM R. 105, 111 (App. 2018).

A judge must disqualify himself from a proceeding in which the judge's impartiality might reasonably be questioned. The disqualifying factors must be from an extrajudicial source. Heirs of Sigrah v. George, 22 FSM R. 211, 218 (App. 2019).

A charge of appearance of partiality must first have a factual basis. The standard to be applied is whether an objective, knowledgeable member of the public would find to be a reasonable basis for doubting the judge's impartiality. Heirs of Sigrah v. George, 22 FSM R. 211, 218 (App. 2019).

Generally, an affidavit is required to provide a factual basis for questioning a judge's impartiality, but other admissible evidence may be used to support a motion to recuse. When the presiding justice's own statements about his own knowledge of facts relating to the incident and the defendant's alleged conduct, were made on the record in the courtroom hearings, these statements may be used to question a justice's impartiality and be a basis for disqualification. Under such facts, the affidavit requirement is satisfied by other admissible evidence: the record

of the hearings. Heirs of Sigrah v. George, 22 FSM R. 211, 218 (App. 2019).

Generally, an affidavit is required to provide a factual basis for questioning a judge's impartiality, but other admissible evidence may be used to support a motion to recuse. When the presiding justice's own statements about his own knowledge of facts relating to the incident and the defendant's alleged conduct, were made on the record in the courtroom hearings, these statements may be used to question a justice's impartiality and be a basis for disqualification. Under such facts, the affidavit requirement is satisfied by other admissible evidence: the record of the hearings. Heirs of Sigrah v. George, 22 FSM R. 211, 218 (App. 2019).

It is not unusual for the same judge to hear interrelated matters involving one or more parties in common, and the fact that the same judge hears different cases involving the same party or parties, and related issues does not automatically result in an appearance of partiality. Heirs of Sigrah v. George, 22 FSM R. 211, 218 (App. 2019).

A judge's disqualification is required when the judge's impartiality might reasonably be questioned, and one specific basis for disqualification is when the justice has personal knowledge of disputed evidentiary facts concerning the proceeding. Heirs of Sigrah v. George, 22 FSM R. 211, 218-19 (App. 2019).

A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. A judge's disqualification is required when the judge or the judge's spouse, or a person within the third degree of relationship to either of them, is a party to the proceeding. An uncle is within the third degree relationship. Relatives within the third degree of relationship are great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, or niece. Heirs of Sigrah v. George, 22 FSM R. 211, 219 & n.2 (App. 2019).

A Supreme Court justice must disqualify himself in any proceeding in which his impartiality might reasonably be questioned. Macayon v. FSM, 22 FSM R. 317, 320 (Chk. 2019).

The type of partiality at which 4 F.S.M.C. 124(1) is aimed is extrajudicial bias, or bias resulting from information received by the judge outside of the judicial proceeding or proceedings in which the judge has participated. Macayon v. FSM, 22 FSM R. 317, 320 (Chk. 2019).

A movant has not shown that a judge's impartiality might reasonably be questioned when it has not shown that a disinterested reasonable person, who knows all the circumstances, would harbor doubts about the judge's impartiality. A judge then is unable to disqualify himself under 4 F.S.M.C. 124(1). Macayon v. FSM, 22 FSM R. 317, 320 (Chk. 2019).

Absent a showing that the judge is disqualified under 4 F.S.M.C. 124, a judge is obligated to hear the cases assigned to that judge. This is because a judge must exercise the power to recuse himself conscientiously and cannot use it to avoid difficult or controversial cases or to merely accommodate nervous litigants or counsel. Macayon v. FSM, 22 FSM R. 317, 321 (Chk. 2019).

When it is not the judge's duty to disqualify himself from a case to which he has been assigned, it is the judge's duty to serve. Macayon v. FSM, 22 FSM R. 317, 321 (Chk. 2019).

When the movant has not shown that the judge is disqualified from hearing the case, and the judge is not aware of other grounds that would disqualify him, the judge is obligated to hear the case, and must deny the disqualification motion. Macayon v. FSM, 22 FSM R. 317, 321 (Chk. 2019).

The type of partiality at which 4 F.S.M.C. 124(1) is aimed is extrajudicial bias, or bias resulting from information received by the judge outside of the judicial proceeding or proceedings in which the judge has participated. Panuelo v. Sigrah, 22 FSM R. 341, 363-64 (Pon. 2019).

– Recusal – Close Relationship

Canon 3E(1) of the Code of Judicial Conduct, as adopted by Kosrae State Code, section 6.201, requires that a justice be disqualified in certain cases, including those cases where the judge is within the third degree relationship to one of the parties. The term "third degree relationship" is defined in the Code of Judicial Conduct and does not include cousin. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 92 (Kos. S. Ct. Tr. 1999).

Disqualification under the Code of Judicial Conduct based upon the justice's family relationship to a party is not mandatory when the party is a cousin because the third degree relationship does not include cousin. So when there are no specific allegations of the justice's partiality and the justice has no personal interest in the outcome, a motion to recuse in a matter involving a cousin may be denied. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 92 (Kos. S. Ct. Tr. 1999).

A justice is required to disqualify himself in a proceeding in which a person within the third degree of relationship to the justice is to the justice's knowledge likely to be a material witness in the proceeding. Shrew v. Kosrae, 10 FSM R. 533, 535 (Kos. S. Ct. Tr. 2002).

When the justice's brother has been named as a witness for trial the justice, pursuant to Canon 3.E(l)(d)(iv), is now disqualified from the proceeding. Shrew v. Kosrae, 10 FSM R. 533, 535 (Kos. S. Ct. Tr. 2002).

A Chuuk State Supreme Court trial justice must be disqualified when the justice's impartiality might reasonably be questioned where he or his spouse, or a person within a close relationship to either of them, or the spouse of such person is a party to the proceeding. Kristoph v. Emin, 10 FSM R. 650, 652 (Chk. S. Ct. Tr. 2002).

The ABA Code of Judicial Conduct provides that a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including when the judge or the judge's spouse, or a person related to either within the third degree of relationship, or the spouse of such a person is a party to the proceeding. Kristoph v. Emin, 10 FSM R. 650, 652-53 (Chk. S. Ct. Tr. 2002).

In order to obtain a justice's disqualification based upon Chk. S.L. No. 190-08, section 22(2)(d)(i), the moving party must establish by admissible evidence that the alleged relationship is within the third degree of relationship. It is not sufficient for disqualification that a party show that a justice is related to a party or a party's spouse solely by virtue of their membership in the same clan. Kristoph v. Emin, 10 FSM R. 650, 653 (Chk. S. Ct. Tr. 2002).

When counsel's affidavit in support of a recusal motion fails to demonstrate in any way how he has personal knowledge of the relationships contained in his affidavit, rather than knowledge based upon statements made to him by others, his affidavit is deficient, and must be disregarded. Kristoph v. Emin, 10 FSM R. 650, 654 (Chk. S. Ct. Tr. 2002).

When it is impossible to determine from an affidavit whether the degree of relationship is within the third degree of consanguinity, a motion to disqualify will be denied because failure to establish the degree of relationship by admissible evidence is fatal to a motion to disqualify. Kristoph v. Emin, 10 FSM R. 650, 654 (Chk. S. Ct. Tr. 2002).

A justice is required to disqualify himself in a proceeding in which a person within the third degree of relationship to the justice is, to the justice's knowledge, likely to be a material witness in the proceeding, but when the justice's brother was never a witness in the case, was not named as a witness by either party, and did not testify at the trial, he was not a person likely to be a material witness in the proceeding and the justice's disqualification was not required on this basis. Tolenoa v. Kosrae, 11 FSM R. 179, 183 (Kos. S. Ct. Tr. 2002).

The Code of Judicial Conduct requires a judge's disqualification when the judge or judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person is a party to the proceeding, or an officer, director or trustee of a party. But the phrase "director of a party" in the Code of Judicial Conduct is limited to corporations and business entities, and does not include directors in state government. Tolenoa v. Kosrae, 11 FSM R. 179, 183-84 (Kos. S. Ct. Tr. 2002).

A Supreme Court justice must disqualify himself when a person within a close relationship to him is a director of a party and also in any proceeding in which his impartiality might reasonably be questioned. Adams v. Island Homes Constr., Inc., 12 FSM R. 181, 182-83 (Pon. 2003).

The recusal statute provides that a justice shall disqualify himself if a closely related person is a director of a party, not has been or was at some point in the past. Therefore when the judge's brother's board membership and the judge's assignment to the case was never concurrent, there was not a time when 4 F.S.M.C. 124(2)(e)(i) was applicable, especially when the judge was not aware that his brother had been a member of party's board until so notified by the party's advice to the court. Adams v. Island Homes Constr., Inc., 12 FSM R. 181, 183 (Pon. 2003).

When it has now been just over three and a half years since the judge's brother was last a party's board member, and more than six and a half years since he first became one, and when the judge was not aware that his brother had been a board member until so advised by the party, the judge's thinking in the course of the case could not have been influenced by a fact of which he was not aware, and the court cannot conclude that a disinterested reasonable observer who knows all of these circumstances would question the judge's impartiality. Adams v. Island Homes Constr., Inc., 12 FSM R. 181, 183 (Pon. 2003).

