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

Promulgated by the Palau Supreme Court
January 4, 2023

PREFACE

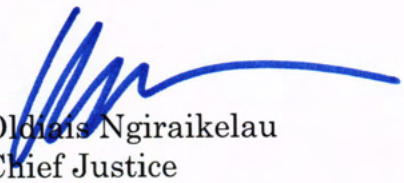
The Republic of Palau Supreme Court is a Court of Record consisting of an Appellate Division and a Trial Division. Pursuant to Article X, Section 14 of the Palau Constitution, the Supreme Court is constitutionally authorized to promulgate rules of practice and procedure in civil and criminal matters. Among these rules are the Rules of Appellate Procedure.

The present Rules of Appellate Procedure, which mirror and follow the format of the Federal Rules of Appellate Procedure for the United States Courts of Appeals ("the Federal Rules"), were last promulgated in August 2007. The 2007 Rules superseded all previously promulgated Rules of Appellate Procedure. A review of the 2007 Rules began in 2022. The review demonstrated a need to make some changes and update a few of the Rules, or adopt new ones.

The Chief Justice takes this opportunity to thank all the justices and members of the Palau Bar for taking the time to review the Rules and provide helpful comments. Special thanks go to former Associate Justice Gregory Dolin, and Court Counsel Carl Hennies, who initiated the review process and shouldered the bulk of the tedious work of reviewing, revising, and updating the Rules.

Consistent with the command of ROP Const. Article X, Section 14, the updated Rules have been approved by the Palau Supreme Court.

January 4, 2023.



Oldiais Ngiraikelau
Chief Justice

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU

IN RE RULES OF APPELLATE PROCEDURE	:	**ORDER**

These Rules of Appellate Procedure are promulgated by the Supreme Court of the Republic of Palau pursuant to Article X, Section 14 of the Constitution and 4 PNC § 101. They take effect **February 6, 2023**, and supersede all previously promulgated Rules of Appellate Procedure. These Rules are immediately applicable to all pending cases except to the extent that they adversely affect the substantive rights of any party.

SO ORDERED this 4th day of January, 2023.

OLDIAIS NGIRAIKELAU
Chief Justice

JOHN K. RECHUCHER
Associate Justice

FRED M. ISAACS
Associate Justice

KATHLEEN M. SALII
Presiding Justice

LOURDES F. MATERNE
Associate Justice

HONORA E. REMENGESAU RUDIMCH
Associate Justice

APPELLATE RULES OF PROCEDURE
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REPUBLIC OF PALAU
RULES OF APPELLATE PROCEDURE

TITLE I. APPLICABILITY OF RULES

Rule 1. Scope of Rules; Title

(a) Scope of Rules.

(1) These rules govern procedure in the Appellate Division of the Supreme Court of the Republic of Palau and should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

(2) When these rules provide for filing a motion or other document in the Court of Common Pleas, the Land Court, or the Trial Division of the Supreme Court, the procedure must comply with the practice of the relevant court.

(b) Jurisdiction Unaffected. These rules must not be construed to extend or limit the jurisdiction of the Appellate Division.

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

(d) Title. These rules will be known and cited as the Republic of Palau Rules of Appellate Procedure (ROP R. App. P. __).

(e) Effective Date. These rules take effect on February 6, 2023. These rules govern all proceedings in the Appellate Division commenced after that date and, as far as is just and practicable, all proceedings then pending.

Comment: Subsection (a)(2) has been added to clarify that when the rules require a motion to be filed in the Court of Common Pleas, the Land Court, or the Trial Division, the motion must comply with the procedure of that court. All other amendments to Rule 1 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the United States Federal Rules of Appellate Procedure (the "Federal Rules").

Rule 2. Suspension of Rules

On its own or a party's motion, the Appellate Division may—to expedite its decision or for other good cause—suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b).

Comment: Rule 2 has been amended to clarify that the Appellate Division's ability to suspend any provision of these rules are subject to the limitations in Rule 26(b). All other amendments to Rule 2 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

TITLE II. APPEALS FROM A JUDGMENT OR ORDER OF A TRIAL COURT

Rule 3. Appeal as of Right—How Taken

(a) Filing the Notice of Appeal.

(1) An appeal as of right may be taken by filing a notice of appeal with the Clerk of Courts within the time allowed by Rule 4.

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the Appellate Division deems appropriate, including dismissing the appeal.

(b) Joint or Consolidated Appeals.

(1) When two or more parties are entitled to appeal from a judgment or order of a trial court and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the Appellate Division on its own, on motion of a party, or by stipulation of the parties to the appeals.

(c) Contents of the Notice of Appeal.

(1) The notice of appeal must:

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X";

(B) designate the judgment, order, or part thereof being appealed;

(C) include the caption of the Appellate Division; and

(D) include the number assigned to the case in the trial court.

(2) An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

(d) Serving the Notice of Appeal. The notice of appeal must include proof of service on all parties. Service must be accomplished in accordance with Rule 25.

(e) Payment of Fees. Upon filing a notice of appeal, the appellant must, except as provided by Rule 24, pay the Clerk of Courts all required fees as established by the Supreme Court of the Republic of Palau.

Comment: Subsection (c) has been amended to updated the required contents of the notice of appeal. Subsection (e) has been amended to clarify that the payment of fees is subject to Rule 24. All other amendments to Rule 3 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

Rule 4. Appeal as of Right—When Taken

(a) Time for Filing a Notice of Appeal. The notice of appeal must be filed within 30 days after the imposition of a sentence in a criminal case, or entry of

judgment or order appealed from a civil case, unless otherwise provided by law.

(b) Filing Before Entry of Judgment. A notice of appeal filed after the trial court announces a decision, sentence, or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

(c) Multiple Appeals. If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by Rule 4(a), whichever period ends later.

(d) Effect of a Motion on a Notice of Appeal.

(1) If a party files in the trial court any of the following motions under the Rules of Civil Procedure or the Rules of Criminal Procedure—and does so within the time allowed by those rules—the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(A) to amend or make additional factual findings under Rule of Civil Procedure 52(b), whether or not granting the motion would alter the judgment;

(B) to alter or amend the judgment under Rule of Civil Procedure 59;

(C) for a new trial under Rule of Civil Procedure 59;

(D) for relief under Rule of Civil Procedure 60 if the motion is filed no later than 28 days after the judgment is entered;

(E) for judgment of acquittal under Rule of Criminal Procedure 29;

(F) for a new trial under Rule of Criminal Procedure 33, but if based on newly discovered evidence, only if the motion is made no later than 14 days after the entry of the judgment; or

(G) for arrest of judgment under Rule of Criminal Procedure 34.

