REPUBLIC OF PALAU RULES OF CIVIL PROCEDURE

Amended by the Supreme Court of the Republic of Palau on August 25, 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 Civil Procedure.

The present Rules of Civil Procedure, which mirror and follow the format of the Federal Rules of Civil Procedure for the United States Courts and Magistrates ("the Federal Rules"), were last promulgated in February 2008. The 2008 Rules superseded all previously promulgated Rules of Civil Procedure. A review of the 2008 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 Associate Justice John K. Rechucher, 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. Thank you also, to Presiding Justice Kathleen M. Salii and Court Counsel Hannah Morrissy for taking over and completing the project.

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

August 25, 2023.

Oldiais Ngiraikelau
Chief Justice

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU

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

These Rules of Civil 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 **September 11, 2023**, and supersede all previously promulgated Rules of Civil 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 25th day of August 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

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REPUBLIC OF PALAU
RULES OF CIVIL PROCEDURE

TITLE I. SCOPE OF RULES; FORM OF ACTION

Rule 1. Scope and Purpose

(a) Applicability. These rules govern procedure in all civil actions and proceedings in the Trial Division of the Supreme Court, the National Court, and the Court of Common Pleas, except to the extent that these rules are inconsistent with the Small Claims Rules or the Admiralty Rules. These rules shall be construed, administered, and employed by the court to secure the just, speedy, and inexpensive determination of every action and proceeding.

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

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

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

(e) Effective Date. These rules take effect on September 11, 2023. These rules govern all proceedings commenced after that date and, as far as is just and practicable, all proceedings then pending.

Comment: The amendments to Rule 1 are intended to be stylistic changes.

Rule 2. One Form of Action

There is one form of action—the civil action.

Comment: The amendments to Rule 2 are intended to be stylistic changes.

TITLE II. COMMENCING AN ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

Rule 3. Commencing an Action

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

Comment: No changes have been made to Rule 3.

Rule 4. Summons

(a) Contents; Amendments.

(1) Contents. A summons must:

(A) name the court and the parties;

(B) be directed to the defendant;

(C) state the name and address of the plaintiff's

attorney or—if unrepresented—of the plaintiff;

(D) state the time within which the defendant must appear and defend;

(E) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;

(F) be signed by the clerk; and

(G) bear the court's seal.

(2) Amendments. The court may permit a summons to be amended.

(b) Issuance. On or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is properly completed, the Clerk of Courts must sign, seal, and issue it to the plaintiff for service on the defendant. A summons—or a copy of a summons that is addressed to multiple defendants—must be issued for each defendant to be served.

(c) Service.

(1) In General. A summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.

(2) By Whom. Any person who is at least 18 years old and not a party may serve a summons and complaint.

(3) By Someone Specially Appointed. At the plaintiff's request, the court may order that service be made by a person specially appointed by the court.

(d) [Reserved]

(e) Serving an Individual Within the Republic of Palau. Unless otherwise provided by law, an individual—other than a minor or an incompetent person—may be served in the Republic of Palau by:

(1) delivering a copy of the summons and of the complaint to the individual personally;

(2) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(3) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

(f) Serving an Individual in a Foreign Country. Unless otherwise provided by law, an individual—other than a minor or an incompetent person—may be served at a place not within the Republic of Palau by a method that is reasonably calculated to give notice:

(1) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(2) as the foreign authority directs in response to a letter rogatory or letter of request;

(3) by other means not prohibited by international agreement, as the court orders; or

(4) unless prohibited by the foreign country's law, by:

(A) delivering a copy of the summons and of the complaint to the individual personally; or

(B) in the manner prescribed by any applicable statute of the Republic of Palau.

(g) Serving a Minor or an Incompetent Person. A minor in the Republic of Palau must be served by serving the summons and complaint upon the infant's custodial parent or guardian in any manner provided for serving an individual. An incompetent person in the Republic of Palau must be served by serving the summons and complaint upon the guardian of the person, if any, in any manner provided for serving an individual or by serving the agency to which the incompetent person has been committed in the manner provided for serving a corporation or association. A minor or an incompetent person not within the Republic of Palau must be served in the manner provided in Rule 4(f)(1), (f)(2), or (f)(3).

(h) Serving a Corporation, Partnership, or Association. Unless otherwise provided by law, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:

(1) in the Republic of Palau by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute to receive service and the statute so requires—by also mailing a copy of each to the defendant;

(2) in a place not within the Republic of Palau, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under Rule 4(f)(4)(A).

(i) Serving the Republic of Palau and Its Agencies, Corporations, Officers, or Employees.

(1) Republic of Palau. To serve the Republic of Palau, a party must:

(A) deliver a copy of the summons and of the complaint to the Attorney General or to any Assistant Attorney General; and

(B) if the action challenges an order of a nonparty agency or officer of the Republic of Palau, send a copy of each by registered or certified mail to the agency or officer.

(2) Agency; Corporation; Officer or Employee Sued in an Official Capacity. To serve a Republic of Palau agency or corporation, or a Republic of Palau officer or employee sued in an official capacity, a party must serve the Republic of Palau and also serve the agency or corporation (as provided in Rule 4(h)) or the officer

or employee (as provided in Rule 4(e)).

(j) Serving a Foreign or State Government.

(1) Foreign State. A foreign state or its political subdivision, agency, or instrumentality must be served in accordance with the foreign state's law respecting service.

(2) State Government. A state of the Republic of Palau must be served by delivering a copy of the summons and of the complaint to its chief executive officer. In any action naming a state officer in an official capacity, a party must also serve the officer or employee (as provided in Rule 4(e)).

(3) State Government Agencies; State Government Officer or Employee Sued in an Official Capacity. A state government agency or organization subject to suit must be served in the manner prescribed in subdivision Rule 4(h). In any action naming a state officer in an official capacity, a party must serve the officer or employee as provided in Rule 4(e).

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

(l) Proving Service. Proof of service must be made to the court. Except for service by a police officer or marshal, proof must be the server's affidavit. Failure to prove service does not affect the validity of service. The court may permit proof of service to be amended.

(m) Time Limit for Service. If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

(n) Asserting Jurisdiction Over Property or Assets.

(1) The court may assert jurisdiction over property if authorized by a statute of the Republic of Palau. Notice to claimants of the property must be given as provided in the statute or by serving a summons under this rule.

(2) On a showing that personal jurisdiction over a defendant cannot be obtained by reasonable efforts to serve a summons under this rule, the court may assert jurisdiction over the defendant's assets found in the Republic of Palau. Jurisdiction is acquired by seizing the assets under the circumstances and in the manner provided by law.

Comment: The 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 United States Federal Rules of Civil Procedure (the "Federal Rules").

Rule 4.1. Serving Other Process

Process—other than a summons under Rule 4 or a subpoena under Rule 45—must be served by a national government police officer or marshal or by a person specially appointed for that purpose. Proof of service must be made under Rule 4(*l*).

Comment: The amendments to Rule 4.1 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

Rule 5. Serving and Filing Pleadings and Other Papers

(a) Service: When Required.

(1) In General. Unless these rules provide otherwise, each of the following papers must be served on every party:

(A) an order stating that service is required;

(B) a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants;

(C) a discovery paper required to be served on a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(E) a written notice, appearance, demand, offer of judgment, or any similar paper.

(2) If a Party Fails to Appear. No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.

(3) Seizing Property. If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or possession of the property when it was seized.

(b) Service: How Made.

(1) Serving an Attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) Service in General. A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if a person has no office or the office is

closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address—in which event service is complete upon mailing;

(D) leaving it with the Clerk of Courts if the person maintains a filing box at the office of the Clerk of Courts;

(E) sending it to a registered user by filing it with the court's electronic filing system or sending it by other electronic means that the person consented to in writing—in either of which events service is complete upon filing or sending, but is not effective if the filer or sender learns that it did not reach the person to be served;

(F) delivering it by any other means that the person consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery; or

(G) delivering it through electronic means in Family Protection Act cases where at least two personal service attempts were unsuccessfully made and the action involves an ex parte petition for a temporary restraining order under 21 PNC § 821 et seq.

(i) "Electronic means" in subsection (G) only, may include the court's electronic filing system, email, text messaging, social media applications, or other technologies where verification may be accomplished by read-receipt mechanisms.

(ii) For the purposes subsection (G) only, consent to be served electronically is not required but the petitioner must provide the respondent's current electronic address which is reasonably effective to give respondent notice of the ex parte temporary restraining order.

(c) Serving Numerous Defendants.

(1) In General. If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:

(A) defendants' pleadings and replies to them need not be served on other defendants;

(B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or

avoided by all other parties; and

(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.

(2) Notifying Parties. A copy of every such order must be served on the parties as the court directs.

(d) Filing.

(1) Required Filings; Certificate of Service.

(A) Any paper after the complaint that is required to be served must be filed no later than a reasonable time after service. But disclosures under Rule 26(a)(1) or (2) and the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admission.

(B) Certificate of Service. When a paper that is required to be served is filed, a certificate of service identifying the paper that was served, the recipient, and the method of service must be filed with the paper or within a reasonable time after service.

(2) Nonelectronic Filing. A paper not filed electronically is filed by delivering it:

(A) to the Clerk of Courts; or

(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the Clerk of Courts.

(3) Electronic Filing and Signing.

(A) 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 court for good cause. If the electronic case filing system is not available, the represented person may file electronically by e-mailing the paper to the address provided by the Clerk of Courts.

(B) By an Unrepresented Person. An unrepresented person may file electronically by e-mailing the paper to the address provided by the Clerk of Courts.

(C) Form. All papers filed electronically must be 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.

(D) Signing. A filing made through the electronic case filing system and authorized by a person, together with that person's name on a signature block, constitutes the person's signature.

(E) Same as a Written Paper. A paper filed electronically is a written paper for purposes of these rules.

(4) Deficient Filings.

(A) In General. The Clerk of Courts must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice, but the Clerk of Courts must notify the filing party and the court whenever a paper is filed with one of the following deficiencies:

1. the paper does not include the certificate as required by Rule 5(d)(1);

2. the paper is not captioned as required by Rule 10(a);

3. the paper is not signed as required by Rule 11; or

4. the motion is not accompanied by a proposed order as required by Rule 7(c)(7).

(B) Remedying Deficiencies. The filing party must, within two days of notice, correct the deficiency. If the party fails to do so, it may be subject to sanctions, including the court striking the document.

(e) [Vacant]

(f) [Vacant]

(g) [Vacant]

(h) Fee Waiver. A party seeking to file an action may request a waiver of the filing fee by filing with the Court an affidavit showing his or her inability to pay fees at the time the party files a complaint. The judge assigned the action shall issue an order granting or denying the requested exemption. If the exemption is denied, the party must pay the fee within 14 days of service of the denial for the case to proceed. If no fee is paid, the case will be automatically disposed.

Comment: Subsection (b)(2) has been amended to allow service via the court's electronic filing system, to incorporate former subsection (g) allowing service by electronic means upon agreement, and to allow special electronic service for cases involving protective orders. Subsection (d)(1)(B) has been added to include former Rule 82's requirement for a certificate of service. Subsection (d) has been amended to require electronic filing by represented parties and to permit electronic filing by unrepresented parties. Former subsection (e) has been moved to subsection (d)(2). Former subsection (f) concerning filing by facsimile has been deleted. Rule 77(e) has been moved and modified to make up what is now subsection (d)(4). This section no longer allows clerks to reject deficient filings, but parties are still obligated to make

corrections when notified of the deficiency. All other amendments to Rule 5 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 5.1. Constitutional Challenge to a Law.

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

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

(A) a national law is questioned and the parties do not include the Republic of Palau, one of its agencies, or one of its officers or employees in an official capacity; or

(B) a state law is questioned and the parties do not include the state, one of its agencies, or one of its officers or employees in an official capacity; and

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

(b) Intervention; Final Decision on the Merits. Unless the court sets a later time, the Republic of Palau or a state may intervene within 30 days after the notice is filed. Before the time to intervene expires, the court may reject the constitutional challenge, but may not enter a final judgment holding the statute unconstitutional.

(c) No Forfeiture. A party's failure to file and serve the notice does not forfeit a constitutional claim or defense that is otherwise timely asserted.

Comment: The amendments to Rule 5.1 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

Rule 6. Computing and Extending Time; Time for Motion Papers.

(a) Computing Time. The following rules apply in computing any time period specified in these rules, in a court order, or in any 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 for periods of fourteen (14) days or more;

(C) exclude intermediate Saturdays, Sundays, and legal holidays for periods less than

fourteen (14) days; and

(D) 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) [Reserved]

(3) Inaccessibility of the Clerk of Courts. Unless the court orders otherwise, if——because of a declared emergency or for any other reason—the Clerk of Courts is inaccessible on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday.