Under Mortlockese custom, a person would be considered related to his relative's stepson, but the added generation that results from his relative being another's step-grandmother – as opposed to his step-mother – cuts off the relationship under Mortlockese custom so that in

actual fact a person is not considered related to the other. In such circumstances, a judge would not need to disqualify himself since he lacks a relationship to the other. Berman v. Rosario, 15 FSM R. 337, 339 n.1 (Pon. 2007).

When the judge disqualified himself in another case because of his mistaken belief at the time that his relative was a party's step-mother; when, although the plaintiff in a second matter moved to disqualify the judge from presiding over that matter, he did not disqualify himself and would not have disqualified himself if he had ruled on the motion, but ultimately reassigned that case for administrative reasons; and when the judge had no relationship of any type with the parties in either case and thus there was no reasonable basis for anyone to question his impartiality in presiding over the case at bar, in which counsel in the other two cases is plaintiff; and when there is no evidence, beyond mere speculation, that the judge might harbor some element of impartiality towards the plaintiff, the judge will deny a request that he disqualify himself. Berman v. Rosario, 15 FSM R. 337, 341-42 (Pon. 2007).

A Chuuk State Supreme Court trial justice must be disqualified when the justice's impartiality might reasonably be questioned including when he or his spouse, or a person within a close relationship to either of them, or the spouse of such person, is a party to the proceeding. A close relationship means a person within the third degree of relationship. Nakamura v. Sharivy, 15 FSM R. 409, 413 (Chk. S. Ct. Tr. 2007).

In order to obtain a justice's disqualification based upon Chk. S.L. No. 190-08, section 22(2)(d)(i), the moving party must establish by admissible evidence that the alleged relationship is within the third degree of relationship. It is not sufficient for disqualification that a party show that a justice is related to a party or a party's spouse solely by virtue of their membership in the same clan. Nakamura v. Sharivy, 15 FSM R. 409, 413 (Chk. S. Ct. Tr. 2007).

A judge is disqualified to sit on a lawsuit when a party's counsel is the judge's sister-in-law. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 606 (App. 2014).

The Code of Judicial Conduct requires that a justice be disqualified when the judge is within the third degree relationship to one of the parties. The term third degree relationship as defined in the Code does not include cousin. Pohnpei Transfer & Storage, Inc. v. Shoniber, 20 FSM R. 492, 495 (Pon. 2016).

There are various degrees of familial relationships and not every family relationship requires disqualification. The FSM Judiciary Act of 1979 requires disqualification of a justice on the basis of "close relationship," not just any relationship, to a person involved in litigation. Pohnpei Transfer & Storage, Inc. v. Shoniber, 20 FSM R. 492, 495 (Pon. 2016).

When the familial relationship relied upon by the movant is too remote to cause any conflict of interest, the motion to recuse will be denied. Pohnpei Transfer & Storage, Inc. v. Shoniber, 20 FSM R. 492, 496 (Pon. 2016).

When counsel is the judge's wife's sister, it creates a non-waivable conflict of interest requiring the judge's recusal. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 549 (Pon. 2016).

Recusal is not required when counsel was the judge's former Pohnpei Supreme Court law clerk but the judge has had no relationship with him since his law clerk employment ended

several years ago and has never worked on this particular matter with him because there is no actual or potential conflict of interest, notwithstanding that the State also waived any potential conflict. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 549 (Pon. 2016).

All FSM Supreme Court justices, including temporary justices while they sit, are subject to the FSM Judiciary Act, under which, an FSM Supreme Court justice must disqualify herself where she or her spouse, or a person within a close relationship to either of them, or the spouse of such a person, is known by the justice to have an interest that could be substantially affected by the outcome of the proceeding. Setik v. FSM Dev. Bank, 21 FSM R. 505, 520 (App. 2018).

The Judiciary Act requires Supreme Court justices to adhere to the standards of the Code of Judicial Conduct of the American Bar Association, and that Code defines close relationship as someone within the third degree of relationship. An uncle is within the third degree of relationship. Setik v. FSM Dev. Bank, 21 FSM R. 505, 520-21 (App. 2018).

When the trial court justice should have known that her uncle had a substantial interest that might be affected by future rulings; and when she should also have realized that by then her impartiality might reasonably be questioned, she should have recused herself and not ruled on a motion to reconsider, and when she did not, that order will be vacated. Setik v. FSM Dev. Bank, 21 FSM R. 505, 522 (App. 2018).

All FSM Supreme Court justices, including temporary justices while they sit, are subject to the FSM Judiciary Act, and, under that Act, an FSM Supreme Court justice must disqualify herself where she or her spouse, or a person within a close relationship to either of them, or the spouse of such a person is known by the justice to have an interest that could be substantially affected by the outcome of the proceeding. Setik v. Mendiola, 21 FSM R. 537, 558-59 (App. 2018).

The Judiciary Act requires Supreme Court justices to adhere to the standards of the Code of Judicial Conduct of the American Bar Association, and that Code defines close relationship as someone within the third degree of relationship. An uncle is within the third degree. Setik v. Mendiola, 21 FSM R. 537, 559 (App. 2018).

When the justice's uncle became the winning bidder of a court-ordered sale, a potential conflict emerged, although if virtually anyone else had been the winning bidder, no conflict would have arisen. Setik v. Mendiola, 21 FSM R. 537, 559 (App. 2018).

When the justice would, or should, have first known – had actual knowledge – that a person in close relationship to her, her uncle, could be substantially affected by further substantive proceedings involving the property, there was now a conflict. Only then did her disqualification become an issue. It was also when her impartiality might first reasonably be questioned. Setik v. Mendiola, 21 FSM R. 537, 559 (App. 2018).

Disqualifying circumstances do not have retroactive effect when they could not have affected the justice's orders beforehand because until her uncle became the winning bidder, the justice would not have known that her uncle had an interest that the litigation could substantially affect. Setik v. Mendiola, 21 FSM R. 537, 559 (App. 2018).

A disqualified justice should recuse herself rather than rule on a Rule 11 motion because it

is neither a housekeeping nor a ministerial matter, and because her impartiality might reasonably be questioned even though the Rule 11 motion could not substantially affect her uncle's interest. Setik v. Mendiola, 21 FSM R. 537, 560 (App. 2018).

Sufficient cause for a party to seek the presiding judge's disqualification after he has made his decision is shown when the presiding judge disclosed his uncle-nephew relationship with the parties while rendering his decision and further discussed a different, related case wherein he indicated that, because a party in that case lost, it was rightful that he also lose this case. Heirs of Sigrah v. George, 22 FSM R. 211, 217 (App. 2019).

The movants have met the standard for showing a factual basis for the judge's disqualification when they have provided an affidavit from a disinterested observer who has pointed to the close familial ties and friendship that the judge has with the case's parties. Heirs of Sigrah v. George, 22 FSM R. 211, 218 (App. 2019).

A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. A judge's disqualification is required when the judge or the judge's spouse, or a person within the third degree of relationship to either of them, is a party to the proceeding. An uncle is within the third degree relationship. Relatives within the third degree of relationship are great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, or niece. Heirs of Sigrah v. George, 22 FSM R. 211, 219 & n.2 (App. 2019).

– Recusal – Extrajudicial Knowledge

A judge who, at the beginning of a trial, is so influenced by other information that he knows he will not be capable of basing his decision solely on the properly admitted evidence in the case is under an ethical obligation to disqualify himself or herself from the litigation. FSM v. Jonas (II), 1 FSM R. 306, 320 n.1 (Pon. 1983).

The normal situation in which recusal may be required is when a judge's extrajudicial knowledge, relationship or dealings with a party or the judge's own personal or financial interests, might be such as to cause a reasonable person to question whether the judge could preside over and decide a particular case impartially. In re Main, 4 FSM R. 255, 260 (App. 1990).

The term "disputed evidentiary facts concerning the proceeding" does not apply to disputed legal issues in the case. Even where a judge may have had prior opinions regarding a legal issue, this alone does not disqualify a judge. Kosrae v. Sigrah, 10 FSM R. 654, 657 (Kos. S. Ct. Tr. 2002).

A judge's participation in a constitutional convention does not require his recusal for having personal knowledge of disputed evidentiary facts concerning a provision adopted in that convention because any knowledge gained during the convention is not a disputed evidentiary fact. Kosrae v. Sigrah, 10 FSM R. 654, 659 (Kos. S. Ct. Tr. 2002).

When the justice does not have personal knowledge of disputed evidentiary facts concerning the proceeding; when he has not prejudged any legal issues in this case; and when a disinterested reasonable observer, knowing all the facts and circumstances, would not have

doubts regarding his impartiality in this case based upon his participation as a Constitutional Convention delegate nearly twenty years ago, the justice's disqualification is not required under the Code of Judicial Conduct. Kosrae v. Sigrah, 10 FSM R. 654, 659 (Kos. S. Ct. Tr. 2002).

The Code of Judicial Conduct requires a justice to disqualify himself in a proceeding where the judge has personal bias or knowledge of disputed evidentiary facts concerning the proceeding. The term "disputed evidentiary facts concerning the proceeding" has been interpreted to mean facts involved in the actions or conduct of persons in a case. The term does not apply to the legal issues presented in the case. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 133, 136 (Kos. S. Ct. Tr. 2002).