(2) If a party files a notice of appeal after the trial court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(d)(1)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(3) A party intending to challenge an order disposing of any motion listed in Rule 4(d)(1), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this rule measured from the entry of the order disposing of the last such remaining motion.

(e) Motion for Extension of Time. Upon a showing of excusable neglect or good cause, the trial court may extend the time for filing the notice of appeal by any party for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this rule. Such an extension may be requested by motion before or after the time otherwise prescribed by this rule has expired.

Comment: Subsections (a) and (d) have been amended so that the time to file a notice of appeal begins to run at the entry of a judgment, sentence, or order, rather than the service of a judgment, sentence, or order. Subsection (d) has been amended to clarify the effect of specific motions on the time for filing a notice of appeal. All other amendments to Rule 4 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

Rule 5. Appeals as of Right

An appeal from a decision of a trial court may be taken as of right in the following circumstances:

(a) Final Judgments. Following a final judgment of the trial court.

(b) Orders on Injunctions. Following any order of the trial court granting, continuing, modifying, refusing, or dissolving an injunction, or refusing to dissolve or modify an injunction; or

(c) Collateral Orders. Following any collateral order of the trial court that:

(1) conclusively determines a disputed question;

(2) resolves an important issue that is completely separate from the merits of the action; and

(3) is effectively unreviewable on appeal from a final judgment of the trial court under Rule 5(a).

Comment: Rule 5 has been added to expound—but not to change—existing caselaw on when a party may take an appeal as of right. Rule 28(a)(4) now requires a party to include a statement in his or her opening brief explaining whether the appeal is proper under either this rule (including the particular subsection) or Rule 6.

Rule 6. Interlocutory Appeals by Permission

(a) Interlocutory Orders Appealable by Permission. The Appellate Division may, in its discretion, allow an appeal to be taken from an interlocutory order if the trial court is of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and an immediate appeal from the order may materially advance the ultimate termination of the litigation.

(b) Procedure.

(1) Trial Court Order Required. Before any notice of interlocutory appeal may be filed in the Appellate Division, the trial court must state that, in its opinion, the order meets the necessary conditions in Rule 6(a) and explain its reasoning. The trial court may amend a prior order, either on its own or in response to a party's motion, to include the required statement. A trial court's decision that an order does or does not satisfy the conditions in Rule 6(a) is not appealable.

(2) Notice of Interlocutory Appeal.

(A) To request permission to appeal, a party must file a notice of interlocutory appeal with the Clerk of Courts attaching a copy of the trial court's order and any briefs filed in the trial court addressing the controlling question of law.

(B) The notice of interlocutory appeal must be filed within 10 days of the trial court's order. If the trial court has amended its order to include the required statement, the time to file the notice runs from entry of the amended order. The trial court may extend the time for filing the notice of interlocutory

appeal as provided in Rule 4(e).

(C) The notice of interlocutory appeal must comply with Rule 3, except the party does not need to pay any fees unless the Appellate Division permits the interlocutory appeal.

(D) The notice of interlocutory appeal should not include any legal argument, and no response to the notice of interlocutory appeal should be filed unless ordered by the Appellate Division.

(3) Appellate Division Permission. After a notice of interlocutory appeal has been filed under Rule 6(b)(2), the Appellate Division will determine whether, in its discretion, to permit the interlocutory appeal based on the pleadings and the decision in the trial court. If the Appellate Division grants permission for the interlocutory appeal, it will set a briefing schedule and attempt to consider the appeal on an expedited basis. If the Appellate Division denies permission for the interlocutory appeal, it will dismiss the interlocutory appeal without prejudice.

(c) Effect of Notice of Interlocutory Appeal. A notice of interlocutory appeal filed under this rule does not stay proceedings in the trial court unless the trial court or the Appellate Division so orders.

Comment: Rule 6 has been added to create a new procedure to consider appeals of interlocutory trial court orders that meet certain conditions. The standard for considering interlocutory appeals tracks 28 U.S.C. § 1292(b). The procedure for considering interlocutory appeals is based loosely on Federal Rule 5, but it has been streamlined for practice in Palau.

Rule 7. Bond for Costs on Appeal in a Civil Case

In a civil case, the trial court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal. Rule 8(b) applies to a surety on a bond given under this rule.

Comment: Rule 7 has been amended to clarify that it can apply in civil cases originating in any trial court.

Rule 8. Stay or Injunction Pending Appeal

(a) Motion for Stay.

(1) Initial Motion in the Trial Court. A party must ordinarily move first in the trial court for the following relief:

(A) a stay of the judgment or order of a trial court pending appeal;

(B) approval of a bond or other security provided to obtain a stay of judgment; or

(C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(2) Motion in the Appellate Division. A motion for the relief mentioned in Rule 8(a)(1) may be made to the Appellate Division or to one of its justices.

(A) The motion must:

(i) show that moving first in the trial court would be impracticable; or

(ii) state that, a motion having been made, the trial court denied the

motion or failed to afford the relief requested and state any reasons given by the trial court for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) Absent unusual circumstances, a showing that the appeal raises a substantial question of law will be sufficient cause for granting a stay on reasonable terms.

(E) The Appellate Division may condition relief on a party's filing a bond or other security in the trial court.

(b) Proceeding Against a Security Provider. If a party gives security with one or more security providers, each provider submits to the jurisdiction of the trial court and irrevocably appoints the Clerk of Courts as its agent on whom any papers affecting its liability on the security may be served. On motion, a security provider's liability may be enforced in the trial court without the necessity of an independent action. The motion and any notice that the trial court prescribes may be served on the Clerk of Courts, who must promptly send a copy to each security provider whose address is known.

(c) No Security Required of the Republic of Palau. When an appeal is taken by the Republic of Palau or one of its officers or agencies in an official capacity, no security is required for stay of execution of judgment pending appeal.

(d) Stay in a Criminal Case. A sentence of imprisonment must be stayed if an appeal is taken from the conviction or sentence and the defendant is released pending disposition of appeal pursuant to Rule 9(b). A sentence to pay a fine or costs, if an appeal is taken, may be stayed by the Trial Division or Appellate Division on such terms as the court deems proper. A sentence of probation may be stayed if an appeal from the conviction or sentence is taken according to the terms fixed by the court.