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

(b) Extending Time.

(1) In General. When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) Exceptions. A court must not extend the time to act under Rules 52(b), 59(b), (d), (e), and 60(b).

(3) Successive Motions. No successive motions for enlargement will be granted absent the showing of extraordinary circumstances.

(c) [Reserved]

(d) Additional Time After Certain Kinds of Service. When a party may or must act within a specified time after being served and service is made by mail under Rule 5(b)(2)(C) (mail), 3 days are added after the period would otherwise expire under Rule 6(a).

Comment: Subsection (a) has been amended to create a different computation of time for periods less than 14 days. Deadlines in other rules that were previously 10 days have been changed to 14 days. Subsection (a) has also been amended to add procedures if the Clerk of Courts is inaccessible. All other amendments to Rule 6 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 III. PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed; Form of Motions and Other Papers; Motion Practice

(a) Pleadings. Only these pleadings are allowed:

(1) a complaint;
(2) an answer to a complaint;
(3) an answer to a counterclaim designated as a counterclaim;
(4) an answer to a crossclaim;
(5) a third-party complaint;
(6) an answer to a third-party complaint; and
(7) if the court orders one, a reply to an answer.

(b) Form of Motions and Other Papers. The rules governing captions and other matters of form in pleadings apply to motions and other papers.

(c) Motion Practice.

(1) In General. A request for a court order must be made by motion. The motion must:
- **(A)** be in writing unless made during a hearing or trial;
- **(B)** state with particularity the grounds for seeking the order; and
- **(C)** state the relief sought.

(2) Certificate of Conference. A motion for a continuance or extension of time must include a certificate stating that counsel for the movant has conferred with the opposing party or its counsel about the motion, whether the other parties consent to the relief requested, and whether any party intends to oppose the motion.

(3) Supporting Briefs.
- **(A) When Required.** A motion raising a substantial issue of law must be supported by a brief filed with the motion containing the moving party's contentions and the reasons for them, with citations to the authorities on which the party relies.
- **(B) Not Required.** Supporting briefs are not required when the motion raises no substantial issue of law and granting relief is within the court's discretion, including—but not limited to—motions all parties agree to, motions for extension of time, motions for default judgment, motions for voluntary or stipulated dismissal, and motions for leave to proceed *in forma pauperis*.

(4) Opposing a Motion.
- **(A) In General.** A party may, within 14 days after service of a motion, file:
  - **(i)** if the motion does not raise a substantial issue of law, a response to the motion; or
  - **(ii)** if the motion raises a substantial issue of law, a brief in opposition containing the responding party's contentions and the reasons for them, with citations to the

authorities on which the party relies.

(B) Failure to Oppose. If a party fails to timely file a response or an opposing brief, the court may, at its discretion, deem the matter uncontested and enter the requested relief.

(5) Replying in Support of a Motion. A moving party may, within 7 days after a response or opposition brief is served, file a reply. The reply must only address arguments raised in the opposition and must not repeat previously presented arguments.

(6) Evidence.

(A) In General. If a motion or brief requires consideration of matters outside the pleadings, the moving party must—at the time of filing the motion—also file any evidentiary materials, including affidavits, on which the party relies.

(B) Authentication of Evidence. All documents filed as evidence supporting a motion must be identified and authenticated by affidavit.

(C) Affidavits. Affidavits must be made on personal knowledge, set forth facts that are admissible as evidence, show that the affiant is competent to testify to the matters stated, and identify the motion in connection with which the affidavit is filed.

(D) Rebuttal Evidence. Rebuttal evidentiary materials must be filed only to address matters raised in the opposition.

(7) Proposed Orders. If a motion raises no substantial issue of law and granting relief is within the court's discretion, the moving party must—at the time of filing the motion—submit a proposed order on a separate page granting the motion and ordering requested relief.

(8) Routine Motions. Routine motions—including, but not limited to, motions for extension of time and motions for leave to proceed *in forma pauperis*—may be ruled on by the court at any time after being filed.

(9) Emergency Motions. Any motion that a party wishes to have heard on an emergency basis must designate the motion as such in the title and must explain why emergency consideration is warranted. The court, at its discretion, may act on the motion or request expedited briefing. Any opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the decision; a separate motion requesting that relief must be filed.

(10) Submission of Motions and Oral Argument. A motion will be submitted on the briefs and evidence at the expiration of the time limits specified in this rule unless the court determines that oral argument should be held. Oral argument may be requested by any party in the caption of its motion, response, or brief in opposition, but will only be granted at the court's discretion.

(11) Witness Testimony. Oral testimony in support of or in opposition to any motion will be permitted only on order of the court. The opportunity to present witness testimony may be requested by any party in the caption of its motion, response, or brief in opposition, but will only be granted at the court's discretion.

(12) Stipulations and Agreed Motions. Stipulations and agreed motions will be effective and binding only if adopted by the court by order. If a stipulation or agreed motion seeks to alter a prior court order, including a scheduling order, the parties must clearly state the reasons justifying the proposed change.

(13) Motions for Reconsideration. Motions for reconsideration shall be plainly labeled as such and shall be filed within fourteen (14) days following the order to which it relates. The motion shall point out with specificity the matters which the movant believes were overlooked or misapprehended by the court, any new matters being brought to the court's attention for the first time, and the particular modifications being sought in the court's prior ruling. Motions for reconsideration are disfavored and the court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to the court's attention earlier in the exercise of reasonable diligence.

(A) Post-Judgment Motions. Motions for reconsideration filed after final judgment will be treated either as Rule 59(e) Motions to Alter or Amend a Judgment or Rule 60(b) Motions for Relief from Final Judgment, depending on the timeframe in which they are filed.

Comment: Subsection (c) has been restructured to clarify the rules on motion practice. Subsection (c)(13) regarding the deadline for filing Motions for Reconsideration has changed from 10 judicial days to 14 days. Judicial days refer to the days in which the Judiciary is open, i.e., not weekends or national holidays. All other amendments to Rule 7 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 8. General Rules of Pleading.

(a) Claim for Relief. A pleading that states a claim for relief, whether a complaint, counterclaim, crossclaim, or third-party claim, must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) Defenses; Admissions and Denials.

(1) In General. In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) Denials—Responding to the Substance. A denial must fairly respond to the substance of the allegation.

(3) General and Specific Denials. A party that intends in good faith to deny all the allegations of a pleading—including the jurisdictional grounds—may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) Denying Part of an Allegation. A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) Lacking Knowledge or Information. A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) Effect of Failing to Deny. An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) Affirmative Defenses.

(1) In General. In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

- accord and satisfaction;
- arbitration and award;

- assumption of risk;
- contributory negligence;
- discharge in bankruptcy;
- duress;
- estoppel;
- failure of consideration;
- fraud;
- illegality;
- injury by fellow servant;
- laches
- license;
- payment;
- release;
- res judicata;
- statute of frauds;
- statute of limitations; and
- waiver.

(2) Mistaken Designation. If a party mistakenly designates a defense as a counterclaim or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) Pleading to be Concise and Direct; Alternative Statements; Inconsistency.

(1) In General. Each allegation must be simple, concise, and direct. No technical form is required.

(2) Alternative Statements of a Claim or Defense. A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) Inconsistent Claims or Defenses. A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) Construing Pleadings. Pleadings must be construed so as to do justice.

Comment: The 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. Pleading Special Matters

(a) Capacity or Authority to Sue; Legal Existence.

(1) In General. Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized

association of persons that is made a party.

(2) Raising Those Issues. To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(b) Fraud or Mistake; Conditions of the Mind. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

(c) Conditions Precedent. In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

(d) Official Document or Act. In pleading an official document or official act, it suffices to allege that the document was legally issued or the act legally done.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or a board or officer, it suffices to plead the judgment or decision without showing jurisdiction to render it.

(f) Time and Place. An allegation of time or place is material when testing the sufficiency of a pleading.

(g) Special Damages. If an item of special damage is claimed, it must be specifically stated.

(h) Admiralty or Maritime Claim. If a claim for relief is within the admiralty or maritime jurisdiction and also within the court's subject-matter jurisdiction on some other ground, the pleading may designate the claim as an admiralty or maritime claim for purposes of Rules 14(c), and the Admiralty Rules. A claim cognizable only in the admiralty or maritime jurisdiction is an admiralty or maritime claim for those purposes, whether or not so designated.

Comment: Former subsection 9(i) concerning expedited proceedings in cases involving the election, qualifications, or office of an elected official has been moved to new Rule 72 because it is more consistent with being characterized as a special proceeding rather than pleading of special matters. 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. Form of Pleadings

(a) Caption; Names of Parties. Every pleading must have a caption with the court's name, a title, a file number, a Rule 7(a) designation, and the name, address, and telephone number of the party's attorney or trial counselor or, if the party is pro se, the party's name, address, and telephone number. The title of the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties. A party must identify any related case—including

the caption of the case, the case number, and the jurisdiction in which the case is pending—that involves common questions of law or fact.

(b) Paragraphs; Separate Statements. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence—and each defense other than a denial—must be stated in a separate count or defense.

(c) Adoption by Reference; Exhibits. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

(d) Paper Size, Line Spacing, Typeface, and Margins. Pleadings must be single-sided, in black ink, and on 8 1/2 by 11-inch white 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. The typeface must be 12-point or larger. 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.

Comment: Rule 10 has been amended to remove references to motions and other papers, consistent with the Federal Rules, although Rule 7(b) requires motions and other papers to comply with this rule. 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.

Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

(a) Signature. Every pleading, written motion, and other paper must be signed by at least one attorney or trial counselor of record in the name of the attorney or trial counselor—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's, trial counselor's, or party's attention.

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

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) Sanctions.

(1) In General. If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, trial counselor, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) Motion for Sanctions. A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) On the Court's Own Initiative. On its own, the court may order an attorney, trial counselor, law firm, or party to show cause why the conduct specifically described in the order has not violated Rule 11(b).

(4) Nature of a Sanction. A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) Limitations on Monetary Sanctions. The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) Requirements for an Order. An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) Inapplicability to Discovery. This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

Comment: The amendments to Rule 11 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 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

(a) Time to Serve a Responsive Pleading.

(1) In General. Unless another time is specified by these rules or a statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer within 21 days of being served with the summons and complaint.

(B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 21 days of being served with an order to reply unless the order specifies a different time.

(2) Effect of a Motion. Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;
(3) [reserved]
(4) insufficient process;
(5) insufficient service of process;
(6) failure to state a claim upon which relief can be granted; and
(7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.

(d) Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) Motion for a More Definite Statement. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) Motion to Strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or
(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

(g) Joining Motions.

(1) Right to Join. A motion under this rule may be joined with any other motion allowed by this rule.

(2) Limitation on Further Motions. Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) Waiving and Preserving Certain Defenses.

(1) When Some are Waived. A party waives any defense listed in Rule 12(b)(2)–(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) When to Raise Others. Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) Lack of Subject-Matter Jurisdiction. If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) Hearing Before Trial. If a party so moves, any defense listed in Rule 12(b)(1)–(7)—whether made in a pleading or by motion—and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

Comment: Subsections (a)(1) and (f) have been amended to change the time period from 20 days to 21 days, and subsections (a)(2) and (e) have been amended to change the time from 10 days to 14 days. Former subsection (b)(3) has been removed because improper venue is not relevant in Palau. All other amendments to Rule 12 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 13. Counterclaim and Crossclaim

(a) Compulsory Counterclaim.

(1) In General. A pleading must state as a counterclaim any claim that—at the time of its service—the pleader has against an opposing party if the claim:

(A) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and

(B) does not require adding another party over whom the court cannot acquire jurisdiction.

(2) Exceptions. The pleader need not state the claim if:

(A) when the action was commenced, the claim was the subject of another pending action; or

(B) the opposing party sued on its claim by

attachment or other process that did not establish personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this rule.

(b) Permissive Counterclaim. A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.

(c) Relief Sought in a Counterclaim. A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.

(d) Counterclaim Against the Republic of Palau. These rules do not expand the right to assert a counterclaim—or to claim a credit—against the Republic of Palau or an officer or agency of the Republic of Palau.

(e) Counterclaim Maturing or Acquired After Pleading. The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.

(f) [Abrogated]

(g) Crossclaim against a Co-Party. A pleading may state as a crossclaim any claim by one party against a co-party if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The crossclaim may include a claim that the co-party is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) Joining Additional Parties. Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim.

(i) Separate Trials; Separate Judgments. If the court orders separate trials under Rule 42(b), it may enter judgment on a counterclaim or crossclaim under Rule 54(b) when it has jurisdiction to do so, even if the opposing party's claims have been dismissed or otherwise resolved.