When a justice does not have personal knowledge of disputed evidentiary facts concerning a case involving the interpretation of constitutional provisions because any knowledge gained during a constitutional convention is not personal knowledge of disputed evidentiary facts concerning the case, and when the justice has not prejudged any legal issues in the case, a disinterested reasonable observer, knowing all the facts and circumstances, would not have doubts regarding the justice's impartiality in the case, based upon his participation as a constitutional convention delegate. The justice's disqualification is therefore not required. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 133, 137 (Kos. S. Ct. Tr. 2002).

There is no need to remand a matter for a new trial judge to consider the summary judgment motions when the knowledge that the defendants lived on part of the land was in the record and did not stem from an extrajudicial source; when there was no extrajudicial conduct because the trial judge received information from the former special master when both counsel were present; when trial counsel as well as the judge engaged in appeals to divine aid at the motion hearing; and when the judge encouraged settlement. Bualuay v. Rano, 11 FSM R. 139, 148-49 (App. 2002).

Generally, an affidavit is required to provide a factual basis for questioning a judge's impartiality, but other admissible evidence may also by used to support a motion to recuse. When statements made by the presiding justice himself, regarding his own extrajudicial knowledge of facts relating to the subject incident and the defendant's alleged conduct, were made on the record in the courtroom at hearings, these statements can be used for questioning the justice's impartiality and a basis for recusal. Under these specific facts and in this case, the requirement for an affidavit is satisfied by other admissible evidence: the record of the hearings. Kosrae v. Langu, 13 FSM R. 269, 272 (Kos. S. Ct. Tr. 2005).

Disqualification of a the justice is required when the justice has personal knowledge of disputed evidentiary facts concerning the proceeding. The term "disputed evidentiary facts concerning the proceeding" has been interpreted to mean facts involved in the actions or conduct of persons in a case. Kosrae v. Langu, 13 FSM R. 269, 272 (Kos. S. Ct. Tr. 2005).

Since at trial, the defendant may defend the malicious mischief charge through disputing the elements of the offense, including the alleged damage to the glass at the school, and since the presiding justice's hearing glass being broken on the subject night at the school may be considered circumstantial evidence of defendant's conduct, the presiding justice's hearing glass being broken on the subject night at the school may be facts involved in the defendant's actions or conduct in this case and therefore disputed evidentiary facts concerning the proceeding. Accordingly, the trial justice recused himself. Kosrae v. Langu, 13 FSM R. 269, 272-73 (Kos. S. Ct. Tr. 2005).

Disqualifying factors must be from an extrajudicial source. When the only example a party gives of the court's supposed "extrajudicial knowledge" is the court's statement of its intention when it issued the search warrant that lead to the events in the case, it is a novel interpretation of the word "extrajudicial." Knowledge gained through the application for and issuance of a search warrant, by its nature, cannot be deemed extrajudicial knowledge. FSM v. Wainit, 13 FSM R. 293, 294-95 (Chk. 2005).

A judge's disqualification must be made on the basis of conduct which is extrajudicial in nature that is, on some basis other than what the judge learned from his participation in the case. Information learned, or events occurring during the course of a judicial proceeding cannot be used to recuse a judge on the grounds that the events or this information has now caused him to be biased or prejudiced or that it creates an appearance of impropriety. FSM v. Wainit, 13 FSM R. 293, 295 (Chk. 2005).

A justice, who at the beginning of a trial, is so influenced by other information that he knows he will not be capable of basing his decision solely on the properly admitted evidence is under an ethical obligation to disqualify himself from the proceedings. Edmond v. Alik, 13 FSM R. 413, 416-17 (Kos. S. Ct. Tr. 2005).

The normal situation in which recusal may be required is when a justice's extrajudicial knowledge, relationship or dealing with a party might be such as to cause a reasonable person to question whether the justice could preside over and decide a particular case impartially. Isaac v. Saimon, 14 FSM R. 33, 35-36 (Kos. S. Ct. Tr. 2006).

A justice must disqualify himself where he has served in governmental employment and in such capacity expressed an opinion concerning the merits of the particular case in controversy. The presiding Land Court justice's former position as Land Commissioner and his attendant statutory duties to review, approve and affirm adjudications for determination of ownership of land, including boundary determinations, serve as grounds for disqualification, based upon extrajudicial knowledge. When the presiding justice served in governmental employment as a Kosrae State Land Commissioner and affirmed the land registration team adjudication and determination of the parcel's boundaries, the presiding justice (as a Land Commissioner) did express an opinion concerning the merits of the parties' boundary claims. Isaac v. Saimon, 14 FSM R. 33, 36 (Kos. S. Ct. Tr. 2006).

Disqualification is required where the justice has "personal knowledge of disputed evidentiary facts concerning the proceeding." The term "disputed evidentiary facts concerning the proceeding" has been interpreted to mean facts involved in the actions or conduct of persons in a case. Kosrae v. Nena, 14 FSM R. 70, 71 (Kos. S. Ct. Tr. 2006).

When the justice did not hear or observe any of the defendant's alleged actions, either concerning the charged offenses, or relating to the alleged crash into the electric pole causing an island-wide power outage; when he did not mention the defendant's identity or name; and when he did not make any statement which suggested bias or prejudice against the defendant, but did reference the island-wide power outage, which the justice and all persons with electrical service on the island suffered and which is unrelated to the offenses that the defendant has been charged with, the exposure to an power outage, without more, cannot form the basis for the justice's disqualification and the justice's disqualification is not required. Kosrae v. Nena, 14 FSM R. 70, 72 (Kos. S. Ct. Tr. 2006).

A justice is barred from sitting on a case where he has personal knowledge of disputed evidentiary facts, but knowledge that does not stem from an extrajudicial source is not disqualifying. Ruben v. Petewon, 14 FSM R. 141, 145-46 (Chk. S. Ct. App. 2006).

The 2000 ABA Code of Judicial Conduct, Canon 3.E requires a judge's disqualification in a proceeding where the judge's impartiality might reasonably be questioned, and one specific basis for disqualification is when the justice has personal knowledge of disputed evidentiary facts concerning the proceeding. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503 (App. 2011).

The general rule is that the disqualifying factors must be from an extrajudicial source, and the normal situation in which a judge's disqualification may be required is when a judge's extrajudicial knowledge, relationship or dealings with a party, or the judge's own personal or financial interests, might be such as to cause a reasonable person to question whether the judge could preside over and decide a particular case impartially. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 195 (App. 2013).

The general rule is that the jurist's knowledge of disqualifying facts must have originated from an extrajudicial source. A disqualification must be made on the basis of conduct which is extrajudicial in nature, that is, on some basis other than what the judge learned from his participation in the case. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

It has long been regarded as normal and proper for a judge to sit in the same case upon its remand. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

A typical situation where recusal may be required is when a sitting judge's extrajudicial knowledge, relationship, or dealings with a party or the judge's own personal or financial interests might be such as to cause a reasonable person to question whether the judge could impartially preside over and decide a particular case. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 45 (App. 2016).

Disqualification is required when the judge has personal knowledge of disputed evidentiary facts concerning the proceeding. The term "disputed evidentiary facts concerning the proceeding" means facts involved in the actions or conduct of the persons in a case. Heirs of Sigrah v. George, 22 FSM R. 211, 218, 219 (App. 2019).

A judge's disqualification is required when the judge's impartiality might reasonably be questioned, and one specific basis for disqualification is when the justice has personal knowledge of disputed evidentiary facts concerning the proceeding. Heirs of Sigrah v. George, 22 FSM R. 211, 218-19 (App. 2019).

A Supreme Court justice must disqualify himself when he has personal knowledge of disputed evidentiary facts concerning the proceeding. Personal knowledge is knowledge gained through firsthand observation or experience, as distinguished from a belief based on what someone else said. Macayon v. FSM, 22 FSM R. 317, 319-20 (Chk. 2019).

A judge has no personal knowledge – no firsthand observation or experience – when he was not present when any of them occurred, and when it is not clear that any of the case's

operative facts will be disputed evidentiary facts. Macayon v. FSM, 22 FSM R. 317, 320 (Chk. 2019).

The general rule is that the jurist's knowledge of disqualifying facts must have originated from an extrajudicial source. Extrajudicial means outside court, outside the functioning of the court system. Macayon v. FSM, 22 FSM R. 317, 320 (Chk. 2019).

When a judge has no personal knowledge, or any extrajudicial knowledge, of the case's operative facts or of any disputed evidentiary facts, he is unable to use 4 F.S.M.C. 124(2)(a) to disqualify himself from the case. Macayon v. FSM, 22 FSM R. 317, 320 (Chk. 2019).

A judge's disqualifying ground must come from an extrajudicial source or conduct. The general rule is that the judge's knowledge of disqualifying facts must have originated from an extrajudicial source. Extrajudicial means outside court; outside the functioning of the court system. Panuelo v. Sigrah, 22 FSM R. 341, 363 (Pon. 2019).