Comment: Subsection (a)(2)(B)(iii) has been added to require that a motion in the Appellate Division include the relevant parts of the record. All other amendments to Rule 8 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

Rule 9. Release in a Criminal Case

(a) Release Before Judgment of Conviction.

(1) The trial court must state in writing, or orally on the record, the reasons for an order regarding the release or detention of a defendant in a criminal case. A party appealing from the order must file with the Appellate Division a copy of the trial court's order and the court's statement of reasons as soon as practicable after filing the notice of appeal.

(2) After reasonable notice to the appellee, the Appellate Division must

promptly determine the appeal on the basis of the papers, affidavits, and parts of the record that the parties present or the court requires. Unless the Appellate Division so orders, briefs need not be filed.

(3) The Appellate Division or one of its justices may order the defendant's release pending the disposition of the appeal, upon such terms and conditions as it deems just and proper.

(b) Release After Judgment of Conviction.

(1) Initial Motion in Trial Court. An application for release after a judgment of conviction must be made in the first instance in the trial court. The trial court must order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal, be detained, unless the trial court finds:

(A) that the person is not likely to flee or pose a danger to the safety of any person or the community if released; and

(B) that the appeal raises a substantial question of law or fact which is sufficiently important to the merits that a contrary appellate ruling is likely to require the person's release or a new trial.

(2) Motion in the Appellate Division. If the trial court refuses release pending appeal, or imposes conditions of release, a motion for release or for modification of the conditions of release may be made to the Appellate Division or one of its justices. The motion must be determined promptly upon such papers, affidavits, and portions of the record as the parties present and after reasonable notice to the appellee. The Appellate Division or one of its justices may order the release of the appellant pending disposition of the motion, upon such terms and conditions as it deems just and proper.

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Comment: Subsection (a) has been amended to provide that the trial court may state the reasons for its order orally on the record. All other amendments to Rule 9 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

Rule 10. The Record on Appeal

(a) Composition of the Record on Appeal. The original papers and exhibits filed in the trial court and the transcript or an audio recording of the proceedings, if any, will constitute the record on appeal. The entire record is open for consideration on appeal to the Appellate Division. Any parts of the record a party relies on that are not in English must be accompanied by a translation prepared by that party.

(b) Record of Proceedings.

(1) Ordering the Transcript. At the time the notice of appeal is filed, an appellant may request an audio recording of the testimony or evidence adduced in the trial court. Within 14 days of receiving the audio recording, any appellant intending to raise an issue on appeal that depends on the whole or any part of the testimony or evidence adduced in the trial court must either:

(A) order a transcript of such parts as the party considers necessary and file

a copy of the transcript order; or

(B) file a certificate stating that no transcript will be ordered and that the party will rely on the audio recording and provide a copy of the audio recording to all appellees.

Failure to file a transcript order or certificate stating that no transcript will be ordered will be considered a decision to proceed without a transcript.

(2) Partial Transcript. Unless the entire transcript is ordered:

(A) the appellant must—within the 14 days provided in Rule 10(b)(1)—file a statement containing the issues that the appellant intends to present on the appeal and a list of the witnesses and testimony that will be included in the partial transcript and must serve on the appellee a copy of both the transcript order and the statement;

(B) if the appellee considers it necessary to have a transcript of other parts of the proceedings, the appellee must, within 20 days after the service of the transcript order and the statement of the issues, file and serve on the appellant a designation of additional parts to be ordered; and

(C) unless within 20 days after service of that designation the appellant has ordered all such parts, and has so notified the appellee, the appellee may within the following 20 days either order the parts or move in the Appellate Division for an order requiring the appellant to do so.

(3) Filing and Serving the Transcript.

(A) Method. The party ordering the transcript must ensure that the transcript is filed and served in accordance with Rule 25.

(B) Time. The transcript should be filed and served as soon as it is prepared—and should not wait until the opening brief or any other pleading is completed—but no later than 120 days after the notice of appeal is filed unless otherwise ordered by the Appellate Division.

(C) Paper Copies. The party ordering the transcript must order a paper copy of the transcript for the court, one for itself, and one for each opposing party. If there is more than one appellant, they may share a copy of the transcript and may share the costs of transcribing and copying the transcripts.

(D) Electronic Version. In addition to paper copies, the party ordering the transcript must file an electronic version of the transcript in a searchable format (*e.g.*, searchable Adobe PDF, Microsoft Word, or similar). Image scans of the transcript that are not searchable do not comply with this rule.

(c) Correction or Modification of the Record.

(1) If any party considers the record as assembled by the Clerk of Courts inaccurate or incomplete in any important respect, he or she must notify the other parties of the alleged error or omission and endeavor to secure a written agreement as to what correction or addition should be made in the record. If an agreement is reached, it must be promptly filed and will become a part of the record.

(2) If the parties cannot agree upon a correction or modification, the party claiming the error must arrange with the trial court for a hearing and must notify the other parties of the time and place. Any party unable to be present or

represented may submit views in writing at or before the hearing. After giving all parties an opportunity to be heard, the trial court will correct or modify the record as the facts warrant and will notify each party.

(3) If any party still feels that the record, as amended by agreement of the parties or by the trial court, is incorrect or incomplete in any important respect, that party may, by written motion supported by affidavits, request the Appellate Division to make further changes, specifying the particular change desired.

Comment: Subsection (a) has been amended to require a party relying on any part of the record not in English to prepare and submit a translation. Any disagreement or other issue arising from the prepared translation will be handled on a case-by-case basis. Subsection (b)(1) has been amended to clarify that failure to file a transcript order or certificate stating that no transcript will be ordered will be considered a decision to proceed without a transcript. Subsection (b)(3)(D) has been added to require that the party filing the transcript also electronically file a version of the transcript that can be searched using Adobe PDF or Microsoft Word. All other amendments to Rule 10 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

[Rules 11–20 Reserved]

TITLE III. EXTRAORDINARY WRITS

Rule 21. Writs of Mandamus and Prohibition, and Other Extraordinary Writs

(a) Mandamus or Prohibition to a Court: Petition, Filing, Service, and Docketing.

(1) A party petitioning for a writ of mandamus or prohibition directed to a trial court must file a petition with the Clerk of Courts and serve it on all parties to the proceeding in the trial court. The party must also provide a copy to the trial-court judge. All parties to the proceeding in the trial court other than the petitioner are respondents for all purposes.

(2) The petition must be titled "In re [name of petitioner]" and must state:

(A) the relief sought;

(B) the issues presented;

(C) the facts necessary to understand the issue presented by the petition; and

(D) the reasons why the writ should issue.