Comment: Former subsection (f) has been removed because amendments to counterclaims are governed by Rule 15. All other amendments to Rule 13 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 14. Third-Party Practice

(a) When a Defending Party May Bring in a Third Party.

(1) Timing of the Summons and Complaint. A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain the court's leave if it files the third-party complaint more than 14 days after serving its original answer.

(2) Third-Party Defendant's Claims and Defenses. The person served with the summons and third-party complaint—the "third-party defendant":

(A) must assert any defense against the third-party plaintiff's claim under Rule 12;

(B) must assert any counterclaim against the third-party plaintiff under Rule 13(a), and may assert any counterclaim against the third-party plaintiff under Rule 13(b) or any crossclaim against another third-party defendant under Rule 13(g);

(C) may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiff's claim; and

(D) may also assert against the plaintiff any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(3) Plaintiff's Claims Against a Third-Party Defendant. The plaintiff may assert against the third-party defendant any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The third-party defendant must then assert any defense under Rule 12 and any counterclaim under Rule 13(a), and may assert any counterclaim under Rule 13(b) or any crossclaim under Rule 13(g).

(4) Motion to Strike, Sever, or Try Separately. Any party may move to strike the third-party claim, to sever it, or to try it separately.

(5) Third-Party Defendant's Claim Against a Nonparty. A third-party defendant may proceed under this rule against a nonparty who is or may be liable to the third-party defendant for all or part of any claim against it.

(6) Third-Party Complaint In Rem. If it is within the admiralty or maritime jurisdiction, a third-party complaint may be in rem. In that event, a reference in this rule to the "summons" includes the warrant of arrest, and a reference to the defendant or third-party plaintiff includes, when appropriate, the claimant of the property arrested.

(b) When a Plaintiff May Bring in a Third Party. When a claim is asserted against a plaintiff, the plaintiff may bring in a third party if this rule would allow a defendant to do so.

(c) Admiralty and Maritime Claims.

(1) Scope of Impleader. If a plaintiff asserts an admiralty or maritime claim under Rule 9(h), the defendant or claimant may, as a third-party

plaintiff, bring in a third-party defendant who may be wholly or partly liable—either to the plaintiff or to the third-party plaintiff—for remedy over, contribution, or otherwise on account of the same transaction, occurrence, or series of transactions or occurrences.

(2) Defending Against a Demand for Judgment for the Plaintiff. The third-party plaintiff may demand judgment in the plaintiff's favor against the third-party defendant. In that event, the third-party defendant must defend under Rule 12 against the plaintiff's claim as well as the third-party plaintiff's claim; and the action proceeds as if the plaintiff had sued both the third-party defendant and the third-party plaintiff.

Comment: Subsection (a)(1) has been amended to change the time period from 10 days to 14 days. All other amendments to Rule 14 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 15. Amended and Supplemental Pleadings

(a) Amendments Before Trial.

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) Time to Respond. Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

(b) Amendments During and After Trial.

(1) Based on an Objection at Trial. If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would

prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) For Issues Tried by Consent. When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move—at any time, even after judgment—to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) Relation Back of Amendments.

(1) When an Amendment Relates Back. An amendment to a pleading relates back to the date of the original pleading when:

(A) the law that provides the applicable statute of limitations allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading; or

(C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:

(i) received such notice of the action that it will not be prejudiced in defending on the merits; and

(ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

(2) Notice to the Republic of Palau. When the Republic of Palau or a Republic of Palau officer or agency is added as a defendant by amendment, the notice requirements of Rule 15(c)(1)(C)(i) and (ii) are satisfied if, during the stated period, process was delivered or mailed to the Attorney General of the Republic of Palau or to the officer or agency.

(d) Supplemental Pleadings. On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

Comment: Subsection (a)(1), on when a party may amend its pleading as a matter of course, has been amended to track the Federal Rules. Subsection

(a)(1) has been amended to change the time period from 20 days to 21 days, and subsection (a)(3) has been amended to change the time period from 10 days to 14 days. Subsection (c)(1)(A) has been added to make clear that this rule does not preclude relation back that may be permitted under applicable law. Subsection (c)(1)(C) has been amended to change the time period that an intended defendant must have become aware of the action to the period allowed by Rule 4(m). All other amendments to Rule 15 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 16. Pretrial Conferences; Scheduling; Management

(a) Purposes of a Pretrial Conference. In any action, the court may order the attorneys, trial counselors, and any unrepresented parties to appear for one or more pretrial conferences for such purposes as:

- **(1)** expediting disposition of the action;
- **(2)** establishing early and continuing control so that the case will not be protracted because of a lack of management;
- **(3)** discouraging wasteful pretrial activities;
- **(4)** improving the quality of the trial through more thorough preparation; and
- **(5)** facilitating settlement.

(b) Scheduling.

- **(1) Scheduling Order.** The court, after consulting with the attorneys, trial counselors, and any unrepresented parties, must issue a scheduling order.
- **(2) Time to Issue.** The court should issue the scheduling order as soon as practicable, but unless the court finds good cause for delay, the court must issue it within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared.
- **(3) Contents of the Order.**
  - **(A) Required Contents.** The scheduling order must limit the time to join other parties, amend the pleadings, complete discovery, and file motions.
  - **(B) Permitted Contents.** The scheduling order may:
    - **(i)** order initial disclosures under Rules 26(a)(1);
    - **(ii)** modify the timing of disclosures under Rules 26(a)(2)–(3) and 26(e)(1);
    - **(iii)** modify the extent of discovery;
    - **(iv)** provide for disclosure, discovery, or preservation of electronically stored information;
    - **(v)** direct that before moving for an order relating to discovery, the movant must request a conference with the court;

(vi) set dates for pretrial conferences and for trial; and

(vii) include other appropriate matters.

(4) Modifying a Schedule. A schedule may be modified only for good cause and with the court's consent.

(c) Attendance and Matters for Consideration at a Pretrial Conference.

(1) Attendance. A represented party must authorize at least one of its attorneys or trial counselors to make stipulations and admissions about all matters that can reasonably be anticipated for discussion at a pretrial conference. If appropriate, the court may require that a party or its representative be present or reasonably available by other means to consider possible settlement.

(2) Status Report; Matters for Consideration. On the day before the first status conference, or on such date as set by the court, each party must file a status report—or the parties may submit a joint status report—setting forth positions on the following matters that the court may consider and take appropriate action on at the pretrial conference:

(A) formulating and simplifying the issues, and eliminating frivolous claims or defenses;

(B) amending the pleadings if necessary or desirable;

(C) obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence;

(D) avoiding unnecessary proof and cumulative evidence;

(E) identifying witnesses and documents, scheduling the filing and exchange of any pretrial briefs, and setting dates for further conferences and for trial;

(F) referring matters to a master;

(G) settling the case and using special procedures to assist in resolving the dispute;

(H) determining the form and content of the pretrial order;

(I) disposing of pending motions;

(J) adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and

(K) facilitating in other ways the just, speedy, and inexpensive disposition of the action.

(d) Pretrial Orders. After any conference under this rule, the

court should issue an order reciting the action taken. This order controls the course of the action unless the court modifies it.

(e) Final Pretrial Conference and Orders. The court may hold a final pretrial conference to formulate a trial plan, including a plan to facilitate the admission of evidence. The conference must be held as close to the start of trial as is reasonable and must be attended by at least one attorney or trial counselor who will conduct the trial for each party and by any unrepresented party. The court may modify the order issued after a final pretrial conference only to prevent manifest injustice.

(f) Sanctions.

(1) In General. On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(2)(B)–(G), if a party or its attorney or trial counselor:

(A) fails to appear at a scheduling or other pretrial conference;

(B) is substantially unprepared to participate—or does not participate in good faith—in the conference; or

(C) fails to obey a scheduling or other pretrial order.

(2) Imposing Fees and Costs. Instead of or in addition to any other sanction, the court must order the party, its attorney or trial counselor, or both to pay the reasonable expenses—including attorney's or trial counselor's fees—incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

Comment: Subsection (b)(2) has been added to include when the scheduling order should be issued. Subsection (b)(3)(B) has been amended to add specific contents that may be included in the scheduling order. All other amendments to Rule 16 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. PARTIES

Rule 17. Plaintiff and Defendant; Capacity; Public Officers

(a) Real Party in Interest.

(1) Designation in General. An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(A) an executor;

(B) an administrator;

(C) a guardian;
(D) a bailee;
(E) a trustee of an express trust;
(F) a party with whom or in whose name a contract has been made for another's benefit; and
(G) a party authorized by statute.

(2) Action in the Name of the Republic of Palau for Another's Use or Benefit. When a statute so provides, an action for another's use or benefit must be brought in the name of the Republic of Palau.

(3) Joinder of the Real Party in Interest. The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

(b) Capacity to Sue or Be Sued. Capacity to sue or be sued is determined as follows:

(1) for an individual who is not acting in a representative capacity, by the law of the individual's domicile;

(2) for a corporation, by the law under which it was organized; and

(3) for all other parties, by the law of the state where the court is located, except that:

(A) a partnership or other unincorporated association with no such capacity under that state's law may sue or be sued in its common name to enforce a substantive right existing under the Palau Constitution or laws.

(c) Minor or Incompetent Person.

(1) With a Representative. The following representatives may sue or defend on behalf of a minor or an incompetent person:

(A) a general guardian;
(B) a committee;
(C) a conservator; or
(D) a like fiduciary.

(2) Without a Representative. A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.

(d) Public Officer's Title and Name. A public officer who sues or is sued in an official capacity may be designated by official title rather than by name, but the court may order that the

officer's name be added.

Comment: Subsection (b) has been added to address the capacity of individuals and organizations to sue or be sued. Subsection (d) has been added to clarify the procedure for suits involving public officers. All other amendments to Rule 17 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 18. Joinder of Claims

(a) In General. A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.

(b) Joinder of Contingent Claims. A party may join two claims even though one of them is contingent on the disposition of the other, but the court may grant relief only in accordance with the parties' relative substantive rights. In particular, a plaintiff may state a claim for money and a claim to set aside a conveyance that is fraudulent as to that plaintiff, without first obtaining a judgment for the money.

Comment: The amendments to Rule 18 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 19. Required Joinder of Parties

(a) Persons Required to be Joined if Feasible.

(1) Required Party. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

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

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

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) Joinder by Court Order. If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(b) When Joinder is Not Feasible. If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

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

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

(c) Pleading the Reasons for Nonjoinder. When asserting a claim for relief, a party must state:

(1) the name, if known, of any person who is required to be joined if feasible but is not joined; and

(2) the reasons for not joining that person.

(d) Exception for Class Actions. This rule is subject to Rule 23.

Comment: Subsection (a) has been amended to remove the reference to improper venue, which is not relevant in Palau. All other amendments to Rule 19 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 20. Permissive Joinder of Parties

(a) Persons Who May Join or Be Joined.

(1) Plaintiffs. Persons may join in one action as plaintiffs if:

(A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all plaintiffs will arise in the action.

(2) Defendants. Persons—as well as a vessel, cargo, or other property subject to admiralty process in rem—may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

(3) Extent of Relief. Neither a plaintiff nor a defendant need be interested in obtaining or defending against all the relief demanded. The court may grant judgment to one or more plaintiffs according to their rights, and against one or more defendants according to their liabilities.

(b) Protective Measures. The court may issue orders—including an order for separate trials—to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party.

Comment: The amendments to Rule 20 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 21. Misjoinder and Nonjoinder of Parties

Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.

Comment: The 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.

Rule 22. Interpleader

(a) Grounds.

(1) By a Plaintiff. Persons with claims that may expose a plaintiff to double or multiple liabilities may be joined as defendants and required to interplead. Joinder for interpleader is proper even though:

(A) the claims of the several claimants, or the titles on which their claims depend, lack a common origin or are adverse and independent rather than identical; or

(B) the plaintiff denies liability in whole or in part to any or all of the claimants.

(2) By a Defendant. A defendant exposed to similar liability may seek interpleader through a crossclaim or counterclaim.

(b) Relation to Other Rules. This rule supplements—and does not limit—the joinder of parties allowed by Rule 20.

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. Class Actions

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

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

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

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

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

(b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:

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

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

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

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

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

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

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

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

(D) the likely difficulties in managing a class action.

(c) Certification Order; Notice to Class Members; Judgment; Issues Classes; Subclasses.

(1) Certification Order.

(A) Time to Issue. At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.

(B) Defining the Class; Appointing Class Counsel. An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g).

(C) Altering or Amending the Order. An order that grants or denies class certification may be altered or amended before final judgment.