– Recusal – Financial Interest

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

Where the trial justice resides in housing provided for him by the national government by statute and is not an intended third-party beneficiary to the government's lease of the land and the action is only for money damages concerning the land the trial justice has no financial or other interest in the matter that may serve to disqualify the justice. Nahnken of Nett v. United States (I), 6 FSM R. 318, 322 (Pon. 1994).

Since debt securities do not give rise to a financial interest in the debtor which issued the securities, a judge who is indebted to a bank in a routine loan transaction is not thereby disqualified from cases in which a bank is a party. In re Estate of Setik, 20 FSM R. 604, 607 (Chk. S. Ct. Tr. 2016).

Debt interests are not considered to give rise to a financial interest in the debtor that issued the security because the debt obligation does not convey ownership interest in the issuer. Therefore, disqualification is not required solely because a party in a matter before the judge is a corporation or governmental entity that has issued a debt security owned by the judge. In re Estate of Setik, 20 FSM R. 604, 607 (Chk. S. Ct. Tr. 2016).

Common sense compels the conclusion that a debt obligation to a bank is not a disqualifying interest since a routine debt like a mortgage, fully secured by real property of an appraised value in excess of the debt, cannot be affected by the outcome of litigation involving the bank that is a mortgagee because a loss for the bank, even if ruinous, would not extinguish or reduce the obligation of the mortgagor to repay, or undermine the value of the property securing the loan, or, similarly, a bank victory, regardless of how substantial, affords not possible benefit to the mortgagor. In re Estate of Setik, 20 FSM R. 604, 607 (Chk. S. Ct. Tr. 2016).

When the presiding judge has a personal bank loan and he is not in default, there is no reason to think that his decision in the case will in any way influence his loan with the bank, either way he decides, since his loan is no different than other loans given to people that are not judges. In re Estate of Setik, 20 FSM R. 604, 608 (Chk. S. Ct. Tr. 2016).

A justice with an outstanding bank loan can also decide for himself whether to recuse himself if the issue of impartiality arises. In re Estate of Setik, 20 FSM R. 604, 608 (Chk. S. Ct. Tr. 2016).

A typical situation where recusal may be required is when a sitting judge's extrajudicial knowledge, relationship, or dealings with a party or the judge's own personal or financial interests might be such as to cause a reasonable person to question whether the judge could impartially preside over and decide a particular case. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 45 (App. 2016).

Unless unusual circumstances exist, a judge is not obligated to disqualify himself or herself because the judge has a loan from a financial institution that is a litigant before the judge. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 45 (App. 2016).

Since 4 F.S.M.C. 124(1) is based on the United States model and its statutory language is verbatim thereto, the court should consider United States legal authority under 28 U.S.C. § 455 for guidance in determining 4 F.S.M.C. 124's meaning concerning recusal as a result of a financial relationship with a lending institution. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 46 (App. 2016).

If it is acceptable for a judge to accept an ordinary loan from a financial institution, the same should not serve as grounds for disqualification. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 46 (App. 2016).

Accepting a loan from a lending institution in its regular course of business on the same terms available to the general public, is fully consistent with a judge's obligation to conduct personal activities so as to minimize the risk of conflicts that would result in frequent disqualifications. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 49 (App. 2016).

When unusual circumstances exist, questions about impartiality may arise. For example, if a judge were presently appealing to the bank for a loan or an extension for or restructuring of a loan, or if the loan is currently in default and is presently or soon will be litigated, there would exist a real question about the appearance of impropriety. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 49 (App. 2016).

The mere fact of a relationship between a judge and a financial institution as borrower/lender or mortgagor/mortgagee does not give rise to an inference that the judge's impartiality might reasonably be questioned. Something more than an ordinary financial transaction between the judge and financial institution must be present for disqualification to be necessary as when the financial relationship affords the judge services and benefits not generally available to the public. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 49 (App. 2016).

When a consumer loan was issued to the judge well before he was appointed to the appellate panel; when the bank does not aver any special circumstances necessitating the

judge's disqualification since the loan was issued on standard terms available to the general public and were negotiated before his designation to the panel; and when the loan is current and not in default or delinquent nor at risk thereof, and is not currently being negotiated for extension, restructuring, or refinancing, the bank has not overcome the presumption that a judicial official is unbiased. Without more, a judge's consumer loan and the mere relationship between the bank and the judge as creditor-debtor, is insufficient to require the judge's disqualification. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 50 (App. 2016).

– Recusal – Judge's Duty

A judge has a duty to disqualify himself from presiding in a proceeding in which he entertains a bias or prejudice against a party. Andohn v. FSM, 1 FSM R. 433, 444 (App. 1984).

A justice's power to recuse himself must be exercised conscientiously and not be used to avoid difficult or controversial cases nor merely to accommodate nervous litigants or counsel. FSM v. Skilling, 1 FSM R. 464, 471 (Kos. 1984).

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

A justice's obligation to recuse himself is not dependent on the existence of a party's motion to disqualify him. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 5 (App. 1997).

In the usual case, a Chuuk State Supreme Court justice's temporary unavailability would not be grounds to consider him disqualified and unable to perform his professional and constitutional duty to preside on an appellate panel. But he is disqualified when the court is required by statute to decide the case by a certain date in the near future and the court would be unable to meet its statutory obligation if it had to await the justice's return. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 151 (Chk. S. Ct. App. 2001).

In the absence of a showing of any actual partiality or extrajudicial bias under 4 F.S.M.C. 124(1), a judge properly meets his obligation to hear the case. Hartman v. Bank of Guam, 10 FSM R. 89, 98 (App. 2001).

It is a judge's duty not to disqualify himself unless he believes that there are proper and reasonable grounds therefor. Tolenoa v. Kosrae, 11 FSM R. 179, 182 (Kos. S. Ct. Tr. 2002).

It is a judge's duty not to disqualify himself unless he believes that there are proper and reasonable grounds therefor. The grounds for disqualification of a Kosrae state justice are provided in the Model Code of Judicial Conduct. Kosrae v. Nena, 14 FSM R. 70, 71 (Kos. S. Ct. Tr. 2006).

When the justice sentencing the defendant has resigned from the court and it is the justice's final day of service as a justice, a motion for recusal from sentencing on that ground is meritless. It is within the judge's authority and is his duty to conduct the sentencing hearing

especially since the sentencing hearing was delayed at the defendant's request to address the issue of admission of defendant's prior criminal record. Kosrae v. Tulensru, 14 FSM R. 115, 126 (Kos. S. Ct. Tr. 2006).

The duty to recuse may arise even in the absence of a motion to disqualify. Ruben v. Petewon, 14 FSM R. 177, 185 (Chk. S. Ct. App. 2006).

In the absence of a showing of any actual partiality or extrajudicial bias under 4 F.S.M.C. 124(1), a judge properly meets his obligation to hear the case. Berman v. Rosario, 15 FSM R. 337, 341 (Pon. 2007).

If a presiding Land Court judge fails to recuse himself when he is required to, it is a due process violation and the matter must be remanded to the Kosrae Land Court with instructions and guidance for re-hearing the matter. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503-04 (App. 2011).

In the absence of a showing of any partiality or extrajudicial bias under 4 F.S.M.C. 124(1), a judge is obligated to hear cases assigned to that judge. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

Absent a depiction of partiality or extrajudicial bias, a judge is obligated to hear the cases assigned to him or her. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 314 (App. 2017).

Except when the judge is disqualified under 4 F.S.M.C. 122 or 124, a judge is obligated to hear the cases assigned to that judge. This is because a judge must exercise the power to recuse conscientiously and cannot use it to avoid difficult or controversial cases or to merely accommodate nervous litigants or counsel. Panuelo v. Sigrah, 22 FSM R. 341, 364 (Pon. 2019).

When it is not the judge's duty to disqualify himself from a case to which he has been assigned, it is the judge's duty to serve. A judge cannot "voluntarily recuse" himself except when that recusal is required. Then it would be the judge's duty to do so. Panuelo v. Sigrah, 22 FSM R. 341, 364 (Pon. 2019).

– Recusal – Judicial Statements or Rulings

The fact that answers given by the victim-witness in response to questions posed by the judge happened to strengthen the government's case did not, by itself, indicate that the judge was impermissibly helping the prosecution, or that he was biased against the defendant. Andohn v. FSM, 1 FSM R. 433, 446 (App. 1984).

4 F.S.M.C. 124 furnishes no grounds for disqualifying a judge on the basis of statements or rulings made by him in his judicial capacity which reflect reasoned views derived from documents submitted, arguments heard, or testimony received in the course of judicial proceedings in the same case. FSM v. Skilling, 1 FSM R. 464, 473 (Kos. 1984).

A judge's adverse rulings in a case do not create grounds for disqualification from that case. FSM v. Skilling, 1 FSM R. 464, 484 (Kos. 1984).

A motion for disqualification ordinarily may not be predicated on the judge's rulings in the case or in related cases, nor on a demonstrated tendency to rule in a particular way, nor on a particular judicial leaning or attitude derived from his experience on the bench. Damarlane v. United States, 7 FSM R. 52, 54 (Pon. S. Ct. App. 1995).