(3) The petition must include a copy of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition.

(b) Denial; Order Directing Answer; Briefs; Precedence.

(1) The Appellate Division may deny the petition without an answer. Otherwise, it must order the respondent, if any, to answer within a fixed time. No answer to the petition may be filed unless requested by the Appellate Division.

(2) The Clerk of Courts must serve the order to respond on all persons directed to respond.

(3) Two or more respondents may answer jointly.

(4) The Appellate Division may invite or order the trial-court judge to address the petition or may invite an amicus curiae to do so. The trial-court judge may request permission to address the petition but may not do so unless invited or ordered to do so by the Appellate Division.

(5) If briefing or oral argument is required, the Clerk of Courts must advise the parties, and, when appropriate, the trial-court judge or amicus curiae.

(6) The proceeding must be given preference over ordinary civil cases.

(7) The Clerk of Courts must send a copy of the final disposition to the trial-court judge.

(c) Other Extraordinary Writs. An application for an extraordinary writ other than one provided for in Rule 21(a) must be made by filing a petition with the Clerk of Courts and serving it on the respondents. Proceedings on the application must conform, so far as is practicable, to the procedures prescribed in Rule 21(a) and (b).

(d) Form of Papers; Number of Copies; Length Limits. All papers must conform to Rule 28(g). In addition to the original paper filed electronically or nonelectronically, a party must file 3 paper copies of each paper with the Clerk of Courts within 7 days of filing the original. Except by the Appellate Division's permission, and excluding the accompanying documents required by Rule 21(a)(3), a paper must not exceed 30 pages.

Comment: Subsection (a)(2) has been amended to require a specific title for the petition. Subsection (b)(1) has been amended to clarify that an answer to the petition may not be filed unless requested by the Appellate Division. Subsection (d) has been amended to clarify the form of petitions and to add a length limit for petitions. All other amendments to Rule 21 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

TITLE IV. HABEAS CORPUS PROCEEDINGS; PROCEEDINGS IN FORMA PAUPERIS

Rule 22. Habeas Corpus Proceedings

An application for a writ of habeas corpus must be made to the appropriate trial court. The applicant may appeal to the Appellate Division from the trial court's order denying the application.

Comment: The amendments to Rule 22 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

Rule 23. Custody or Release of a Prisoner in a Habeas Corpus Proceeding

(a) Transfer of Custody Pending Review. Pending review of a decision in a habeas corpus proceeding commenced before a court, justice, or judge for the release of a prisoner, the person having custody of the prisoner must not transfer custody to another unless a transfer is directed in accordance with this rule. When, upon application, a custodian shows the need for a transfer, the court, justice, or judge

rendering the decision under review may authorize the transfer and substitute the successor custodian as a party.

(b) Detention or Release Pending Review of Decision Not to Release. While a decision not to release a prisoner is under review, the court or judge rendering the decision, the Appellate Division, or a justice of the Appellate Division may order that the prisoner be:

(1) detained in the custody from which release is sought;

(2) detained in other appropriate custody; or

(3) released on personal recognizance, with or without surety.

(c) Release Pending Review of Decision Ordering Release. While a decision ordering the release of a prisoner is under review, the prisoner must—unless the court or judge rendering the decision, the Appellate Division, or a justice of the Appellate Division orders otherwise—be released on personal recognizance, with or without surety.

Comment: Subsections (b) and (c) have been amended to provide that the Appellate Division or a justice of the Appellate Division may make an appropriate order on release or detainment of a prisoner pending review of a lower court decision. All other amendments to Rule 23 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

Rule 24. Proceeding In Forma Pauperis

(a) Motion in the Trial Court. Except as stated in Rule 24(c), a party to a trial-court action who desires to appeal in forma pauperis must file a motion in the trial court. The party must attach an affidavit that:

(1) shows the party's inability to pay or to give security for fees and costs;

(2) claims an entitlement to redress; and

(3) states the issues that the party intends to present on appeal.

(b) Action on the Motion. If the trial court grants the motion, the party may proceed on appeal without prepaying or giving security for fees and costs; provided that, absent further order of the Appellate Division, the party will remain responsible for the cost of any transcript he or she has ordered. If the trial court denies the motion, it must state its reasons in writing.

(c) Prior Approval. A party who was permitted to proceed in forma pauperis in the trial-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless the trial court—before or after the notice of appeal is filed—certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding.

(d) Notice of Trial Court's Denial. The Clerk of Courts must immediately notify the parties when the trial court does any of the following:

(1) denies a motion to proceed on appeal in forma pauperis;

(2) certifies that the appeal is not taken in good faith; or

(3) finds that the party is not otherwise entitled to proceed in forma pauperis.

(e) Motion in the Appellate Division. A party may file a motion to proceed on appeal in forma pauperis in the Appellate Division within 10 days after service of the notice prescribed in Rule 24(d). The motion must include a copy of the affidavit filed in the trial court and the trial court's statement of reasons for its action. If no affidavit was filed in the trial court, the party must include the affidavit prescribed by Rule 24(a).

Comment: The amendments to Rule 24 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

TITLE V. GENERAL PROVISIONS

Rule 25. Filing and Service

(a) Filing.

(1) Filing with the Clerk of Courts. Papers required or permitted to be filed in the Appellate Division must be filed with the Clerk of Courts.

(2) Method and Timeliness.

(A) Nonelectronic Filing. For a paper not filed electronically, filing may be accomplished by either personal delivery to the Clerk of Courts or by mail addressed to the Clerk of Courts, but filing is not timely unless the Clerk receives the paper within the time fixed for filing.

(B) Electronic Filing.

(i) By a Represented Person. A person represented by an attorney must file electronically using the electronic case filing system, unless nonelectronic filing is allowed by the Appellate Division for good cause. If the electronic case filing system is not available, the represented person may file electronically by emailing the paper to the address provided by the Clerk of Courts.

(ii) By an Unrepresented Person. An unrepresented person may file electronically by emailing the paper to the address provided by the Clerk of Courts.

(iii) Timeliness. A paper filed electronically is considered to be filed at the time the document is uploaded or sent via email.

(iv) Form. All briefs, transcripts, and other similar papers must be electronically filed in a searchable format (*e.g.*, searchable Adobe PDF, Microsoft Word, or similar) with optical character recognition. Copies of exhibits, maps, and similar non-word-based documents may be filed as non-searchable images.

(3) Clerk of Courts' Refusal of Documents. The Clerk of Courts must not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules. The fact that the Clerk of Courts accepts a document for filing does not limit the ability of the Appellate Division to strike a non-conforming paper from the docket or to require a party filing

such a paper to resubmit it in conformance with these rules.