(2) Notice.

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

(B) For (b)(3) Classes. For any class certified under Rule 23(b)(3)—or upon ordering notice under Rule 23(e)(1) to a class proposed to be certified for purposes of settlement under Rule 23(b)(3)—the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice may be by one or more of the following: mail, electronic means, or other appropriate means. The notice must clearly and concisely state in plain, easily understood language:

(i) the nature of the action;

(ii) the definition of the class certified;

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

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

(v) that the court will exclude from the class any member who requests exclusion;

(vi) the time and manner for requesting exclusion; and

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

(3) Judgment. Whether or not favorable to the class, the judgment in a class action must:

(A) for any class certified under Rule 23(b)(1) or

(b)(2), include and describe those whom the court finds to be class members; and

(B) for any class certified under Rule 23(b)(3), include and specify or describe those to whom the Rule 23(c)(2) notice was directed, who have not requested exclusion, and whom the court finds to be class members.

(4) Particular Issues. When appropriate, an action may be brought or maintained as a class action with respect to particular issues.

(5) Subclasses. When appropriate, a class may be divided into subclasses that are each treated as a class under this rule.

(d) Conducting the Action.

(1) In General. In conducting an action under this rule, the court may issue orders that:

(A) determine the course of proceedings or prescribe measures to prevent undue repetition or complication in presenting evidence or argument;

(B) require—to protect class members and fairly conduct the action—giving appropriate notice to some or all class members of:

(i) any step in the action;

(ii) the proposed extent of the judgment; or

(iii) the members' opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise come into the action;

(C) impose conditions on the representative parties or on intervenors;

(D) require that the pleadings be amended to eliminate allegations about the representation of absent persons and that the action proceed accordingly; or

(E) deal with similar procedural matters.

(2) Combining and Amending Orders. An order under Rule 23(d)(1) may be altered or amended from time to time and may be combined with an order under Rule 16.

(e) Settlement, Voluntary Dismissal, or Compromise. The claims, issues, or defenses of a certified class—or a class proposed to be certified for purposes of settlement—may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) Notice to the Class. The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.

(2) Approval of the Proposal. If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including the timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

(3) Identifying Agreements. The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.

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

(5) Class-Member Objections.

(A) In General. Any class member may object to the proposal if it requires court approval under this subdivision (e). The objection must state with specificity the grounds for the objection. An objection may be withdrawn only with the court's approval.

(B) Court Approval Required for Payment in Connection with an Objection. Unless approved by the court after a hearing, no payment or other consideration may be provided in connection with:

(i) forgoing or withdrawing an objection, or

(ii) forgoing, dismissing, or abandoning an appeal from a judgment approving the proposal.

(f) Appeals. The Appellate Division may permit an appeal from an order granting or denying class-action certification under this rule. A party must file a petition for permission to appeal

with the Clerk of Courts within 14 days after the order is entered. An appeal does not stay proceedings in the trial court unless the trial judge or the Appellate Division so orders.

(g) Class Counsel.

(1) Appointing Class Counsel. Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court:

(A) must consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class;

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

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

(D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Rule 23(h); and

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

(2) Standard for Appointing Class Counsel. When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.

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

(4) Duty of Class Counsel. Class counsel must fairly and adequately represent the interests of the class.

(h) Attorney's Fees and Nontaxable Costs. In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this

subdivision (h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

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

(3) The court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a).

Comment: Subsection (e)(2) has been amended to add factors for the court to consider when determining whether a settlement, voluntary dismissal, or compromise is fair, reasonable, and adequate. Subsection (e)(5)(B) has been added to require court approval for payment in connection with an objection or an appeal. Subsection (f) has been added to allow appeals, with the Appellate Division's permission, of an order granting or denying class-action certification. 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 23.1. Derivative Actions

(a) Prerequisites. This rule applies when one or more shareholders or members of a corporation or an unincorporated association bring a derivative action to enforce a right that the corporation or association may properly assert but has failed to enforce. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of shareholders or members who are similarly situated in enforcing the right of the corporation or association.

(b) Pleading Requirements. The complaint must be verified and must:

(1) allege that the plaintiff was a shareholder or member at the time of the transaction complained of, or that the plaintiff's share or membership later devolved on it by operation of law;

(2) allege that the action is not a collusive one to confer jurisdiction that the court would otherwise lack; and

(3) state with particularity:

(A) any effort by the plaintiff to obtain the desired action from the directors or comparable authority and, if necessary, from the shareholders or members; and

(B) the reasons for not obtaining the action or not making the effort.

(c) Settlement, Dismissal, and Compromise. A derivative action may be settled, voluntarily dismissed, or compromised only with the court's approval. Notice of a proposed settlement, voluntary dismissal, or compromise must be given to shareholders or members in the manner that the court orders.

Comment: The amendments to Rule 23.1 are intended to be stylistic

changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

Rule 23.2. Actions Relating to Unincorporated Associations

This rule applies to an action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties. The action may be maintained only if it appears that those parties will fairly and adequately protect the interests of the association and its members. In conducting the action, the court may issue any appropriate orders corresponding with those in Rule 23(d), and the procedure for settlement, voluntary dismissal, or compromise must correspond with the procedure in Rule 23(e).

Comment: The amendments to Rule 23.2 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.

Rule 24. Intervention

(a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:

- **(1)** is given an unconditional right to intervene by a statute of the Republic of Palau; or
- **(2)** claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest unless existing parties adequately represent that interest.

(b) Permissive Intervention.

- **(1) In General.** On timely motion, the court may permit anyone to intervene who:
  - **(A)** is given a conditional right to intervene by a statute of the Republic of Palau; or
  - **(B)** has a claim or defense that shares with the main action a common question of law or fact.
- **(2) By a Government Officer or Agency.** On timely motion, the court may permit a national or state government officer or agency to intervene if a party's claim or defense is based on:
  - **(A)** a statute or executive order administered by the officer or agency; or
  - **(B)** any regulation, order, requirement, or agreement issued or made under the statute or executive order.
- **(3) Delay or Prejudice.** In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) Notice and Pleading Required. A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

Comment: Subsection (c) has been amended to delete the requirement that the court notify the Attorney General when the constitutionality of a national law because that requirement already appears in Rule 5.1. All other 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.

Rule 25. Substitution of Parties

(a) Death.

(1) Substitution if the Claim Is Not Extinguished. If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

(2) Continuation Among the Remaining Parties. After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.

(3) Service. A motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner.

(b) Incompetency. If a party becomes incompetent, the court may, on motion, permit the action to be continued by or against the party's representative. The motion must be served as provided in Rule 25(a)(3).

(c) Transfer of Interest. If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

(d) Public Officers; Death or Separation from Office. An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

Comment: The 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.

TITLE V. DISCLOSURES AND DISCOVERY

Rule 26. Duty to Disclose; General Provisions Governing Discovery

(a) Disclosures.

(1) Initial Disclosures.

(A) In General. The court, at its discretion, may order a party—without awaiting a discovery request—to provide to the other parties:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses unless the use would be solely for impeachment;

(ii) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

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

(B) Basis for Initial Disclosure; Unacceptable Excuses. A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its

disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) Disclosure of Expert Testimony.

(A) In General. In addition to the disclosures provided for in Rule 26(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Rule of Evidence 702, 703, or 705.

(B) Witnesses Who Must Provide a Written Report. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report—prepared and signed by the witness—if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

(i) a complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) the facts or data considered by the witness in forming them;

(iii) any exhibits that will be used to summarize or support them;

(iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and

(vi) a statement of the compensation to be paid for the study and testimony in the case.

(C) Witnesses Who Do Not Provide a Written Report. Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state:

(i) the subject matter on which the witness is expected to present evidence under Federal Rule of Evidence 702, 703, or 705; and

(ii) a summary of the facts and opinions to which the witness is expected to testify.

(D) Time to Disclose Expert Testimony. A party must make these disclosures at the

times and in the sequence that the court orders. Absent a stipulation or a court order, the disclosures must be made:

(i) at least 90 days before the date set for trial or for the case to be ready for trial; or

(ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B) or (C), within 30 days after the other party's disclosure.

(E) Supplementing the Disclosure. The parties must supplement these disclosures when required under Rule 26(e).

(3) Pretrial Disclosures.

(A) In General. In addition to the disclosures provided for in Rule 26(a)(1) and (2), a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

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

(ii) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and;

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

(B) Time for Pretrial Disclosures; Objections. Unless the court orders otherwise, these disclosures must be made at least 30 days before trial. Within 14 days after they are made, unless the court sets a different time, a party may serve and promptly file a list of the following objections: any objections to the use under Rule 32(a) of a deposition designated by another party under Rule 26(a)(3)(A)(ii); and any objection, together with the grounds for it, that may be made to the admissibility of materials identified under Rule 26(a)(3)(A)(iii). An objection not so made—except for one under

Rule of Evidence 402 or 403—is waived unless excused by the court for good cause.

(4) Form of Disclosures. Unless the court orders otherwise, all disclosures under Rule 26(a) must be in writing, signed, and served.

(b) Discovery Scope and Limits.

(1) Scope in General. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(2) Limitations on Frequency and Extent.

(A) When Permitted. By order, the court may alter the limits in these rules on the number of depositions and interrogatories, or on the length of depositions under Rule 30. By order, the court may also limit the number of requests under Rule 36.

(B) Specific Limitations on Electronically Stored Information. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(C) When Required. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

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

(iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).

(3) Trial Preparation: Materials.

(A) Documents and Tangible Things. Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, trial counselor, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:

(i) they are otherwise discoverable under Rule 26(b)(1); and

(ii) the party shows that it has a substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) Protection Against Disclosure. If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney, trial counselor, or other representative concerning the litigation.

(C) Previous Statement. Any party or other person may, on request and without the required showing, obtain the person's own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and Rule 37(a)(5) applies to the award of expenses. A previous statement is either:

(i) a written statement that the person has signed or otherwise adopted or approved; or

(ii) a contemporaneous stenographic, mechanical, electrical, or other recording—or a transcription of it—that recites substantially verbatim the person's oral statement.

(4) Trial Preparation: Experts.

(A) Deposition of an Expert Who May Testify. A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule

26(a)(2)(B) requires a report from the expert, the deposition may be conducted only after the report is provided.

(B) Trial-Preparation Protection for Draft Reports or Disclosures. Rules 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded.

(C) Trial-Preparation Protection for Communications Between a Party's Attorney and Expert Witnesses. Rules 26(b)(3)(A) and (B) protect communications between the party's attorney and any witness required to provide a report under Rule 26(a)(2)(B), regardless of the form of the communications, except to the extent that the communications:

- **(i)** relate to compensation for the expert's study or testimony;
- **(ii)** identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or
- **(iii)** identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(D) Expert Employed Only for Trial Preparation. Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

- **(i)** as provided in Rule 35(b); or
- **(ii)** on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(E) Payment. Unless manifest injustice would result, the court must require that the party seeking discovery:

- **(i)** pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(4)(A) or (D); and
- **(ii)** for discovery under (D), also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts and

opinions.

(5) Claiming Privilege or Protecting Trial-Preparation Materials.

(A) Information Withheld. When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

(i) expressly make the claim; and

(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) Information Produced. If information produced in discovery is subject to a claim of privilege or protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(c) Protective Orders.

(1) In General. A party or any person from whom discovery is sought may move for a protective order. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the disclosure or discovery;

(B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery;

(C) prescribing a discovery method other than the one selected by the party seeking discovery;

(D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

(E) designating the persons who may be present while the discovery is conducted;

(F) requiring that a deposition be sealed and opened only on court order;

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and

(H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

(2) Ordering Discovery. If a motion for a protective order is wholly or partly denied, the court may, on just terms, order that any party or person provide or permit discovery.

(3) Awarding Expenses. Rule 37(a)(5) applies to the award of expenses.

(d) Timing and Sequence of Discovery.

(1) Timing. A party may not seek discovery from any source until 21 days after the complaint has been filed, except when authorized by these rules, by stipulation, or by court order.

(2) Sequence. Unless the parties stipulate or the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice:

(A) methods of discovery may be used in any sequence; and

(B) discovery by one party does not require any other party to delay its discovery.

(e) Supplementing Disclosures and Responses.

(1) In General. A party who has made a disclosure under Rule 26(a)—or who has responded to an interrogatory, request for production, or request for admission—must supplement or correct its disclosure or response:

(A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the court.

(2) Expert Witness. For an expert whose report must be disclosed under Rule 26(a)(2)(B), the party's duty to supplement extends both to information included in the report and to information given during the expert's deposition. Any additions or changes to this

information must be disclosed by the time the party's pretrial disclosures under Rule 26(a)(3) are due.