Statements and rulings made by a judge in the course of judicial proceedings do not provide grounds for disqualification under 4 F.S.M.C. 124(1). There is a presumption that judicial officials are unbiased, and the burden of proof is on the party asserting an unconstitutional bias to demonstrate otherwise. A party requesting recusal on retrial must establish that actual bias or prejudice exists that comes from an extrajudicial source. FSM v. Ting Hong Oceanic Enterprises, 7 FSM R. 644, 649 (Pon. 1996).

Claims that a trial justice has shown disfavor toward intervenors' counsel, or bias in rulings in the instant case or other cases can be dismissed as failing to provide valid grounds for disqualification. Kristoph v. Emin, 10 FSM R. 650, 654 (Chk. S. Ct. Tr. 2002).

Adverse rulings by a judge in a case do not create grounds for disqualification in that case. To be disqualifying, any alleged judicial bias and prejudice must be based upon an extrajudicial source. Tolenoa v. Kosrae, 11 FSM R. 179, 182 (Kos. S. Ct. Tr. 2002).

When the court did not *sua sponte* raise the issue of the search warrant's validity and only proceeded to that question after defense counsel had insisted on entering that area and the government had orally waived its right to oppose the motion in writing and when there was no proper challenge to, and the court has made no ruling on, the arrest warrant's validity, the court will not grant a recusal motion because the court's oral or written rulings on a search warrant's validity or its issuance of an arrest warrant cannot be basis upon which its impartiality may be reasonably questioned and recusal granted. FSM v. Wainit, 11 FSM R. 424, 430-31 (Chk. 2003).

A judge's statements and rulings made in the course of judicial proceedings do not provide grounds for disqualification under 4 F.S.M.C. 124(1) (appearance of partiality) and even a judge's adverse rulings made in the course of judicial proceedings do not provide grounds for disqualification under 4 F.S.M.C. 124(1). FSM v. Wainit, 11 FSM R. 424, 431 (Chk. 2003).

A judge must disqualify himself from a proceeding in which the judge's impartiality might reasonably be questioned, and in specific instances. The disqualifying factors must be from an extrajudicial source. Statements and rulings made by a judge in the course of judicial proceedings do not provide grounds for disqualification. Adverse rulings in a case are not grounds for disqualification of the presiding justice. The slow progress of the case is not based upon an extrajudicial source and therefore is not a basis for disqualification. Allen v. Kosrae, 13 FSM R. 55, 59 (Kos. S. Ct. Tr. 2004).

A judge's statements and rulings made in the course of judicial proceedings do not provide grounds for disqualification under 4 F.S.M.C. 124(1). Even a judge's adverse rulings made in the course of judicial proceedings do not provide grounds for disqualification under 4 F.S.M.C. 124(1). FSM v. Wainit, 13 FSM R. 293, 295 (Chk. 2005).

A judge's adverse rulings made in the course of judicial proceedings do not provide grounds for recusal. Nor may a recusal be based on the judge's rulings in a related case. Thus, whether a refiled case is considered the same case as the earlier (dismissed) case or a related case, the

court's prior rulings are not a ground for recusal. FSM v. Wainit, 13 FSM R. 293, 295 (Chk. 2005).

Courts adhere to the rule that any alleged judicial bias and prejudice, to be disqualifying, must stem from an extrajudicial source, and that a judge's adverse rulings in a case do not create grounds for disqualification from that case. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

Rulings made by a judge in the course of prior proceedings do not provide grounds for disqualification. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

Adverse rulings made in the course of judicial proceedings do not provide grounds for disqualification under 4 F.S.M.C. 124(1). Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

Under controlling FSM case law, the disqualifying factors must stem from an extrajudicial source. Unfavorable or adverse rulings in a case, are not an extrajudicial source and are not a ground to reasonably question the judge's impartiality in that case. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 569-70 (Pon. 2016).

When none of the rulings about which the movants complain were based on or were the result of any extrajudicial source, knowledge, or factor, they cannot be a ground for disqualification. Litigation (and thus impartial judging) by its very nature, invites judicial rulings unfavorable to one party, or another, or both since it is in the very nature of our system of justice that judges must rule in favor of one party and against another. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 570 (Pon. 2016).

A judge's unfavorable rulings are not grounds for disqualification even if those rulings are believed to be erroneous, since the appellate division may later correct a judge's erroneous ruling. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 570 (Pon. 2016).

Generally, a judge's adverse rulings in the course of judicial proceedings do not provide grounds to disqualify a judge. Peterson v. Anson, 20 FSM R. 657, 659 (App. 2016).

A judge's legal rulings, even if adverse, made in the course of judicial proceedings, whether in the same case, or a related case, (or even an unrelated case) do not disqualify that judge. Setik v. Perman, 22 FSM R. 105, 111 (App. 2018).

An appellate panel's legal rulings in the two earlier appeals, even though unfavorable, do not, and cannot, disqualify the panel members from sitting on a later, related appeal. Setik v. Perman, 22 FSM R. 105, 111 (App. 2018).

Since court rulings, by their nature, are almost always unfavorable to one or more parties, for a judge to be disqualified for no reason other than the judge had once made an unfavorable ruling against a party, would quickly lead to all judges being disqualified from most court cases. Setik v. Perman, 22 FSM R. 105, 111 n.2 (App. 2018).

Speculation that the result might be more favorable with a different judge is not a basis to disqualify a judge. Nor does a party's displeasure with a judge's decisions in one or more cases form a basis to disqualify a judge. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 180 (Pon. 2019).

A motion for disqualification ordinarily may not be predicated on the judge's rulings in the instant case or in related cases, nor on a demonstrated tendency to rule any particular way, nor on a particular judicial leaning or attitude derived from the judge's experience on the bench. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 180 (Pon. 2019).

A judge's statements and rulings made in the course of judicial proceedings do not provide grounds for disqualification. Adverse rulings in a case are not grounds for the presiding judge's disqualification. Heirs of Sigrah v. George, 22 FSM R. 211, 218 (App. 2019).

Judicial rulings, even if adverse, made in the course of other judicial proceedings are not grounds for disqualification under 4 F.S.M.C. 124(1). Panuelo v. Sigrah, 22 FSM R. 341, 364 (Pon. 2019).

When judicial rulings could not be a basis to disqualify either of the justices who presided over a case from presiding over a different case, their rulings cannot be a basis to disqualify a former law clerk for his service under them. Panuelo v. Sigrah, 22 FSM R. 341, 364 (Pon. 2019).

A judge's adverse rulings made in the course of judicial proceedings do not provide grounds for disqualification under 4 F.S.M.C. 124(1) which provides for a justice's disqualification when the justice's impartiality might reasonably be questioned. FSM Dev. Bank v. Talley, 22 FSM R. 608, 610 (Kos. 2020).

– Recusal – Procedure

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

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

A party's motion to have a trial justice recuse himself is insufficient if not supported by affidavit as required by 4 F.S.M.C. 124(c). Jonas v. FSM, 2 FSM R. 238, 239 (App. 1986).

The fact that the Pohnpei Judiciary Act, 2L-160-82, §§ 30(1), (2), requires a judge to rule on a motion for recusal reveals that disqualification is not mandated but instead is at the discretion of the judge. Adams v. Etscheit, 4 FSM R. 226, 230-31 (Pon. S. Ct. Tr. 1989).

Disqualification of a judge under the Pohnpei Judiciary Act, 2L-160-82, minimally requires: 1) a written motion for disqualification filed before the trial or hearing unless good cause is shown otherwise; 2) a good faith affidavit showing factual grounds; and 3) grounds which originated after January 20, 1984 when the Act became effective, whereupon impartiality is to be assessed on the basis of whether a disinterested reasonable Pohnpeian who knows all the circumstances would harbor doubt about the judge's impartiality. Adams v. Etscheit, 4 FSM R. 226, 231-32 (Pon. S. Ct. Tr. 1989).

A motion requesting a trial court to reconsider its earlier ruling denying a motion for recusal may be denied where a party making the motion has been aware of the document upon which the motion is based for almost 10 years; where counsel who prepared the motion had done so without previously appearing before the trial judge to "assess the temper of that judge;" where the trial judge had studied the entire case "quite extensively" before the motion had been filed; and where there are "strong indications" that counsel is "judge-shopping," so that counsel's conduct "represents an example of a very serious and contemptuous misconduct" toward the court. Adams v. Etscheit, 4 FSM R. 237, 238-40 (Pon. S. Ct. Tr. 1989).

Mere argument by counsel, be it oral or set forth in a brief, is not the basis on which motions to disqualify are determined. Motions for recusal must be supported by affidavit stating the grounds for recusal. It is the movant's burden to go beyond wide-ranging speculation or conclusions and show a factual basis for recusal. Jano v. King, 5 FSM R. 266, 268 (Pon. 1992).

The court is required by statute to rule on a motion to disqualify the sitting justice before proceeding further on the matter. Nahnken of Nett v. United States (I), 6 FSM R. 318, 320 n.1 (Pon. 1994).

In order to overturn the trial judge's denial of a motion to recuse an appellant must show an abuse of the trial judge's discretion. The same standard of review applies to a petition for a writ of prohibition ordering a judge to recuse himself. Nahnken of Nett v. Trial Division, 6 FSM R. 339, 340 (App. 1994).