(b) Service of All Papers Required. Unless a rule requires service by the Clerk of Courts, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review. Service on a party represented by counsel must be made on the party's counsel.

(c) Manner of Service.

(1) Nonelectronic Service. Nonelectronic service may be made by delivery to the counsel or party, by mailing to the counsel or party at the last known address, or, if no address is known, by leaving it with the Clerk of Courts. If the person or agency maintains a filing box at the office of the Clerk of Courts, service may be made by delivering a copy to that box.

(2) Electronic Service. Electronic service of a paper may be made by sending it to a registered user by filing it with the court's electronic case filing system or by sending it by other electronic means that the person to be served consented to in writing.

(d) Proof of Service. A paper presented for filing must contain either an acknowledgment of service by the person served or proof of service consisting of a statement by the person who made the service certifying the date and manner of service and the names of the person served. Proof of service may appear on or be affixed to the papers filed.

Comment: Subsection (a) has been amended to require electronic filing by represented parties and to permit electronic filing by unrepresented parties. Electronic filings must be in a searchable format, preferably Adobe PDF. Subsection (a)(3) has been added to provide that the Clerk of Courts must not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form. Subsection (c) has been amended to allow for electronic service by filing with the court's electronic case filing system. Former subsection (f) has been deleted because copies for filings are addressed elsewhere in the rules. All other amendments to Rule 25 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

Rule 26. Computing and Extending Time

(a) Computing Time. The following rules apply in computing any time period specified in these rules, in an order of the Appellate Division, or in any applicable statute that does not specify a method of computing time.

(1) Period Stated in Days or a Longer Unit. When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) Period Stated in Hours. When a period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers

the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) Inaccessibility of Clerk of Courts. Unless the Appellate Division orders otherwise, if—because of a declared emergency or for any other reason—the Clerk of Courts is inaccessible:

(A) on the last day for filing under Rule 26(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 26(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) "Legal Holiday" Defined. As used in this rule, "legal holiday" means any day appointed as a holiday by the President, the Olbiil Era Kelulau, or the Chief Justice.

(b) Extending Time. For good cause, the Appellate Division may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. No successive motions for enlargement will be granted absent the showing of extraordinary circumstances. The Appellate Division may not extend the time to file:

(1) a notice of appeal (except as authorized in Rule 4) or a notice of interlocutory appeal (except as authorized in Rule 6);

(2) briefs in an appeal in which the election, qualifications, or office of an elected official is disputed (except at authorized in Rule 31(e)).

(c) Additional Time After Service by Mail. When a party may or must act within a specified time after being served, and the paper is not served electronically on the party but instead served by mail, 3 days are added after the period would otherwise expire under Rule 26(a).

Comment: Subsection (a) has been amended to remove the different computation of time for periods less than 11 days and to add a computation of time for periods stated in hours. Subsection (b)—formerly subsection (c)—has been amended to make good cause the standard for extending time whether the request is made before or after time expires. All other amendments to Rule 26 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

Rule 27. Motions

(a) In General.

(1) Application for Relief. An application for an order or other relief is made by motion unless these rules prescribe another form. A motion must be in writing unless the Appellate Division permits otherwise.

(2) Contents of a Motion.

(A) Grounds and Relief Sought. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

(B) Accompanying Documents. Any affidavit—containing only factual information, not legal argument—or other paper necessary to support a motion must be served and filed with the motion. A motion seeking substantive relief must include a copy of the trial court's opinion as a separate exhibit.

(C) Certificate of Conference. In cases where all parties are represented by counsel, a motion must include a certificate stating that counsel for the movant has conferred with counsel for the other parties about the motion, whether the other parties consent to relief requested, and whether any party intends to file a response in opposition to the motion.

(3) Response. Any party may file a response to a motion; Rule 27(a)(2) governs its contents. The response must be filed within 7 days after service of the motion unless the Appellate Division shortens or extends the time. A motion authorized by Rules 8 or 9 may be granted before the 7-day period runs only if the Appellate Division gives reasonable notice to the parties that it intends to act sooner.

(4) Reply to Response. Any reply to a response must be filed within 7 days after service of the response. A reply must not present matters that do not relate to the response.

(b) Disposition of a Motion for a Procedural Order. The Appellate Division may act on a motion for a procedural order—including a motion under Rule 26(b)—at any time without awaiting a response. A party adversely affected by the court's action may file a motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.

(c) Power of a Single Justice to Entertain a Motion. A single justice may act alone on any motion, but may not dismiss or otherwise determine an appeal or other proceeding except dismissals pursuant to Rule 42. The Appellate Division may review the action of a single justice.

(d) Copies. Only one copy of the motion must be filed unless the Appellate Division requires a different number of copies.

Comment: Subsection (a) has been amended to require that a motion include a certificate of conference in cases where all parties are represented by counsel. Subsection (a) has also been amended to permit a reply to be filed. All other amendments to Rule 27 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

Rule 28. Briefs

(a) Appellant's Brief. The appellant's brief must contain, under appropriate headings and in the order indicated:

(1) a brief statement of related cases indicating any case previously decided involving either or both parties that may have a preclusive effect or any case currently pending that may directly affect or be directly affected by the Appellate Division's decision in the pending appeal, including the title of the case, case number, and date of decision (if applicable);

(2) a table of contents, with page references;

(3) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;

(4) a statement explaining whether the appeal is proper under either Rule 5 (including the particular subsection) or Rule 6;

(5) a statement of the issues presented for review set forth in separately numbered paragraphs;

(6) a concise statement of the case in narrative form setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record;

(7) the argument, which must contain:

(A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

(8) a short conclusion stating the precise relief sought; and

(9) appended to the brief, the judgment or order appealed from (or the relevant portion of the transcript if the judgment or order was conveyed orally).

(b) Appellee's Brief. The appellee's brief must conform to the requirements of Rule 28(a), except that the judgment or order appealed from does not need to be included and none of the following need appear unless the appellee is dissatisfied with the appellant's statement:

(1) the statement of related cases;

(2) the statement explaining whether the appeal is proper under either Rule 5 (including the particular subsection) or Rule 6;

(3) the statement of the issues;

(4) the statement of the case; or

(5) the statement of the standard of review.

(c) Reply Brief. The appellant may file a brief in reply to the appellee's brief. Unless the Appellate Division permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, and a table of authorities. The argument must be limited to arguments raised in the appellee's brief and may not raise any new arguments for the first time.