(f) Discovery Conference.

(1) In General. At any time after the commencement of an action, the court, on motion or on its own, may order the parties to appear for a discovery conference.

(2) Conference Content. At the discovery conference, the court and the parties may consider the nature and basis of the claims and defenses and the possibilities for promptly settling or resolving the case; arrange for the disclosures under Rule 26(a)(1); discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys or trial counselors of record and all unrepresented parties have a duty to participate in good faith in the framing of the proposed discovery plan.

(3) Discovery Order. Following the discovery conference, the court will enter an order identifying the subjects on which discovery may be needed, establishing a plan and schedule for discovery, setting any necessary limitations on discovery, and determining any other issues necessary for the proper management of discovery in the action. The court's order may be altered or amended when justice so requires.

(4) Combination with Pretrial Conference. Subject to a party's right to move for a discovery conference, the court may combine the discovery conference with the pretrial conference authorized by Rule 16.

(g) Signing Disclosures and Discovery Requests, Responses, and Objections.

(1) Signature Required; Effect of Signature. Every disclosure under Rule 26(a)(1) or (a)(3) and every discovery request, response, or objection must be signed by at least one attorney or trial counselor of record in the attorney's or trial counselor's own name—or by the party personally, if unrepresented—and must state the signer's address, e-mail address, and telephone number. By signing, an attorney, trial counselor, or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry:

(A) with respect to a disclosure, it is complete and correct as of the time it is made; and

(B) with respect to a discovery request, response, or objection, it is:

(i) consistent with these rules and

warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;

(ii) not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(iii) neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

(2) Failure to Sign. Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's, trial counselor's, or party's attention.

(3) Sanction for Improper Certification. If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney's or trial counselor's fees, caused by the violation.

Comment: Former subsection (a) has been deleted as redundant. Subsection (a)(2)(C) has been added to require disclosure for expert witnesses not required to provide a written report. Subsection (b)(2)(B) has been added to provide limitations on the discovery of electronically stored information. Former subsection (c)(3) concerning the discovery of insurance agreements has been deleted because such discovery is discussed in subsection (a)(1)(A). Subsection (b)(4)(A) has been amended to remove reference to interrogatories to identify expert witnesses because expert witnesses are required to be disclosed under subsection (a)(2). Subsection (b)(4)(A) has also been amended to allow the deposition of expert witnesses as a matter of course without a court order. Subsections (b)(4)(B) and (C) have been added to clarify when trial-preparation applies to draft reports and communications with expert witnesses. Subsection (b)(5) has been added to include provisions for claiming privilege and protecting trial preparation materials. Subsection (c)(1) has been amended to require the parties to confer in good faith before filing a motion for a protective order. Subsection (d)(1) has been amended to add that a party generally may not seek discovery until 21 days after the complaint has been filed. Subsection (g)(1)(A) has been added to provide that a person signing a disclosure certifies that it is complete and correct as of the time it is made. Section (g)(3) has been amended to provide that sanctions are appropriate when a certification violates this rule without substantial justification. 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. Depositions to Perpetuate Testimony

(a) Before an Action Is Filed.

(1) Petition. A person who wants to perpetuate testimony about any matter cognizable in a court of the Republic of Palau may file a verified petition in the Trial Division. The petition must ask for an order authorizing the petitioner to depose the named persons in order to perpetuate their testimony. The petition must be titled in the petitioner's name and must show:

(A) that the petitioner expects to be a party to an action cognizable in a court of the Republic of Palau but cannot presently bring it or cause it to be brought;

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

(C) the facts that the petitioner wants to establish by the proposed testimony and the reasons to perpetuate it;

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

(E) the name, address, and expected substance of the testimony of each deponent.

(2) Notice and Service. At least 21 days before the hearing date, the petitioner must serve each expected adverse party with a copy of the petition and a notice stating the time and place of the hearing. The notice may be served in the manner provided in Rule 4. If that service cannot be made with reasonable diligence on an expected adverse party, the court may order service by publication or otherwise. The court must appoint an attorney or trial counselor to represent persons not served in the manner provided in Rule 4 and to cross-examine the deponent if an unserved person is not otherwise represented. If any expected adverse party is a minor or is incompetent, Rule 17(c) applies.

(3) Order and Examination. If satisfied that perpetuating the testimony may prevent a failure or delay of justice, the court must issue an order that designates or describes the persons whose depositions may be taken, specifies the subject matter of the examinations, and states whether the depositions will be taken orally or by written interrogatories. The depositions may then be taken under these rules, and the court may issue orders like those authorized by Rules 34 and 35.

(4) Using the Deposition. A deposition to perpetuate testimony may be used under Rule 32(a) in any later-filed action brought in any trial court in the Republic of Palau involving the same subject matter.

(b) Pending Appeal.

(1) In General. The court, where a judgment has been rendered, may if an appeal has been taken or may still be taken, permit a party to depose witnesses to perpetuate their testimony for use in the event of further proceedings in that court.

(2) Motion. The party who wants to perpetuate testimony may move for leave to take the depositions, on the same notice and service as if the action were pending in the court. The motion must show:

(A) the name, address, and expected substance of the testimony of each deponent; and

(B) the reasons for perpetuating the testimony.

(3) Court Order. If the court finds that perpetuating the testimony may prevent a failure or delay of justice, the court may permit the depositions to be taken and may issue orders like those authorized by Rules 34 and 35. The depositions may be taken and used as any other deposition taken in a pending action.

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

Comment: Subsection (a)(2) has been amended to change the time period from 20 days to 21 days. All other amendments to Rule 12 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. Persons Before Whom Depositions May Be Taken

(a) Within the Republic of Palau. Within the Republic of Palau, a deposition must be taken before an officer authorized to administer oaths either by a law of the Republic of Palau or a person appointed by the court where the action is pending to administer oaths and take testimony. The term "officer" in Rules 30, 31, and 32 includes a person appointed by the court under this rule or designated by the parties under Rule 29(a).

(b) In a Foreign Country.

(1) In General. A deposition may be taken in a foreign country:

(A) under a letter of request, whether or not captioned a "letter rogatory";

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

(C) before a person commissioned by the court to administer any necessary oath and take testimony.

(2) Issuing a Letter of Request or a Commission. A letter of request, a commission, or both may be

issued:

(A) on appropriate terms after an application and notice of it; and

(B) without a showing that taking the deposition in another manner is impracticable or inconvenient.

(3) Form of a Request, Notice, or Commission. A letter of request may be addressed "To the Appropriate Authority in [name of country]." A deposition notice or a commission must designate by name or descriptive title the person before whom the deposition is to be taken.

(4) Letter of Request—Admitting Evidence. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the Republic of Palau.

(c) Disqualification. A deposition must not be taken before a person who is any party's relative, employee, attorney, or trial counselor; who is related to or employed by any party's attorney or trial counselor; or who is financially interested in the action.

Comment: The 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 29. Stipulations About Discovery Procedure

Unless the court orders otherwise, the parties may stipulate that:

(a) a deposition may be taken before any person, at any time or place, on any notice, and in the manner specified—in which event it may be used in the same way as any other deposition; and

(b) other procedures governing or limiting discovery be modified—but a stipulation extending the time for any form of discovery must have court approval if it would interfere with the time set for completing discovery, for hearing a motion, or for trial.

Comment: The 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. Depositions By Oral Examination

(a) When a Deposition May Be Taken.

(1) Without Leave. A party may, by oral questions, depose any person, including a party, without leave of court except as provided in Rule 30(a)(2). The deponent's attendance may be compelled by subpoena under Rule 45.

(2) With Leave. A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2):

(A) if the parties have not stipulated to the deposition and:

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

(ii) the deponent has already been deposed in the case; or

(B) if the deponent is confined in prison.

(b) Notice of the Deposition; Other Formal Requirements.

(1) Notice in General. A party who wants to depose a person by oral questions must give reasonable written notice to every other party. The notice must state the time and place of the deposition and, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) Producing Documents. If a subpoena duces tecum is to be served on the deponent, the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment. The notice to a party deponent may be accompanied by a request under Rule 34 to produce documents and tangible things at the deposition.

(3) Method of Recording.

(A) Method Stated in the Notice. The party who notices the deposition must state in the notice the method for recording the testimony. Unless the court orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. The noticing party bears the recording costs. Any party may arrange to transcribe a deposition.

(B) Additional Method. With prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice. That party bears the expense of the additional record or transcript unless the court orders otherwise.

(4) By Remote Means. The parties may stipulate—or the court may on motion order—that a deposition be taken by telephone or other remote means. For the purpose of this rule and Rules 28(a), 37(a)(2), and

37(b)(1), the deposition takes place where the deponent answers the questions.

(5) Officer's Duties.

(A) Before the Deposition. Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under Rule 28. The officer must begin the deposition with an on-the-record statement that includes:

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

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

(iii) the deponent's name;

(iv) the officer's administration of the oath or affirmation to the deponent; and

(v) the identity of all persons present.

(B) Conducting the Deposition; Avoiding Distortion. If the deposition is recorded non-stenographically, the officer must repeat the items in Rule 30(b)(5)(A)(i)–(iii) at the beginning of each unit of the recording medium. The deponent's and attorneys' appearance or demeanor must not be distorted through recording techniques.

(C) After the Deposition. At the end of a deposition, the officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

(6) Notice or Subpoena Directed to an Organization. In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination. A subpoena must advise a nonparty organization of its duty to confer with the serving party and to designate each person who will testify. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by

these rules.

(c) Examination and Cross-Examination; Record of the Examination; Objections; Written Questions.

(1) Examination and Cross-Examination. The examination and cross-examination of a deponent proceed as they would at trial under the Rules of Evidence, except Rules 103 and 615. After putting the deponent under oath or affirmation, the officer must record the testimony by the method designated under Rule 30(b)(3)(A). The testimony must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer.

(2) Objections. An objection at the time of the examination—whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition—must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).

(3) Participating Through Written Questions. Instead of participating in the oral examination, a party may serve written questions in a sealed envelope to the party noticing the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

(d) Duration; Sanction; Motion to Terminate or Limit.

(1) Duration. Unless otherwise stipulated or ordered by the court, a deposition is limited to one day of 4 hours. The court must allow additional time consistent with Rule 26(b)(1) and (2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(2) Sanction. The court may impose an appropriate sanction—including the reasonable expenses and attorney's or trial counselor's fees incurred by any party—on a person who impedes, delays, or frustrates the fair examination of the deponent.

(3) Motion to Terminate or Limit.

(A) Grounds. At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. If the

objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) Order. The court may order that the deposition be terminated or may limit its scope and manner as provided in Rule 26(c). If terminated, the deposition may be resumed only by order of the court.

(C) Award of Expenses. Rule 37(a)(5) applies to the award of expenses.

(e) Review by the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and if so, must attach any changes the deponent makes during the 30-day period.

(f) Certification and Delivery; Exhibits; Copies of the Transcript or Recording; Filing.

(1) Certification and Delivery. The officer must certify in writing that the witness was duly sworn and that the deposition accurately records the witness's testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of [witness's name]" and must promptly send it to the attorney who arranged for the transcript or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) Documents and Tangible Things.

(A) Originals and Copies. Documents and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition. Any party may inspect and copy them. But if the person who produced them wants to keep the originals, the person may:

(i) offer copies to be marked, attached to the deposition, and then used as

originals—after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(ii) give all parties a fair opportunity to inspect and copy the originals after they are marked—in which event the originals may be used as if attached to the deposition.

(B) Order Regarding the Originals. Any party may move for an order that the originals be attached to the deposition pending the final disposition of the case.

(3) Copies of the Transcript or Recording. Unless otherwise stipulated or ordered by the court, the officer must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method. When paid reasonable charges, the officer must furnish a copy of the transcript or recording to any party or the deponent.

(4) Notice of Filing. A party who files the deposition must promptly notify all other parties of the filing.

(g) Failure to Attend a Deposition or Serve a Subpoena; Expenses. A party who, expecting a deposition to be taken, attends in person or by an attorney or trial counselor may recover reasonable expenses for attending, including attorney's or trial counselor's fees, if the noticing party failed to:

(1) attend and proceed with the deposition; or

(2) serve a subpoena on a nonparty deponent, who consequently did not attend.

Comment: Subsection (b)(4) has been added to allow depositions to be taken by remote means. Subsection (b)(6) has been amended to require a serving party and an organization to confer in good faith about the matters for examination. Subsection (d)(1) has been amended to state that a deposition is limited to 4 hours unless the court orders otherwise. Subsection (f)(1) has been amended to state that the officer must send the deposition to the noticing party instead of filing the deposition. All other amendments to Rule 30 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 31. Depositions by Written Questions

(a) When a Deposition May Be Taken.