A person who is not a party cannot move for the disqualification of the trial judge because persons who are not parties of record to a suit have no standing which will enable them to take part in or control the proceedings. Shiro v. Pios, 6 FSM R. 541, 543 (Chk. S. Ct. App. 1994).

The proper method to obtain a writ of prohibition to disqualify a member of an appellate panel is to move for disqualification before that member, and, if the recusal motion is denied, to file a petition for a writ of prohibition as a separate matter to be considered by an appellate panel constituted pursuant to Appellate Rule 21(a). Berman v. FSM Supreme Court (I), 7 FSM R. 8, 10 (App. 1995).

In considering motions for recusal a court must carefully analyze the grounds in terms of the disqualification statute, and it need not lightly grant such motions simply to accommodate or placate litigants or their counsel, lest the judge be violating his judicial oath to administer justice. Damarlane v. United States, 7 FSM R. 52, 54 (Pon. S. Ct. App. 1995).

Under the Pohnpei statute a party moving for disqualification of a judge must do so before the trial or hearings unless good cause is shown for filing it at a later time. Upon receipt of such a motion, the judge shall rule on it before proceeding further in the matter, stating his reasons for granting or denying it on the record. Damarlane v. United States, 7 FSM R. 52, 55 (Pon. S. Ct. App. 1995).

The Chuuk Judiciary Act requires that a motion for a justice's disqualification be supported by affidavits to establish a factual basis for the motion, and that there be a hearing at which the movant must prove his allegations. In re Disqualification of Justice, 7 FSM R. 278, 279 (Chk. S. Ct. Tr. 1995).

Allegations that are the basis for a motion for a justice's disqualification must be proven by

admissible and competent evidence. Inadmissible affidavits are not enough. In re Disqualification of Justice, 7 FSM R. 278, 279 (Chk. S. Ct. Tr. 1995).

The standard to be applied in reviewing a request for disqualification under 4 F.S.M.C. 124(1) is whether a disinterested reasonable observer who knows all the circumstances would harbor doubts about the judge's impartiality. A motion for disqualification must be supported by an affidavit which clearly sets forth the factual basis for the belief that grounds for disqualification exist. Fu Zhou Fuyan Pelagic Fishery Co. v. Wang Shun Ren, 7 FSM R. 601, 605 (Pon. 1996).

Because a judge has a ministerial, non-discretionary duty to state on the record his reasons for denying a motion to disqualify himself a writ of prohibition may issue to prevent him from proceeding further on a case until he has done so. Ting Hong Oceanic Enterprises v. Trial Division, 7 FSM R. 642, 643 (App. 1996).

A motion to recuse is untimely when it is brought over five weeks after the deadline for pretrial motions and when the movant had known for months which judge would be presiding over the trial. FSM v. Ting Hong Oceanic Enterprises, 7 FSM R. 644, 647-48, 649 (Pon. 1996).

A denial of a motion to recuse may be reviewed by means of a petition for a writ of prohibition or mandamus. The standard of review is whether the trial judge abused his discretion in denying the motion to recuse. The petitioner must show that the trial judge clearly and indisputably abused his discretion when he denied the motion to disqualify. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 4 (App. 1997).

By statute, a motion to recuse should be brought before the trial or hearing unless good cause is shown for filing it at a later time. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 5 (App. 1997).

When the issue of recusal was brought to the trial judge's attention well before the date he set for pretrial motions, a judge's obligation to recuse himself is not dependent on bringing a motion, and the motion was timely by the terms of the statute because it was brought before trial even though brought after the date set for pretrial motions the motion to recuse cannot be denied as untimely. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 5 (App. 1997).

4 F.S.M.C. 124(6) provides that a party may move to disqualify a Supreme Court justice, and requires that such a motion be accompanied by an affidavit stating the reasons for belief that grounds for disqualification exist. Any disqualification motion must be filed before the trial or hearing, unless good cause is shown. Hartman v. Bank of Guam, 10 FSM R. 89, 95-96 (App. 2001).

A party in cases involving related issues is not entitled as a matter of right to a different judge for each case. Hartman v. Bank of Guam, 10 FSM R. 89, 97 (App. 2001).

Recusals are not required to be in writing. While the better practice would be that recusals be in writing, and the Legislature could require that practice if it so chose, there is currently no such statutory or constitutional requirement. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 151 (Chk. S. Ct. App. 2001).

A motion to recuse may be considered untimely when it is brought many weeks after the deadline for pretrial motions and where the movant has known for months which justice would be presiding over the trial. Shrew v. Kosrae, 10 FSM R. 533, 535 (Kos. S. Ct. Tr. 2002).

A motion to recuse should be brought before the trial or hearing unless good cause is shown filing it at a later time. Tolenoa v. Kosrae, 11 FSM R. 179, 182 (Kos. S. Ct. Tr. 2002).

An application for a trial judge's disqualification must be filed at the earliest opportunity. This rule will be strictly applied against a party who, having knowledge of the facts constituting a disqualification, does not seek to disqualify the judge until an unfavorable ruling has been made. Tolenoa v. Kosrae, 11 FSM R. 179, 184 (Kos. S. Ct. Tr. 2002).

The trial court may deny a motion for new trial when the motion's basis is the judge's failure to recuse himself and the party making the motion was, since the beginning of the case, aware of the information upon which the motion is based. Tolenoa v. Kosrae, 11 FSM R. 179, 184 (Kos. S. Ct. Tr. 2002).

A motion for disqualification of a Chuuk State Supreme Court justice must be supported by affidavits establishing a factual basis for the motion, and there must be a hearing where the moving party has the burden of proving the basis for the motion. Allegations that provide the basis for a motion to recuse must be proven by admissible and competent evidence. Kupenes v. Ungeni, 12 FSM R. 252, 259 (Chk. S. Ct. Tr. 2003).

A motion to disqualify a judge that is not supported by an affidavit which explains the factual basis for the motion is insufficient and will be denied. Allen v. Kosrae, 13 FSM R. 55, 59 (Kos. S. Ct. Tr. 2004).

An application for a trial judge's disqualification must be filed at the earliest opportunity. A motion to recuse should be brought before the trial or hearing unless good cause is shown for filing it at a later time. Kosrae v. Langu, 13 FSM R. 269, 271-72 (Kos. S. Ct. Tr. 2005).

It is necessary to show a factual basis – not just speculation or conclusions, for questioning a judge's impartiality. A factual basis must be provided by affidavit or other admissible evidence. Counsel's arguments are not evidence and therefore cannot form a "factual basis" for questioning a judge's impartiality. Kosrae v. Langu, 13 FSM R. 269, 272 (Kos. S. Ct. Tr. 2005).

Mere argument by counsel, verbal or written, is not the basis on which motions to recuse are determined. It is the movant's burden to go beyond speculation or conclusion and show a factual basis for recusal. Kosrae v. Langu, 13 FSM R. 269, 272 (Kos. S. Ct. Tr. 2005).

Generally, an affidavit is required to provide a factual basis for questioning a judge's impartiality, but other admissible evidence may also by used to support a motion to recuse. When statements made by the presiding justice himself, regarding his own extrajudicial knowledge of facts relating to the subject incident and the defendant's alleged conduct, were made on the record in the courtroom at hearings, these statements can be used for questioning the justice's impartiality and a basis for recusal. Under these specific facts and in this case, the requirement for an affidavit is satisfied by other admissible evidence: the record of the hearings. Kosrae v. Langu, 13 FSM R. 269, 272 (Kos. S. Ct. Tr. 2005).

The court must decide a recusal motion before it can consider and rule on substantive motions, although the court can probably entertain and decide merely procedural matters before ruling on the recusal motion. FSM v. Wainit, 13 FSM R. 293, 294 (Chk. 2005).

By state law, a motion to disqualify a justice must be referred to another justice for ruling. Ruben v. Petewon, 13 FSM R. 383, 388 (Chk. 2005).

If the Acting Chief Justice knows that a particular associate justice is disqualified there is no reason for him to take the pointless step of referring the matter to that associate justice for that justice to say so. Ruben v. Petewon, 14 FSM R. 146, 148 (Chk. S. Ct. App. 2006).

Upon receipt of a disqualification motion, the Chuuk State Supreme Court justice must refer the motion to another justice, to hear the motion and rule upon it. There is no room for discretion. Ruben v. Petewon, 14 FSM R. 177, 184 (Chk. S. Ct. App. 2006).

When a party files a motion to remove a trial justice from presiding over a case, irrespective of nomenclature, the party is attacking that justice's perceived bias or conflict of interest. For purposes of the referral procedure set forth in section 22(5) of the Chuuk Judiciary Act, a motion to recuse and one to disqualify are one and the same. Ruben v. Petewon, 14 FSM R. 177, 185 (Chk. S. Ct. App. 2006).

A Chuuk State Supreme Court justice exceeds his jurisdiction when he refuses to refer a recusal motion to another trial division justice. Ruben v. Petewon, 14 FSM R. 177, 185 (Chk. S. Ct. App. 2006).