(d) References to Parties. In briefs and at oral argument, counsel should minimize use of the terms "appellant" and "appellee." To make briefs clear, counsel should use the parties' actual names or the designations used in the lower court proceeding, or such descriptive terms as "the employee," "the injured person," or "the

taxpayer."

(e) References to the Record. References to evidence or other parts of the record must be followed by a pinpoint citation to the page, transcript line, or recording time in the record and the relevant document must be included in the appendix to the brief (*see* Rule 30). For example:

- Answer at 7.
- Motion to Dismiss at 2.
- Transcript at 123.

Only clear abbreviations may be used. A party referring to evidence whose admissibility is in controversy must cite the pages at which the evidence was identified, offered, and received or rejected. The Appellate Division may, in its discretion, decline to consider factual arguments or references to the record not supported by a pinpoint citation to the appendix.

(f) Citation to Authority Not Contained in the Palau Supreme Court Library. If a party relies on or cites to any authority not contained in the Palau Supreme Court Library or on electronic databases such as Westlaw or Lexis, then the relevant portion of such authority must be appended to the party's brief for it to be considered by the Appellate Division. If the authority is a court decision or opinion, then a copy of the entire decision or opinion must be appended.

(g) Form of a Brief.

(1) Cover. The cover of a brief must contain:

(A) the number of the case centered at the top;

(B) the name of the Supreme Court of the Republic of Palau, Appellate Division;

(C) the full title of the case, including the names of all appellants and appellees;

(D) the name of the court, the name of the judge or justice, and the case number in the trial court;

(E) the title of the brief, identifying the party or parties for whom the brief is filed;

(F) a request for oral argument, if so desired;

(G) the names, addresses, and telephone numbers of counsel for the respective parties.

(2) Paper Size, Line Spacing, and Margins. The brief must be on 8 1/2 by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(3) Typeface. The Appellate Division prefers a serif font (such as Times New Roman or Century Schoolbook) and the typeface must be 14-point or larger.

(4) Length. The appellant's opening brief and the appellee's response brief must not exceed 30 pages, and appellant's reply brief must not exceed 15 pages. In computing length, the following items do not count toward the limit: cover page, table of contents, table of authorities, and any addendum.

(h) Signature. All briefs must be signed by a lawyer or pro se party. By signing, the signatory represents that, in his or her opinion, the appeal raises a substantial question of law or fact and that it otherwise complies with these rules.

(i) Briefs in Cases Involving Multiple Appellants or Appellees. In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.

(j) Citation of Supplemental Authorities. If pertinent and significant authorities come to a party's attention after the party's brief has been filed—or after oral argument but before decision—a party may promptly advise the Clerk of Courts by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited.

Comment: Subsection (a) has been amended to require an appellant's brief to contain a statement of related cases and a statement explaining whether the appeal is proper under either Rule 5 or Rule 6. Subsections (b) and (c) have been amended to clarify the contents of a response brief and a reply brief. Subsection (d) has been added to eliminate references to "appellant" and "appellee" in briefs, which will make briefs clearer. Subsection (e) has been amended to note that all references to evidence or other parts of the record must be included in the appendix to the brief required by Rule 30. Subsection (g) has been added to consolidate requirements of form in one subsection, including adding a provision on preferred fonts. Subsection (g) also shortens the page length for opening and response briefs (from 40 pages to 30 pages) and reply briefs (from 25 pages to 15 pages) because the Appellate Division does not regularly receive briefs longer than the new limits and most cases should be able to be concisely briefed within the new limits. The Appellate Division will consider motions to expand the page limit on a case-by-case basis. Subsection (j) has been amended to limit a letter citing supplemental authorities to 350 words. All other amendments to Rule 28 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

Rule 28.1. Cross-Appeals

(a) Applicability. This rule applies to a case in which a cross-appeal is filed. Rules 28(a)–(c), 28(g)(4), and 31(b) do not apply to such a case, except as otherwise provided in this rule.

(b) Designation of Appellant. The party who files a notice of appeal first is the appellant for the purposes of this rule and Rule 34. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.

(c) Briefs. In a case involving a cross-appeal:

(1) Appellant's Principal Brief. The appellant must file a principal brief in the appeal. That brief must comply with Rule 28(a).

(2) Appellee's Principal and Response Brief. The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That appellee's brief must comply with Rule 28(a), except that the brief need not include a statement of the case unless the appellee is dissatisfied with the appellant's statement.

(3) Appellant's Response and Reply Brief. The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 28(a)(2)–(7), except that none of the following need appear unless the appellant is dissatisfied with the appellee's statement in the cross-appeal:

(A) the statement explaining whether the appeal is proper under either Rule 5 (including the particular subsection) or Rule 6;

(B) the statement of the issues;

(C) the statement of the case; and

(D) the statement of the standard of review.

(4) Appellee's Reply Brief. The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 28(a)(2)–(3) and must be limited to the issues presented by the cross-appeal.

(5) No Further Briefs. Unless the Appellate Division permits, no further briefs may be filed in a case involving a cross-appeal.

(d) Length. The appellant's principal brief must not exceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's reply brief, 15 pages.

(e) Time to Serve and File a Brief. Briefs must be served and filed as follows:

(1) the appellant's principal brief, as provided in Rule 31(b)(1);

(2) the appellee's principal and response brief, within 30 days after the appellant's principal brief is served;

(3) the appellant's response and reply brief, within 30 days after the appellee's principal and response brief is served; and

(4) the appellee's reply brief, within 15 days after the appellant's response and reply brief is served.

Comment: Rule 28.1 has been added to create explicit procedures for cases involving cross-appeals because of confusion caused by cross-appeals in prior cases. The procedure for cross-appeals is based on Federal Rule 28.1.

Rule 29. Brief of an Amicus Curiae

(a) When Permitted. The Republic of Palau or its officer or agency or a State may file an amicus brief without the consent of the parties or leave of the Appellate Division. Any other amicus curiae may file a brief only by leave of the Appellate Division or if the brief states that all parties have consented to its filing, but the Appellate Division may prohibit the filing of or may strike an amicus brief that would result in a justice's disqualification. The Appellate Division may invite interested parties to submit briefs amicus curiae.