(1) Without Leave. A party may, by written questions, depose any person, including a party, without leave of court except as provided in Rule 31(a)(2). The deponent's attendance may be compelled by subpoena under Rule 45.

(2) With Leave. A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2):

(A) if the parties have not stipulated to the

deposition and:

(i) the deposition would result in more than 10 depositions being taken under this rule or Rule 30 by the plaintiffs, by the defendants, or by the third-party defendants;

(ii) the deponent has already been deposed in the case; or

(iii) the party seeks to take a deposition before the time specified in Rule 26(d); or

(B) if the deponent is confined in prison.

(3) Service; Required Notice. A party who wants to depose a person by written questions must serve them on every other party, with a notice stating, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice must also state the name or descriptive title and the address of the officer before whom the deposition will be taken.

(4) Questions Directed to an Organization. A public or private corporation, a partnership, an association, or a governmental agency may be deposed by written questions in accordance with Rule 30(b)(6).

(5) Questions from Other Parties. Any questions to the deponent from other parties must be served on all parties as follows: cross-questions, within 30 days after being served with the notice and direct questions; redirect questions, within 10 days after being served with cross-questions; and recross-questions, within 10 days after being served with redirect questions. The court may, for good cause, extend or shorten these times.

(b) Delivery to the Officer; Officer's Duties. The party who noticed the deposition must deliver to the officer a copy of all the questions served and of the notice. The officer must promptly proceed in the manner provided in Rule 30(c), (e), and (f) to:

(1) take the deponent's testimony in response to the questions;

(2) prepare and certify the deposition; and

(3) send it to the party, attaching a copy of the questions and the notice.

(c) Notice of Completion or Filing.

(1) Completion. The party who noticed the deposition must notify all other parties when it is completed.

(2) Filing. A party who files the deposition must promptly notify all other parties of the filing.

Comment: Subsection (a)(2) has been amended to clarify situations in

which the court's leave is required to take a deposition by written questions. Subsection (b) has been amended to state that the officer must send the deposition to the noticing party instead of filing the deposition. 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. Using Depositions in Court Proceedings

(a) Using Depositions.

(1) In General. At a hearing or trial, all or part of a deposition may be used against a party on these conditions:

(A) the party was present or represented at the taking of the deposition or had reasonable notice of it;

(B) it is used to the extent it would be admissible under the Rules of Evidence if the deponent were present and testifying; and

(C) the use is allowed by Rule 32(a)(2) through (8).

(2) Impeachment and Other Uses. Any party may use a deposition to contradict or impeach the testimony given by the deponent as a witness, or for any other purpose allowed by the Rules of Evidence.

(3) Deposition of Party, Agent, or Designee. An adverse party may use for any purpose the deposition of a party or anyone who, when deposed, was the party's officer, director, managing agent, or designee under Rule 30(b)(6) or 31(a)(4).

(4) Unavailable Witness. A party may use for any purpose the deposition of a witness, whether or not a party, if the court finds:

(A) that the witness is dead;

(B) that the witness is outside the Republic of Palau, unless it appears that the witness's absence was procured by the party offering the deposition;

(C) that the witness cannot attend or testify because of age, illness, infirmity, or imprisonment;

(D) that the party offering the deposition could not procure the witness's attendance by subpoena; or

(E) on motion and notice, that exceptional circumstances make it desirable—in the interest of justice and with due regard to the importance of live testimony in open court—to permit the deposition to be used.

(5) Limitation on Use of Deposition Taken on Short Notice. A deposition must not be used against a party who, having received less than 14

days' notice of the deposition, promptly moved for a protective order under Rule 26(c)(1)(B) requesting that it not be taken or be taken at a different time or place—and this motion was still pending when the deposition was taken.

(6) Using Part of a Deposition. If a party offers in evidence only part of a deposition, an adverse party may require the offeror to introduce other parts that in fairness should be considered with the part introduced, and any party may itself introduce any other parts.

(7) Substituting a Party. Substituting a party under Rule 25 does not affect the right to use a deposition previously taken.

(8) Deposition Taken in an Earlier Action. A deposition lawfully taken and, if required, filed in any action may be used in a later action involving the same subject matter between the same parties, or their representatives or successors in interest, to the same extent as if taken in the later action. A deposition previously taken may also be used as allowed by the Rules of Evidence.

(b) Objections to Admissibility. Subject to Rules 28(b) and 32(d)(3), an objection may be made at a hearing or trial to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

(c) Form of Presentation. Unless the court orders otherwise, a party must provide a transcript of any deposition testimony the party offers, but may provide the court with the testimony in non-transcript form as well.

(d) Waiver of Objections.

(1) To the Notice. An objection to an error or irregularity in a deposition notice is waived unless promptly served in writing on the party giving the notice.

(2) To the Officer's Qualification. An objection based on disqualification of the officer before whom a deposition is to be taken is waived if not made:

(A) before the deposition begins; or

(B) promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known.

(3) To the Taking of the Deposition.

(A) Objection to Competence, Relevance, or Materiality. An objection to a deponent's competence—or to the competence, relevance, or materiality of testimony—is not waived by a failure to make the objection before or during the deposition, unless the ground for it might have been corrected at that time.

(B) Objection to an Error or Irregularity. An objection to an error or irregularity at an oral examination is waived if:

(i) it relates to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct, or other matters that might have been corrected at that time; and

(ii) it is not timely made during the deposition.

(C) Objection to a Written Question. An objection to the form of a written question under Rule 31 is waived if not served in writing on the party submitting the question within the time for serving responsive questions or, if the question is a recross-question, within 7 days after being served with it.

(4) To Completing and Returning the Deposition. An objection to how the officer transcribed the testimony—or prepared, signed, certified, sealed, endorsed, sent, or otherwise dealt with the deposition—is waived unless a motion to suppress is made promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.

Comment: Subsection (a)(5) has been added to limit the use of depositions taken on short notice. Subsection (d)(3)(C) has been amended to change the time period from 5 days to 7 days. All other amendments to Rule 32 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 33. Interrogatories to Parties

(a) In General.

(1) Number. Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(1) and (2).

(2) Scope. An interrogatory may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.

(b) Answers and Objections.

(1) Responding Party. The interrogatories must be

answered:

(A) by the party to whom they are directed; or

(B) if that party is a public or private corporation, a partnership, an association, or a governmental agency, by any officer or agent, who must furnish the information available to the party.

(2) Time to Respond. The responding party must serve its answers and any objections within 30 days after being served with the interrogatories. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(3) Answering Each Interrogatory. Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.

(4) Objections. The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.

(5) Signature. The person who makes the answers must sign them, and the attorney who objects must sign any objections.

(c) Use. An answer to an interrogatory may be used to the extent allowed by the Rules of Evidence.

(d) Option to Produce Business Records. If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

(1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

Comment: Subsection (b)(5) has been added to require the signature of the person answering the interrogatories and the attorney objecting to the interrogatories. All other 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. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering Onto Land, for Inspection and Other Purposes

(a) In General. A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(B) any designated tangible things; or

(2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(b) Procedure.

(1) Contents of the Request. The request:

(A) must describe with reasonable particularity each item or category of items to be inspected;

(B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(C) may specify the form or forms in which electronically stored information is to be produced.

(2) Responses and Objections.

(A) Time to Respond. The party to whom the request is directed must respond in writing within 30 days after being served or—if the party to whom the request is directed is a defendant and the request is made before that defendant has answered—within 45 days after that defendant was served with the summons and complaint. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(B) Responding to Each Item. For each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons. The responding party may state that it will produce copies of documents or electronically stored information instead of permitting inspection. The production must then be

completed no later than the time for inspection specified in the request or another reasonable time specified in the response.

(C) Objections. An objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest.

(D) Responding to a Request for Production of Electronically Stored Information. The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form—or if no form was specified in the request—the party must state the form or forms it intends to use.

(E) Producing the Documents or Electronically Stored Information. Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(iii) A party need not produce the same electronically stored information in more than one form.

(c) Nonparties. As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.

Comment: Several amendments and additions have been made to Rule 34 to clarify that the rule applies to electronically stored information and to specify the procedures for producing electronically stored information. 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. Physical and Mental Examinations

(a) Order for Examination.

(1) In General. The court where the action is pending may order a party whose mental or physical condition—including blood group—is in controversy

to submit to a physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.

(2) Motion and Notice; Contents of the Order. The order:

(A) may be made only on motion for good cause and on notice to all parties and the person to be examined; and

(B) must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.

(b) Examiner's Report.

(1) Request by the Party or Person Examined. The party who moved for the examination must, on request, deliver to the requester a copy of the examiner's report, together with like reports of all earlier examinations of the same condition. The request may be made by the party against whom the examination order was issued or by the person examined.

(2) Contents. The examiner's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(3) Request by the Moving Party. After delivering the reports, the party who moved for the examination may request—and is entitled to receive—from the party against whom the examination order was issued like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

(4) Waiver of Privilege. By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have—in that action or any other action involving the same controversy—concerning testimony about all examinations of the same condition.

(5) Failure to Deliver a Report. The court on motion may order—on just terms—that a party deliver the report of an examination. If the report is not provided, the court may exclude the examiner's testimony at trial.

(6) Scope. This subdivision (b) applies also to an examination made by the parties' agreement unless the agreement states otherwise. This subdivision does not preclude obtaining an examiner's report or deposing an examiner under other rules.

Comment: The amendments to Rule 35 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 36. Requests for Admission

(a) Scope and Procedure.

(1) Scope. A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to:

(A) facts, the application of law to fact, or opinions about either; and

(B) the genuineness of any described documents.

(2) Form; Copy of a Document. Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying.

(3) Time to Respond; Effect of Not Responding. A matter is admitted unless, within 30 days after being served—or, if the party to whom the request is directed is a defendant and the request is made before that defendant has answered, within 45 days after that defendant was served with the summons and complaint—the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney or trial counselor. A shorter or longer time for responding may be stipulated to under Rule 29 or be ordered by the court.

(4) Answer. If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(5) Objections. The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for trial.

(6) Motion Regarding the Sufficiency of an

Answer or Objection. The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. Rule 37(a)(5) applies to an award of expenses.

(b) Effect of an Admission; Withdrawing or Amending It. A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. Subject to Rule 16(e), the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.

Comment: The amendments to Rule 36 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 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

(a) Motion for an Order Compelling Disclosure or Discovery.

(1) In General. On notice to other parties and all affected persons, a party may move in the court where the action is pending for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

(2) Specific Motions.

(A) To Compel Disclosure. If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions.

(B) To Compel a Discovery Response. A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

(i) a deponent fails to answer a question asked under Rule 30 or 31;

(ii) a corporation or other entity fails to make a designation under Rule 30(b)(6)

or 31(a)(4);

(iii) a party fails to answer an interrogatory submitted under Rule 33; or

(iv) a party fails to produce documents or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34.

(C) Related to a Deposition. When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order.

(3) Evasive or Incomplete Disclosure, Answer, or Response. For purposes of this subdivision (a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.

(4) Payment of Expenses; Protective Orders.

(A) If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing). If the motion is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney or trial counselor advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's or trial counselor's fees. But the court must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(ii) the opposing party's nondisclosure, response, or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

(B) If the Motion Is Denied. If the motion is denied, the court may issue any protective order authorized under Rule 26(c) and must, after giving an opportunity to be heard, require the movant, the attorney or trial counselor filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's or trial counselor's fees. But the court must not order this payment if the motion was

substantially justified or other circumstances make an award of expenses unjust.

(C) If the Motion Is Granted in Part and Denied in Part. If the motion is granted in part and denied in part, the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.

(b) Sanctions for Failure to Comply with a Court Order.

(1) For Failing to Be Sworn In or Answer a Question. If the court orders a deponent to be sworn in or to answer a question and the deponent fails to obey, the failure may be treated as contempt of court.

(2) For Not Obeying a Discovery Order. If a party or a party's officer, director, or managing agent—or a witness designated under Rule 30(b)(6) or 31(a)(4)—fails to obey an order to provide or permit discovery, including an order under Rule 26(f), 35, or 37(a), the court may issue further just orders. They may include the following:

(A) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

(B) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(C) striking pleadings in whole or in part;

(D) staying further proceedings until the order is obeyed;

(E) dismissing the action or proceeding in whole or in part;

(F) rendering a default judgment against the disobedient party; or

(G) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

(3) For Not Producing a Person for Examination. If a party fails to comply with an order under Rule 35(a) requiring it to produce another person for examination, the court may issue any of the orders listed in Rule 37(b)(2)(A)–(F), unless the disobedient party shows that it cannot produce the other person.