When a petition addressed to an appellate justice asking that he disqualify himself has been denied by that justice, the party may file a petition for a writ of prohibition to prevent that justice from continuing to sit on the appeal. When the other two panel justices are of the opinion that the writ of prohibition clearly should not be granted, they will deny the petition. Goya v. Ramp, 14 FSM R. 303, 304 (App. 2006).

The FSM disqualification statute requires that a motion to disqualify a justice be filed before the trial or hearing unless good cause is shown for filing it later. When good cause was not shown for filing a disqualification motion four months after the hearing for which the movant seeks a justice's disqualification, it will be denied as untimely. Goya v. Ramp, 14 FSM R. 303, 304 (App. 2006).

When a party has filed a writ of prohibition directed to disqualify one appellate justice, the remaining members of the appellate panel may deny that petition if it clearly should not be granted. Goya v. Ramp, 14 FSM R. 305, 308 n.2 (App. 2006).

Since the FSM disqualification statute requires that a motion to disqualify a justice be filed before the trial or hearing unless good cause is shown for filing it at a later time, when good cause was not shown for filing a disqualification motion four months after the hearing for which the movant now seeks a justice's disqualification, it will be denied as untimely. Goya v. Ramp, 14 FSM R. 305, 308 (App. 2006).

By failing to refer motions to recuse and to disqualify the presiding justice to another justice, as required by the State Judiciary Act, the trial justice violated the movants' rights to due process of law. Ruben v. Hartman, 15 FSM R. 100, 108 (Chk. S. Ct. App. 2007).

A motion for a Chuuk State Supreme Court justice's disqualification must be supported by affidavit(s) establishing a factual basis for the motion. Mere argument by counsel, be it oral or set forth in a brief, is not the basis on which motions to disqualify are determined. It is the movant's burden to go beyond wide-ranging speculation or conclusions and show a factual basis for recusal by admissible competent evidence. Nakamura v. Sharivy, 15 FSM R. 409, 412 (Chk. S. Ct. Tr. 2007).

A trial judge is justified in denying a motion for recusal on the basis of the moving party's failure to file an affidavit explaining the factual basis for the motion. Nakamura v. Sharivy, 15 FSM R. 409, 412 (Chk. S. Ct. Tr. 2007).

An application for a trial judge's disqualification must be filed at the earliest opportunity. This rule will be strictly applied against a party who, having knowledge of the facts constituting a disqualification, does not seek to disqualify the judge until an unfavorable ruling has been made. Nakamura v. Sharivy, 15 FSM R. 409, 412 (Chk. S. Ct. Tr. 2007).

A motion to recuse may be considered untimely when it is brought many weeks after the deadline for pretrial motions and when the movant has known for months which justice would be presiding over the trial. Nakamura v. Sharivy, 15 FSM R. 409, 412 (Chk. S. Ct. Tr. 2007).

By Chuuk statute, a disqualification motion filed after trial has begun must be denied unless there is a showing of good cause for filing it at a later time. Nakamura v. Sharivy, 15 FSM R. 409, 412 (Chk. S. Ct. Tr. 2007).

A motion to recuse is deficient and will be denied when it was filed without an accompanying affidavit as required by law because without an affidavit establishing the degree of relationship between the justice and the parties, the court has no basis to grant the motion, and when there has been no attempt to comply with the statutory requirement that good cause be shown for filing the motion after trial has already begun. Nakamura v. Sharivy, 15 FSM R. 409, 413 (Chk. S. Ct. Tr. 2007).

When the trial judge has a Rule 60(b) motion before him, which is within his jurisdiction to consider and deny even though the case is on appeal, and also a motion to recuse, and when, upon receipt of a recusal motion, a justice must rule on it before proceeding any further in the matter, the trial judge is required to rule on the recusal motion before proceeding on to the Rule 60(b) motion. The trial judge therefore had the jurisdiction to, and a duty to, rule on the recusal motion. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

When, while the judgment was on appeal, the appellant's recusal motion was filed at the same time as her Rule 60(b) motion for relief from judgment and the recusal motion had to be decided before any action could be taken on the Rule 60(b) motion, and when the appellant did not file a separate notice of appeal from the post-judgment order denying recusal, the appellate court accordingly lacks jurisdiction to review the recusal issue. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

An appellate court may first address the ground that the trial judge ought to have recused himself because if the appellant were to prevail on it, the case would be remanded for a new trial and no other issue would need to be addressed. Berman v. Pohnpei, 17 FSM R. 360, 367 (App. 2011).

An application to disqualify a trial judge ought to be filed at the earliest opportunity. This principle should be applied against a party who, having knowledge of the facts constituting a disqualification, does not seek to disqualify the judge until after an unfavorable ruling has been made. Berman v. Pohnpei, 17 FSM R. 360, 367 (App. 2011).

To permit a party to disqualify a judge after learning how the judge intended to rule on a matter would permit forum-shopping of the worst kind. It would also be inequitable, because it would afford the moving party an additional opportunity to achieve a favorable result while denying a similar opportunity to its adversary. For these reasons, it is generally agreed that a party who has a reasonable basis for moving to disqualify a judge should not be permitted to delay filing a disqualification motion in hope of first obtaining a favorable ruling, and then complain only if the result is unfavorable to his cause. Berman v. Pohnpei, 17 FSM R. 360, 367 (App. 2011).

The appellate court will not consider a recusal issue when, by her own account, the appellant knew of the factual basis for a recusal motion long before trial but she delayed raising the issue in the case until she filed her appellate brief. Berman v. Pohnpei, 17 FSM R. 360, 367-68 (App. 2011).

Following the judge's disclosure on the record of any basis for disqualification other than personal bias or prejudice concerning a party, the judge may ask the parties and their lawyers to consider, out of the judge's presence, whether to waive disqualification, and, if the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement must be incorporated in the record of the proceeding. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 504 (App. 2011).

When the Land Court judge asked the parties and counsel to consider whether to waive his disqualification but there was no recess taken after the judge informed the parties's counsel of his possible disqualification and when it may be inferred that the Land Court judge participated in the waiver process and actively solicited a waiver and that an agreement by all parties and their counsel (assuming that there was one) on waiver was not, as required, made out of the judge's presence and without his participation, the Land Court judge's disqualification was not properly remitted and his decision will be vacated and the matter remanded. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 504-05 (App. 2011).

A motion for disqualification of a Chuuk State Supreme Court justice must be supported by affidavit(s) establishing a factual basis for the motion. Mere argument by counsel, be it oral or set forth in a brief, is not the basis on which motions to disqualify are determined. It is the movant's burden to go beyond wide-ranging speculation or conclusions and show a factual basis for recusal by admissible, competent evidence. In re Title to Two Parcels, 19 FSM R. 482, 485 (Chk. S. Ct. Tr. 2014).

A trial judge is justified in denying a motion for recusal on the basis of the moving party's failure to file an affidavit explaining the factual basis for the motion. In re Title to Two Parcels, 19 FSM R. 482, 485 (Chk. S. Ct. Tr. 2014).

An application for a trial judge's disqualification must be filed at the earliest opportunity. This rule will be strictly applied against a party who, having knowledge of the facts constituting a

disqualification, does not seek to disqualify the judge until an unfavorable ruling has been made. In re Title to Two Parcels, 19 FSM R. 482, 485 (Chk. S. Ct. Tr. 2014).

A motion to recuse may be considered untimely when it is brought many weeks after the deadline for pretrial motions and when the movant has known for months which justice would be presiding over the trial. In re Title to Two Parcels, 19 FSM R. 482, 485 (Chk. S. Ct. Tr. 2014).

By Chuuk statute, a disqualification motion filed after trial has begun must be denied unless there is good cause for filing it at a later time. In re Title to Two Parcels, 19 FSM R. 482, 485 (Chk. S. Ct. Tr. 2014).

A disqualification motion is deficient and untimely when it is unclear what involvement, if any, the trial judge had in the instant matter; when it was only after a judgment had been rendered in another's favor, and after the denial of two motions to set aside the judgment, that the movant sought to disqualify the trial judge; when the movant has failed to establish "good cause" for filing the disqualification motion almost seven months after the judgment was rendered; and when, in support of its disqualification motion, the movant merely stated that it "did not have knowledge of the facts constituting a disqualification until about seven months, or this month, June 2014," since this statement, without anything further, is insufficient to meet the good cause standard. In re Title to Two Parcels, 19 FSM R. 482, 485-86 (Chk. S. Ct. Tr. 2014).

Generally, any application to disqualify a trial judge must be filed at the earliest opportunity, and this principle is applied against a party who, having knowledge of the facts constituting a disqualification, does not seek to disqualify the judge until after an unfavorable ruling has been made. Just as a litigant may not sit idly by during the course of litigation and then seek to present additional defenses in the event of an adverse outcome, a litigant may not sit idly by and seek to disqualify a judge only after an adverse final judgment has been rendered. George v. Palsis, 20 FSM R. 157, 159-60 (Kos. 2015).

A motion for a justice's disqualification must be supported by affidavit(s) establishing a factual basis for the motion. Mere argument by counsel, be it oral or set forth in a brief, is not the basis on which motions to disqualify are determined. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 228 (Chk. 2015).