(b) Motion for Leave to File. The motion must be accompanied by the proposed brief and state:

(1) the movant's interest; and

(2) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

(c) Contents and Form. An amicus brief must comply with Rule 28(g). In addition to the requirements of Rule 28(g), the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. An amicus brief must include the following:

(1) a table of contents, with page references;

(2) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;

(3) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;

(4) unless the amicus curiae is one listed in the first sentence of Rule 29(a), a statement that indicates whether a party's counsel authored the brief in whole or in part or whether a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and

(5) an argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review.

(d) Length. Except by the Appellate Division's permission, an amicus brief may be no more than 20 pages.

(e) Time for Filing. An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's principal brief is filed. The Appellate Division may grant leave for later filing, specifying the time within which an opposing party may answer.

(f) Reply Brief. Except by the Appellate Division's permission, an amicus curiae may not file a reply brief.

(g) Oral Argument. An amicus curiae may participate in oral argument only with the Appellate Division's permission.

Comment: Subsection (a) has been amended to provide that the Appellate Division may prohibit the filing of an amicus brief that would result in a justice's disqualification and to provide that the Appellate Division may invite parties to submit amicus briefs. Subsection (c) has been amended to require an amicus brief to include a statement regarding authorship and contributions. All other amendments to Rule 29 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

Rule 30. Appendices to the Briefs

(a) Appendix to Appellant's Opening Brief. Appellant must prepare and file an appendix at the same time as the opening brief containing:

(1) the judgment, order, or decision appealed from; and

(2) any other parts of the record on appeal—including the portions of the pleadings, evidence, or memoranda of law—that appellant cites in the opening brief (*see* Rule 30(c)).

(b) Appendices to All Other Briefs. For all briefs following an appellant's opening brief, the party must prepare and file an appendix at the same time as the brief containing any part of the record on appeal that the party cites in the brief (*see*

Rule 30(c)) and is not already contained in the appendix to another brief.

(c) Contents. Parties may include only the relevant pages of the record cited in the briefs, but should include in the appendix sufficient surrounding record and transcript pages to provide context for a cited excerpt. Inclusion of unnecessary pages in the appendix is prohibited. If no transcript is ordered, citations to audio recordings do not need to be included in the appendix.

(d) Filing. If an appendix contains less than 50 pages of material, it must be appended to the brief and filed as one document. If an appendix contains 50 pages or more of material, it should be filed as a separate document.

(e) Number of Copies. Each party must file a paper copy of the appendix with the Clerk of Courts and represented parties must also submit an electronic version of the appendix that complies with Rule 25 and is, to the extent practicable, in a searchable format.

(f) Format of Appendix. Each appendix must have a cover indicating the brief it corresponds to and must be in chronological order, except that the judgment, order, or decision appealed from must be first in the appendix to the appellant's opening brief.

Comment: Rule 30 has been added to require the parties to file an appendix with their brief which contains the parts of the trial court record that the party relies on in its brief. Including the appendix is intended to make it easy for the Appellate Division to have the relevant parts of the trial court record in one document for ease of reference.

Rule 31. Serving and Filing Briefs

(a) Place of Filing. All briefs must be filed with the Clerk of Courts.

(b) Time to Serve and File a Brief.

(1) Appellant's Brief. The appellant must serve and file a brief:

(A) if a transcript has been ordered, within 45 days after service of the transcript;

(B) if no transcript has been ordered but an audio recording has been requested, within 45 days after the appellant has received an audio recording of the trial-court proceedings;

(C) if no transcript has been ordered and no audio recording has been requested, within 45 days after the filing of the notice of appeal.

(2) Appellee's Brief. The appellee must serve and file a brief within 30 days after the appellant's brief is filed.

(3) Appellant's Reply Brief. The appellant may serve and file a reply brief within 15 days after filing of the appellee's brief.

(c) Number of Copies. In addition to the original brief filed electronically or nonelectronically, a party must file 4 paper copies of each brief with the Clerk of Courts within 7 days of filing the original.

(d) Consequence of Failure to File. If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal or the Appellate Division may dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument unless the Appellate

Division grants permission.

(e) Expedited Time to Serve and File Briefs in Cases Involving the Election, Qualification, or Office of an Elected Official. Any appeal in which the election, qualifications, or office of an elected official is disputed must proceed in an expedited manner. The appellant must serve and file a brief within 15 days after the appellant has received an audio recording or a transcript of the testimony and evidence or, if no recording or transcript has been requested, within 15 days after the filing of the notice of appeal. The appellee must serve and file a brief within 15 days after the appellant's brief is filed. The appellant may serve and file a reply brief within 5 days after the appellee's brief is filed. No enlargement of time will be granted absent a showing of extraordinary circumstances.

Comment: Subsection (c), which provides the number of copies of each brief to be filed, has been moved from former Rule 28(a). All other amendments to Rule 31 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

[Rule 32 Reserved]

Rule 33. Appeal Conferences

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

Comment: The amendments to Rule 33 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

Rule 34. Oral Argument

(a) Request for Argument. An appeal will include oral argument only upon the request of a party made on the cover sheet of an opening brief as required by Rule 28(g)(1)(F). If no request for oral argument is made, the case will be submitted on the briefs without oral argument unless the Appellate Division determines that oral argument should be held. Even if oral argument is requested, the Appellate Division may, in its discretion, order a case submitted on the briefs.

(b) Time and Place. If oral argument has been requested or ordered by the Appellate Division, the Appellate Division will assign a time and place for oral argument and notify each party or that party's counsel. A motion to postpone the argument must be filed reasonably in advance of the hearing date. For the

convenience of parties and justices, the Appellate Division will, on request, permit oral argument to be held remotely with the aid of telephonic or electronic means. If any party is neither present nor represented at the oral argument, the Appellate Division may proceed to hear the other parties and then proceed to decide the appeal without further notice.

(c) Order of Argument. The appellant opens and concludes the argument. If there is a cross-appeal, it will be argued when the initial appeal is argued and in the order that the Appellate Division directs.

(d) Length of Argument. Unless otherwise ordered, the appellant will have 30 minutes for argument, and the appellee will also have 30 minutes. The appellant may, by advising the courtroom deputy of his choice, reserve up to 10 minutes of the time allowed for argument in which to reply. A motion to allow longer argument must be filed at least 5 days before the time set for argument.