(4) Payment of Expenses. Instead of or in addition to the orders above, the court must order the disobedient party, the attorney or trial counselor advising that party, or both to pay the reasonable

expenses, including attorney's or trial counselor's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(c) Failure to Disclose, to Supplement an Earlier Response, or to Admit.

(1) Failure to Disclose or Supplement. If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

(A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;

(B) may inform the jury of the party's failure; and

(C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)–(F).

(2) Failure to Admit. If a party fails to admit what is requested under Rule 36 and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's or trial counselor's fees, incurred in making that proof. The court must so order unless:

(A) the request was held objectionable under Rule 36(a);

(B) the admission sought was of no substantial importance;

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

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

(d) Party's Failure to Attend Its Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for Inspection.

(1) In General.

(A) Motion; Grounds for Sanctions. The court may, on motion, order sanctions if:

(i) a party or a party's officer, director, or managing agent—or a person designated under Rule 30(b)(6) or 31(a)(4)—fails, after being served with proper notice, to appear for that

person's deposition; or

(ii) a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or written response.

(B) Certification. A motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action.

(2) Unacceptable Excuse for Failing to Act. A failure described in Rule 37(d)(1)(A) is not excused on the ground that the discovery sought was objectionable unless the party failing to act has a pending motion for a protective order under Rule 26(c).

(3) Types of Sanctions. Sanctions may include any of the orders listed in Rule 37(b)(2)(A)–(F). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney or trial counselor advising that party, or both to pay the reasonable expenses, including attorney's or trial counselor's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(e) Failure to Participate in Framing a Discovery Plan. If a party or its attorney or trial counselor fails to participate in good faith in developing and submitting a proposed discovery plan as required by Rule 26(f), the court may, after giving an opportunity to be heard, require that party, attorney, or trial counselor to pay to any other party the reasonable expenses, including attorney's or trial counselor's fees, caused by the failure.

Comment: Several amendments and additions have been made to Rule 37 to clarify that the rule applies to a party's failure to make disclosures. Subsection (a)(4)(A)(i) has been added to provide that filing a motion to compel before attempting to confer in good faith is grounds for the court to not order payment of expenses if the motion is granted. Subsection (b)(4) has been added to provide that the court may order payment of expenses as a sanction for failing to comply with a court order. Subsection (c) has been amended to apply to failure to disclose or to supplement an earlier response. 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.

TITLE VI. TRIALS

[Rules 38–39 Reserved]

Rule 40. Good Faith Settlement Attempt

Prior to the commencement of a trial, counsel for all parties shall certify to the court that they conferred with each other and made a good faith effort to settle the dispute.

Comment: No changes have been made to Rule 40.

Rule 41. Dismissal of Actions

(a) Voluntary Dismissal.

(1) By the Plaintiff.

(A) Without a Court Order. Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared.

(B) Effect. Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any action in the Republic of Palau based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(2) By Court Order; Effect. Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

(b) Involuntary Dismissal; Effect.

(1) By Court. The court, after notice to the parties and in the absence of a showing of good cause to the contrary, must dismiss an action for failure to prosecute at any time more than six months have passed since the last docket entry showing any action taken by the plaintiff other than filing a motion for continuance.

(2) On Defendant's Motion. If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.

(3) Effect. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of

jurisdiction or failure to join a party under Rule 19—operates as an adjudication on the merits.

(c) Dismissing a Counterclaim, Crossclaim, or Third-Party Claim. This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 41(a)(1)(A)(i) must be made:

(1) before a responsive pleading is served; or

(2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

(d) Costs of a Previously Dismissed Action. If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court:

(1) may order the plaintiff to pay all or part of the costs of that previous action; and

(2) may stay the proceedings until the plaintiff has complied.

Comment: Subsection (a)(1)(A) has been amended to make the voluntary dismissals subject to Rule 23.1(c) and Rule 23.2. All other amendments to Rule 41 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 42. Consolidation; Separate Trials

(a) Consolidation.

(1) In General. If actions before the court involve a common question of law or fact, the court may:

(A) join for hearing or trial any or all matters at issue in the actions;

(B) consolidate the actions; or

(C) issue any other orders to avoid unnecessary cost or delay.

(2) Motion to Consolidate. A motion to consolidate must be filed in the lowest-numbered case included in the proposed consolidation and will be decided by the judge to whom the lowest-numbered case is assigned. A notice of filing of a motion to consolidate shall be filed by the moving party as a party or, with the assistance of the Clerk of Courts, as an interested party in all other cases proposed for consolidation.

(3) Reassignment. If the cases to be consolidated are assigned to different judges, the cases will be reassigned to the judge to whom the lowest numbered consolidated case was assigned.

(b) Separate Trials. For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims.

Comment: Subsections (a)(2) and (3) have been added to address the

procedure for moving to consolidate and for reassigning consolidated cases when the cases were initially assigned to different judges. All other 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. Taking Testimony

(a) In Open Court. At trial, the witnesses' testimony must be taken in open court unless a statute, the Rules of Evidence, or these rules provide otherwise. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

(b) Affirmation Instead of an Oath. When these rules require an oath, a solemn affirmation suffices.

(c) Evidence on a Motion. When a motion relies on facts outside the record, the court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

(d) Interpreter. The court may appoint an interpreter of its choosing; fix reasonable compensation to be paid from funds provided by law or by one or more parties; and tax the compensation as costs.

Comment: Subsection (a) has been amended to allow for remote testimony. Subsection (c) has been added to permit a court to hear evidence on a motion in the form of affidavits, oral testimony, or depositions. All other 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. Proving an Official Record

(a) Means of Proving.

(1) Domestic Record. Each of the following evidences an official record—or an entry in it—that is otherwise admissible and is kept within the Republic of Palau or any state:

(A) an official publication of the record; or

(B) a copy attested by the officer with legal custody of the record—or by the officer's deputy—and accompanied by a certificate that the officer has custody. The certificate must be made under seal:

(i) by a judge of a court of record where the record is kept; or

(ii) by any public officer with a seal of office and with official duties in the government agency or political subdivision where the record is kept.

(2) Foreign Record.

(A) In General. Each of the following evidences a foreign official record—or an entry in it—

that is otherwise admissible:

(i) an official publication of the record; or

(ii) the record—or a copy—that is attested by an authorized person and is accompanied by a final certification of genuineness.

(B) Final Certification of Genuineness. A final certification must certify the genuineness of the signature and official position of the attester or of any foreign official whose certificate of genuineness relates to the attestation or is in a chain of certificates of genuineness relating to the attestation. A final certification may be made by a secretary of a Republic of Palau embassy or legation; by a consul general, vice consul, or consular agent of the Republic of Palau; or by a diplomatic or consular official of the foreign country assigned or accredited to the Republic of Palau.

(C) Other Means of Proof. If all parties have had a reasonable opportunity to investigate a foreign record's authenticity and accuracy, the court may, for good cause, either:

(i) admit an attested copy without final certification; or

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

(b) Lack of a Record. A written statement that a diligent search of designated records revealed no record or entry of a specified tenor is admissible as evidence that the records contain no such record or entry. For domestic records, the statement must be authenticated under Rule 44(a)(1). For foreign records, the statement must comply with Rule 44(a)(2).

(c) Other Proof. A party may prove an official record—or an entry or lack of an entry in it—by any other method authorized by law.

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 44.1. Determining Foreign Law

A party who intends to raise an issue about a foreign country's law must give notice by a pleading or other writing. In determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Rules of Evidence. The court's determination must be treated as a ruling on a question of law.

Comment: The amendments to Rule 44.1 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

Rule 45. Subpoena

(a) In General.

(1) Form and Contents.

(A) Requirements—In General. Every subpoena must:

(i) state the court from which it was issued;

(ii) state the title of the action and its civil-action number; and

(iii) command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises.

(B) Command to Attend a Deposition—Notice of the Recording Method. A subpoena commanding attendance at a deposition must state the method for recording the testimony.

(C) Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information. A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(D) Command to Produce; Included Obligations. A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding person to permit inspection, copying, testing, or sampling of the materials.

(2) Issuing Court. A subpoena must issue from the court where the action is pending.

(3) Issued by Whom. The Clerk of Courts must issue a subpoena, signed but otherwise in blank, to a

party who requests it. That party must complete it before service. An attorney or trial counselor also may issue and sign a subpoena if the attorney is authorized to practice in the Republic of Palau.

(4) Notice to Other Parties Before Service. If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party.

(b) Service.

(1) By Whom and How; Tendering Fees. Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person.

(2) Service in the Republic of Palau. A subpoena may be served at any place within the Republic of Palau.

(3) Service in a Foreign Country. When provided for by law, the court issuing the subpoena may, upon proper application and cause shown, authorize the service of the subpoena at any place outside the Republic of Palau. 14 PNC § 143 governs issuing and serving a subpoena directed to a Republic of Palau national or resident who is in a foreign country.

(4) Proof of Service. Proving service, when necessary, requires filing with the Clerk of Courts a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server.

(c) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party, attorney, or trial counselor responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court from which the subpoena is issued must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's or trial counselor's fees—on a party, attorney, or trial counselor who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the

place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

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

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

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court may, on motion, quash or modify the subpoena if it requires:

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

(ii) disclosing an unretained expert's opinion or information that does not

describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

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

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

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

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that

showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Comment: Several provisions have been added to Rule 45 concerning the production of electronically stored information. Subsection (d)(2)(B) has been added to provide procedures for when a party produces protected information. All other 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.

Rule 46. Objecting to a Ruling or Order

A formal exception to a ruling or order is unnecessary. When the ruling or order is requested or made, a party need only state the action that it wants the court to take or objects to, along with the

grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made.

Comment: The amendments to Rule 46 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 47–51 Reserved]

Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings

(a) Findings and Conclusions.

(1) In General. In an action tried on the facts, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58.

(2) For an Interlocutory Injunction. In granting or refusing an interlocutory injunction, the court must similarly state the findings and conclusions that support its action.

(3) For a Motion. The court is not required to state findings or conclusions when ruling on a motion under Rule 12 or 56 or, unless these rules provide otherwise, on any other motion.

(4) Effect of a Master's Findings. A master's findings, to the extent adopted by the court, must be considered the court's findings.

(5) Questioning the Evidentiary Support. A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

(6) Setting Aside the Findings. Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.

(b) Amended or Additional Findings. On a party's motion filed no later than 28 days after the entry of judgment, the court may amend its findings—or make additional findings—and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59.

(c) Judgment on Partial Findings. If a party has been fully heard on an issue during a trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can

be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law as required by Rule 52(a).

Comment: Subsection (b) has been amended to change the time period from 10 days to 28 days. All other amendments to Rule 52 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 53. Masters and Assessors

(a) Appointment of Master.

(1) Scope. A court may appoint a master to address pretrial, trial, or posttrial matters that cannot be effectively and timely addressed by the presiding judge, including performing duties consented to by the parties, handling issues related to the testimony of witnesses whose appearance before the court would be unduly burdensome, and holding trial proceedings and making or recommending findings of fact on issues.

(2) Disqualification. A master must not have a relationship with the parties, attorneys, trial counselors, action, or court that would require disqualification of a judge, unless the parties, with the court's approval, consent to the appointment after the master discloses any potential grounds for disqualification.

(3) Possible Expense or Delay. In appointing a master, the court must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.

(b) Master's Authority.

(1) Order Appointing Master. The appointing order must direct the master to proceed with all reasonable diligence and may specify or limit the master's powers, direct the master to report only upon particular issues or to perform particular acts or to receive and report evidence, and fix the time and place for beginning and closing the hearings and for the filing of the master's report.

(2) Generally. Unless the appointing order directs otherwise, a master may regulate all proceedings, take all appropriate measures to perform the assigned duties fairly and efficiently, if conducting an evidentiary hearing, exercise the appointing court's power to compel, take, and record evidence, rule upon the admissibility of evidence. When a party so requests, the master must make a record of the evidence offered and excluded in the same

manner and subject to the same limitations as provided in the Rules of Evidence.

(3) Sanctions. The master may by order impose on a party any noncontempt sanction provided by Rule 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty.

(c) Proceedings.

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

(2) Witnesses. The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided by Rule 45.

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

(d) Master's Report.

(1) Contents and Filing. The master must prepare a report on the matters submitted to the master by the appointment order, including making findings of fact and conclusions of law. The master must file the report with the Clerk of Courts and serve a copy of the report on each party. Unless otherwise directed, the master must file with the report an audio recording or transcript of the proceedings, other evidence, and the original exhibits.