A motion to disqualify a judge that is not supported by an affidavit explaining the factual basis for the motion, is insufficient and will be denied. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 228 (Chk. 2015).

For the purpose of a recusal motion, a temporary justice is considered an FSM justice, to whom 4 F.S.M.C. 124 applies. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 228 (Chk. 2015).

A petition for a writ of prohibition to disqualify a trial court judge is procedurally deficient when it includes a lone exhibit which reflects the trial judge's order; when there is no affidavit stating the reasons for the belief that grounds for disqualification exist; when it lacks a memorandum of points and authorities; and when it includes a motion to stay that does not properly belong before the appellate division since it should have been filed in the trial court. Halbert v. Manmaw, 20 FSM R. 245, 249 (App. 2015).

A petitioner for a writ of prohibition must allege facts that show an appearance of partiality. Without a supporting affidavit, the purported facts underpinning the allegation are absent, and

only the petitioner's subjective assertions remain, and when the petitioner's unsupported allegations that the judge is not impartial are purely speculative, they are insufficient to support his disqualification. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

When there are too many procedural deficiencies to overlook because the application for a writ of prohibition's certificate of service shows service only on the respondent judge at her office; because the real parties in interest were not served and were not named as real parties in interest in the application or in the case caption; because the petition does not contain a copy of the respondent judge's order denying her recusal, if there was a written order, or a transcript of the denial on the record if the denial was made orally; and because, although the relevant judicial disqualification statute requires that an application to disqualify a justice be accompanied by an affidavit stating the reasons for the belief that grounds for disqualification exist, no affidavit accompanied the petition although an "affidavit attached hereto" is mentioned in the application, the petition for a writ of prohibition will be denied without prejudice to any future application in which all of the procedural deficiencies have been cured. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 563, 564 (App. 2016).

A court must decide a disqualification motion and give its reasons for its decision before it can rule on any other matter. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 569 (Pon. 2016).

A Chuuk State Supreme Court justice exceeds his jurisdiction when he refuses to refer a recusal motion to another trial division justice. For purposes of the referral procedure set forth in section 22(5) of the Chuuk Judiciary Act, a motion to recuse and one to disqualify are one and the same. In re Estate of Setik, 20 FSM R. 604, 606 (Chk. S. Ct. Tr. 2016).

The standard for disqualification in a proceeding is whether a disinterested reasonable person, knowing all the circumstances, would harbor doubts about a judge's impartiality. There is a presumption that judicial officers are unbiased and the burden of proof rests with the party asserting an unconstitutional bias to demonstrate otherwise. In re Estate of Setik, 20 FSM R. 604, 606 (Chk. S. Ct. Tr. 2016).

The relevant judicial disqualification statute requires that an application to disqualify a justice, be accompanied by an affidavit stating the reasons for the belief that grounds for disqualification exist. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 2016).

It is a well recognized rule that an application for a trial judge's disqualification must be filed at the earliest opportunity. This rule is strictly applied against a party, who had knowledge of the facts that establish a disqualification, but did not ask for the judge's disqualification until an unfavorable ruling was made in the matter. Heirs of Sigrah v. George, 22 FSM R. 211, 217 (App. 2019).

A motion to recuse should be brought before the trial or hearing unless good cause is shown for filing at a later time. Heirs of Sigrah v. George, 22 FSM R. 211, 217 (App. 2019).

Sufficient cause for a party to seek the presiding judge's disqualification after he has made his decision is shown when the presiding judge disclosed his uncle-nephew relationship with the parties while rendering his decision and further discussed a different, related case wherein he indicated that, because a party in that case lost, it was rightful that he also lose this case. Heirs of Sigrah v. George, 22 FSM R. 211, 217 (App. 2019).

A party's motion to disqualify a judge must be supported by an affidavit. Heirs of Sigrah v.

George, 22 FSM R. 211, 218 (App. 2019).

Generally, an affidavit is required to provide a factual basis for questioning a judge's impartiality, but other admissible evidence may be used to support a motion to recuse. When the presiding justice's own statements about his own knowledge of facts relating to the incident and the defendant's alleged conduct, were made on the record in the courtroom hearings, these statements may be used to question a justice's impartiality and be a basis for disqualification. Under such facts, the affidavit requirement is satisfied by other admissible evidence: the record of the hearings. Heirs of Sigrah v. George, 22 FSM R. 211, 218 (App. 2019).

The movants have met the standard for showing a factual basis for the judge's disqualification when they have provided an affidavit from a disinterested observer who has pointed to the close familial ties and friendship that the judge has with the case's parties. Heirs of Sigrah v. George, 22 FSM R. 211, 218 (App. 2019).

The statute requires that a disqualification motion be accompanied by an affidavit stating the reasons for the belief that grounds for disqualification exist. A disqualification motion may be denied solely on the ground that the movant failed to accompany it with an affidavit setting forth the motion's factual basis. Macayon v. FSM, 22 FSM R. 317, 319 (Chk. 2019).

The relevant statute requires that a disqualification motion shall be accompanied by an affidavit stating the reasons for the belief that grounds for disqualification exist. A disqualification motion may be denied solely because the movant failed to accompany it with an affidavit setting forth the motion's factual basis. Panuelo v. Sigrah, 22 FSM R. 341, 363 n.15 (Pon. 2019).

When there is an actual disqualification motion, the court would have to address it first. A contemporaneous denial should suffice when the denial and a substantive order are included in the same document and issued simultaneously. Panuelo v. Sigrah, 22 FSM R. 341, 363 n.15 (Pon. 2019).

The FSM Supreme Court has no mechanism whereby a motion to disqualify a justice may be referred to or assigned to another trial division justice for decision. The justice to whom the motion is addressed is expected to, and must, rule on the motion. FSM Dev. Bank v. Talley, 22 FSM R. 608, 610 (Kos. 2020).

– Recusal – Rule of Necessity

Practical and policy considerations relating to judicial administration in the FSM could be viewed as justifying invocation of the Rule of Necessity whereby judges are obliged to hear and decide cases from which they might otherwise recuse themselves if no other judge is available to hear the case. FSM v. Skilling, 1 FSM R. 464, 469-70 (Kos. 1984).

The Rule of Necessity has been held in the United States to prevail over the disqualification provisions of 28 U.S.C. § 455 and Canon 3C of the ABA Code of Judicial Conduct, both of which are nearly identical to the language of 4 F.S.M.C. 124(1) and (2). FSM v. Skilling, 1 FSM R. 464, 470-71 (Kos. 1984).

Given the social and geographical configuration of Micronesia the Rule of Necessity may

oblige judges to hear and decide cases from which they would otherwise recuse themselves. Factors to be considered include delay, expense, and impact on other cases. Nahnken of Nett v. United States (I), 6 FSM R. 318, 323-24 (Pon. 1994).

Because parties have a right to trial before a justice duly appointed by the President under Article XI of the Constitution the Rule of Necessity may be invoked to prevent recusal of a judge when no other judge is qualified to hear the case. FSM v. Ting Hong Oceanic Enterprises, 7 FSM R. 644, 648 (Pon. 1996).

The only time the Rule of Necessity may apply to allow a judge not to recuse himself is if no other judge is available to hear the case. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 5 (App. 1997).

The "rule of necessity" cannot be applied to force an otherwise disqualified justice to serve because as long as it is possible to appoint a temporary judge who is not disqualified, the rule of necessity has no application and cannot be resorted to. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 151 (Chk. S. Ct. App. 2001).

If the Chief Justice is a member of a Chuuk State Supreme Court appellate panel, or is so removed or disqualified, then the most senior associate justice who has not been removed or disqualified from the case shall appoint the temporary justices, but if all Chuuk State Supreme Court justices are disqualified and there is no associate justice that could appoint a panel in the Chief Justice's stead and there is no provision for the Chief Justice to appoint a temporary justice to make the appointments, then the rule of necessity, in this limited circumstance, allows the Chief Justice to make the panel appointments. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 152 (Chk. S. Ct. App. 2001).

The "rule of necessity" cannot be applied to force an otherwise disqualified justice to serve because as long as it is possible to appoint a temporary judge who is not disqualified, the rule of necessity has no application and cannot be resorted to. Ruben v. Petewon, 14 FSM R. 146, 148 n.1 (Chk. S. Ct. App. 2006).

The only time the "rule of necessity" may be applied to allow a judge not to recuse himself is if no other judge is available to hear the case. The "rule of necessity" cannot be applied to permit an otherwise disqualified justice to serve as long as it is possible to appoint a temporary judge who is not disqualified. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 606 (App. 2014).

It is established law that the rule of necessity cannot be applied to permit an otherwise disqualified justice to serve as long as it is possible to appoint a temporary judge who is not disqualified. The "rule of necessity" may be applied to allow a judge not to recuse himself only if no other judge is available to hear the case. Heirs of Sigrah v. George, 22 FSM R. 211, 220 (App. 2019).

The rule of necessity does not apply when the other Kosrae State Court justice has not ruled whether he is disqualified and because, if all of the regularly-appointed Kosrae State Court justices are disqualified, the Kosrae State Code provides for the appointment of a temporary justice. Heirs of Sigrah v. George, 22 FSM R. 211, 220 (App. 2019).