Comment: Subsection (a) has been amended to clarify that the Appellate Division may order a case submitted on the briefs even if oral argument is requested. Subsection (b) has been amended to provide that the Appellate Division will permit oral argument to be held remotely. Subsection (c) has been amended to provide a procedure for argument in cases with a cross-appeal. Subsection (d) has been amended to provide a procedure for appellant to request rebuttal time. All other amendments to Rule 34 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

[Rule 35 Reserved]

Rule 36. Judgment and Mandate

An opinion or other dispositive order of the Appellate Division constitutes the Appellate Division's judgment and mandate to the trial court and is effective when the deadline for filing a petition for rehearing has passed or, if a petition for rehearing is filed, the Appellate Division has disposed of the petition. The Clerk of Courts must enter the opinion or other dispositive order on the docket and must serve on all parties a copy of the opinion or order and a notice of the date when the opinion or order was entered.

Comment: Rule 36 has been amended to address two issues the prior rules were silent on—what constitutes the Appellate Division's judgment and mandate to the trial court and when the judgment and mandate become final. The new rule is based on Federal Rule 36. The former text of Rule 36 has been deleted as unnecessary.

Rule 37. Interest on Judgment

(a) When the Court Affirms. Unless the law provides otherwise, if a trial court's money judgment in a civil case is affirmed, whatever interest is allowed by law is payable from the date when the trial court's judgment was entered.

(b) When the Court Reverses. If the Appellate Division modifies or reverses a trial court's judgment with a direction that a money judgment be entered in the trial court, the Appellate Division's opinion must contain instructions about the allowance

of interest.

Comment: The amendments to Rule 37 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

Rule 38. Frivolous Appeal—Damages and Costs

If the Appellate Division determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

Comment: Rule 38 has been amended to make the rule consistent with the current version of the Federal Rules.

Rule 39. Costs

(a) Against Whom Assessed. The following rules apply unless the law provides or the Appellate Division orders otherwise:

(1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;

(2) if a judgment is affirmed, costs are taxed against the appellant;

(3) if a judgment is reversed, costs are taxed against the appellee;

(4) if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the Appellate Division orders.

(b) Costs For and Against the Republic of Palau. Costs for or against the Republic of Palau, its agency, or officer will be assessed under Rule 39(a) only if authorized by law.

Comment: The amendments to Rule 39 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

Rule 40. Petition for Rehearing

(a) Time to File; Contents; Response; Action by the Appellate Division if Granted.

(1) Time. Unless the time is shortened or extended by order, a petition for rehearing may be filed within 14 days after entry of the Appellate Division's opinion or order.

(2) Contents. The petition must state with particularity each point of law or fact that the petitioner believes the Appellate Division has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted.

(3) Response. Unless the Appellate Division requests, no response to a petition for rehearing is permitted. Ordinarily, rehearing will not be granted in the absence of such a request. If a response is requested, the requirements of Rule 40(b) apply to the response.

(4) Action by the Appellate Division. If a petition for rehearing is granted,

the Appellate Division may do any of the following:

(A) make a final disposition of the case without reargument;

(B) restore the case to the calendar for reargument or resubmission; or

(C) issue any other appropriate order.

(b) Form of Petition; Length. The petition must comply in form with Rule 28(g). Copies must be served and filed as Rule 31 prescribes. Except by permission of the Appellate Division, a petition for rehearing must not exceed 15 pages.

Comment: The amendments to Rule 40 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

[Rule 41 Reserved]

Rule 42. Voluntary Dismissal

The Appellate Division will dismiss an appeal or other proceeding if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due, but no other process may issue without a court order. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the Appellate Division.

Comment: The amendments to Rule 42 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

Rule 43. Substitution of Parties

(a) Death of a Party.

(1) After Notice of Appeal is Filed. If a party dies after a notice of appeal has been filed or while a proceeding is pending in the Appellate Division, the decedent's personal representative may be substituted as a party on motion filed with the Clerk of Courts by the representative or by any party. A party's motion must be served on the representative in accordance with Rule 25. If the decedent has no representative, any party may suggest the death on the record or the Appellate Division may take notice of the death, and the Appellate Division may then direct appropriate proceedings.

(2) Before Notice of Appeal is Filed—Potential Appellant. If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative—or, if there is no personal representative, the decedent's attorney of record—may file a notice of appeal within the time prescribed by these rules. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

(3) Before Notice of Appeal is Filed—Potential Appellee. If a party against whom an appeal may be taken dies after entry of a judgment or order in the trial court, but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

(b) Substitution for a Reason Other Than Death. If a party needs to be substituted for any reason other than death, the procedure prescribed in Rule 43(a) applies.

(c) Public Officer. When a public officer who is a party to an appeal or other proceeding in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate. The public officer's successor is automatically substituted as a party. Proceedings following the substitution are to be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties may be disregarded. An order of substitution may be entered at any time, but failure to enter an order does not affect the substitution.

Comment: The amendments to Rule 43 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

Rule 44. Case Involving a Constitutional Question When the Republic of Palau is Not a Party

If a party questions the constitutionality of an act of the Olbiil Era Kelulau in a proceeding in the Appellate Division in which the Republic of Palau or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the Attorney General immediately upon the filing of the record or as soon as the question is raised in the Appellate Division and must file a certificate of service of such notice with the Clerk of Courts.

Comment: The amendments to Rule 44 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

Rule 45. Clerk of Courts' Duties

(a) When Court Is Open. The Appellate Division is always open for filing any proper paper, issuing and returning process, making a motion, and entering an order. The office of the Clerk of Courts with the Clerk or assistant in attendance must be open during business hours on all days except Saturdays, Sundays, and legal holidays.

(b) Records.

(1) The Docket. The Clerk of Courts must maintain a docket and an index of all docketed cases in the manner prescribed by the Administrative Director. Cases will be assigned consecutive file numbers, and the file number of each case must be noted on the docket when the first entry is made. The Clerk of Courts must record all papers filed with the Clerk and all process, orders, and judgments in the docket in chronological order. Entries must be brief but must show the nature of each paper filed or judgment or order entered. Entries for an order or judgment must show the date the entry is made.

(2) Other Records. The Clerk must keep other books and records required by the Administrative Director or by the Appellate Division.

(c) Notice of an Order or Opinion. Upon the entry of an order or opinion, the

Clerk of Courts must immediately serve a notice of entry on each party, with a copy of any opinion, and must note the date of service on the docket. Service on a party represented by counsel must be made on counsel.

(d) Custody of Records and Papers. The Clerk of Courts has custody of the Appellate Division's records and papers. Unless the Appellate Division orders or instructs otherwise, the Clerk must not permit an original record or paper to be taken from the Clerk's office. Upon disposition of the case, original papers constituting the record on appeal or review must be returned to the court from which they were received. The Clerk must preserve a copy of any brief, appendix, or other paper that has been filed.

Comment: The amendments to Rule 45 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.