(2) Objections and Review. Within 14 days of being served with the master's report, any party may file objections to—or a motion to adopt or modify—the

master's report. The court, after giving the parties notice and an opportunity to be heard, may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions. The court's review of all factual and legal findings is de novo. The court may set aside a master's ruling on a procedural matter only for an abuse of discretion.

(3) Stipulations as to Findings. The effect of a master's report is the same whether or not the parties have consented to the appointment; but, when the parties stipulate that a master's findings of fact will be final, only questions of law arising upon the report will be considered by the court.

(4) Draft Report. Before filing the report, a master may submit a draft report to counsel for all parties for the purpose of receiving suggestions.

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

Comment: Subsection (a) has been amended to add a provision concerning the disqualification of masters and a provision concerning considerations for the court when appointing a master. Subsection (b) has been amended to clarify that a master cannot hold a person in contempt, but can only recommend a contempt sanction. Subsection (d) has been amended to change the time period for objections from 10 to 14 days. All other amendments to Rule 53 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 VII. JUDGMENT

Rule 54. Judgment; Costs

(a) Definition; Form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment should not include recitals of pleadings, a master's report, or a record of prior proceedings.

(b) Judgment on Multiple Claims or Involving Multiple Parties. When an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

(c) Demand for Judgment; Relief to Be Granted. A

default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

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

(1) Costs Other Than Attorney's or Trial Counselor's Fees. Unless a statute, these rules, or a court order provides otherwise, costs—other than attorney's or trial counselor's fees—should be allowed to the prevailing party. But costs against the Republic of Palau, its officers, and its agencies may be imposed only to the extent allowed by law. Claims for costs other than attorney's or trial counselor's fees must be made by motion, which must be filed no later than 14 days after entry of judgment and must state with particularity the amount sought.

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

(A) Claim to Be by Motion. A claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.

(B) Timing and Contents of the Motion. Unless a statute or a court order provides otherwise, the motion must:

(i) be filed no later than 14 days after the entry of judgment;

(ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

(iii) state the amount sought or provide a fair estimate of it; and

(iv) disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.

(C) Proceedings. Subject to Rule 23(h), the court must, on a party's request, give an opportunity for adversary submissions on the motion. The court may decide issues of liability for fees before receiving submissions on the value of services. The court must find the facts and state its conclusions of law as provided in Rule 52(a).

Comment: Subsection (d)(2)(C) has been amended to clarify that proceedings on a motion for attorney's or trial counselor's fees are subject to Rule 23(h). All other amendments to Rule 54 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 55. Default; Default Judgment

(a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the Clerk of Courts must enter the party's default.

(b) Entering a Default Judgment.

(1) By the Clerk of Courts. If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the Clerk of Courts—on the plaintiff's request, with an affidavit showing the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.

(2) By the Court. In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals when, to enter or effectuate judgment, it needs to:

(A) conduct an accounting;

(B) determine the amount of damages;

(C) establish the truth of any allegation by evidence; or

(D) investigate any other matter.

(c) Setting Aside a Default or a Default Judgment. The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b).

(d) Judgment Against the Republic of Palau or Other Governmental Entity. A default judgment may be entered against the Republic of Palau, any state, or officers or agencies of the Republic or any state only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

(e) Motion for Default Judgment. Any motion for default judgment for a sum certain shall be accompanied by an affidavit of the party or the party's counsel showing that the party against whom judgment is sought is not a minor or incompetent person, and has defaulted in appearance in the action, that the damages alleged in the complaint are justly due and owing, that no part thereof has been paid, and that the costs sought to be taxed have been made or incurred in the action or will necessarily be made or incurred therein. No motion for default judgment shall be granted against an individual defendant unless the affidavit of service of process shows that the process server complied with the requirement of Rule 4(e), that "reasonable attempts shall be

made by the person serving the complaint to assure that the person served understands the meaning of the summons and complaint." No motion for default judgment shall be granted against a party when service has been accomplished by certified or registered mail unless the affidavit of service of process shows that the defendant has received the summons and complaint 30 days or more before the filing of the motion for default or cause is shown why such is not necessary.

Comment: Subsection (b)(2) has been amended to change the time period from 3 days to 7 days. Former subsection (d) concerning this rule applying to plaintiffs, third-party plaintiffs, or a party who has pleaded a crossclaim or counterclaim has been deleted as unnecessary. All other amendments to Rule 55 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 56. Summary Judgment

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) Time to File a Motion. Unless the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(c) Procedures.

(1) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must set forth in a supporting brief, a separate statement of each material fact and support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) Objection That a Fact Is Not Supported by Admissible Evidence. A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) Materials Not Cited. The court need consider only the cited materials, but it may consider other

materials in the record.

(4) Affidavits or Declarations. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) Failing to Properly Support or Address a Fact. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or

(4) issue any other appropriate order.

(f) Judgment Independent of the Motion. After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) Failing to Grant All the Requested Relief. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

(h) Affidavit or Declaration Submitted in Bad Faith. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's or trial counselor's fees, it incurred as a result. An offending party, attorney, or trial counselor may also be held in contempt or subjected to other appropriate sanctions.

Comment: Rule 56 has been restructured and amended to make summary

judgment practice consistent with the current version of the Federal Rules. Unlike the Federal Rules, however, the Palau Rules still require a separate brief and statement of material facts.

Rule 57. Declaratory Judgments

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

Comment: The amendments to Rule 57 are intended to be stylistic changes and to make it consistent with the current version of the Federal Rules.

Rule 58. Entering Judgment

(a) Separate Document. Every judgment and amended judgment must be set out in a separate document, but a separate document is not required for an order disposing of a motion:

- **(1)** to amend or make additional findings under Rule 52(b);
- **(2)** for attorney's or trial counselor's fees under Rule 54;
- **(3)** for a new trial, or to alter or amend the judgment, under Rule 59; or
- **(4)** for relief under Rule 60.

(b) Entering Judgment.

- **(1) Without the Court's Direction.** Subject to Rule 54(b) and unless the court orders otherwise, the Clerk of Courts must, without awaiting the court's direction, promptly prepare, sign, and enter the judgment when:
  - **(A)** the court awards only costs or a sum certain; or
  - **(B)** the court denies all relief.
- **(2) Court's Approval Required.** Subject to Rule 54(b), the court must enter the judgment when it grants any relief not described in Rule 58(b)(1).

(c) Time of Entry. For purposes of these rules, judgment is entered at the following times:

- **(1)** if a separate document is not required, when the judgment is entered in the civil docket under Rule 79(a); or
- **(2)** if a separate document is required, when the judgment is entered in the civil docket under Rule 79(a) and the earlier of these events occurs:
  - **(A)** it is set out in a separate document; or
  - **(B)** 150 days have run from the entry in the civil

docket.

(d) Request for Entry. A party may request that judgment be set out in a separate document as required by Rule 58(a).

(e) Cost or Fee Awards. Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney's or trial counselor's fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Rule of Appellate Procedure 4(a)(4) as a timely motion under Rule 59.

Comment: Rule 58 has been restructured and amended to make entry of judgment consistent with the current version of the Federal Rules.

Rule 59. New Trial; Altering or Amending a Judgment

(a) In General.

(1) Grounds for New Trial. The court may, on motion, grant a new trial on all or some of the issues—and to any party—for a manifest error of law, newly discovered evidence, or in order to prevent injustice.

(2) Further Action. The court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

(b) Time to File a Motion for a New Trial. A motion for a new trial must be filed no later than 28 days after the entry of judgment.

(c) Time to Serve Affidavits. When a motion for a new trial is based on affidavits, they must be filed with the motion. The opposing party has 14 days after being served to file opposing affidavits, which period may be extended up to 21 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) New Trial on the Court's Initiative or for Reasons Not in the Motion. No later than 28 days after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment. A post-judgment motion styled as a "motion to reconsider" will be construed as a motion to alter or amend the judgment if filed within the time prescribed by this rule.

Comment: Subsection (a) has been amended to add the prevention of

injustice as grounds for granting a motion for a new trial. Subsections (b), (d), and (e) have been amended to change the time period from 10 days to 28 days, and subsection (c) has been amended to change the time from 10 days to file an opposition to 14 days. The deadline to extend that filing period has been changed 20 days to 21 days, to be consistent with the rest of these Rules which count deadlines in multiples of seven. All other amendments to Rule 59 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 60. Relief From a Judgment or Order

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the Appellate Division and while it is pending, such a mistake may be corrected only with the Appellate Division's leave.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- **(1)** mistake, inadvertence, surprise, or excusable neglect;
- **(2)** newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- **(3)** fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- **(4)** the judgment is void;
- **(5)** the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- **(6)** any other reason that justifies relief.

(c) Timing and Effect of the Motion.

- **(1) Timing.** A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.
- **(2) Effect on Finality.** The motion does not affect the judgment's finality or suspend its operation.
- **(3) Motion for Reconsideration.** A post-judgment motion styled as a "motion for reconsideration" filed after the time prescribed by Rule 59(e) to file a motion to alter or amend the judgment will be deemed a motion for relief from judgment under this rule.

(d) Other Powers to Grant Relief. This rule does not limit a court's power to:

- **(1)** entertain an independent action to relieve a party

from a judgment, order, or proceeding; or

(2) set aside a judgment for fraud on the court.

(e) Bills and Writs Abolished. The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

Comment: The amendments to Rule 60 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 61. Harmless Error

Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the court or a party—is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

Comment: The amendments to Rule 61 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 62. Stay of Proceedings to Enforce a Judgment

(a) Automatic Stay. Except as provided in Rule 62(c) and (d), execution on a judgment and proceedings to enforce it are stayed for 30 days after its entry, unless the court orders otherwise.

(b) Stay by Bond or Other Security. At any time after judgment is entered, a party may obtain a stay by providing a bond or other security. The stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.

(c) Stay of an Injunction or Receivership Order. Unless the court orders otherwise, an interlocutory or final judgment in an action for an injunction or receivership is not stayed after being entered, even if an appeal is taken.

(d) Injunction Pending an Appeal. While an appeal is pending from an interlocutory order or final judgment that grants, continues, modifies, refuses, dissolves, or refuses to dissolve or modify an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights.

(e) Stay Without Bond on an Appeal by the Republic of Palau, Any State or Other Governmental Entity, or Officers or Agencies. The court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the Republic of Palau, any state or other governmental agency, or the officers or agencies of a governmental entity.

(f) [Vacant]

(g) Appellate Division's Power Not Limited. This rule

does not limit the power of the Appellate Division or one of its justices:

(1) to stay proceedings—or suspend, modify, restore, or grant an injunction—while an appeal is pending; or

(2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

(h) Stay with Multiple Claims or Parties. A court may stay the enforcement of a final judgment entered under Rule 54(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

Comment: Subsection (a) has been amended to change the time period from 10 days to 30 days. Former subsection (b) has been deleted as unnecessary. All other amendments to Rule 62 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 63. Judge's or Justice's Inability to Proceed

If a judge or justice conducting a hearing or trial is unable to proceed, any other judge or justice may proceed upon certifying familiarity with the record and determining that the case may be completed without prejudice to the parties. In a hearing or trial, the successor judge or justice must, at a party's request, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge or justice may also recall any other witness.

Comment: The amendments to Rule 63 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 VIII. PROVISIONAL AND FINAL REMEDIES

Rule 64. Seizing a Person or Property

(a) Remedies—In General. At the commencement of and throughout an action, every remedy then existing under the law of the Republic of Palau, that provides for seizing a person or property to secure satisfaction of the potential judgment is available.

(b) Specific Kinds of Remedies. The remedies available under this rule include the following, however designated and regardless of whether the remedy requires an independent action:

- arrest;
- attachment;
- garnishment;
- replevin;
- sequestration; and
- other corresponding or equivalent remedies.

Comment: The amendments to Rule 64 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 65. Injunctions and Restraining Orders

(a) Preliminary Injunction.

(1) Notice. The court may issue a preliminary injunction only on notice to the adverse party.

(2) Consolidating the Hearing with the Trial on the Merits. Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial.

(b) Temporary Restraining Order.

(1) Issuing Without Notice. The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney or trial counselor only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney or trial counselor certifies in writing any efforts made to give notice and the reasons why it should not be required.

(2) Contents; Expiration. Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the Clerk of Court's office and entered in the record. The order expires at the time after entry—not to exceed 14 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(3) Expediting the Preliminary-Injunction Hearing. If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must

dissolve the order.

(4) Motion to Dissolve. On 3 days' notice to the party who obtained the order without notice—or on shorter notice set by the court—the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

(c) Security. The court may require, prior to the issuance of a preliminary injunction or a temporary restraining order, that the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained at the discretion of the court. The Republic of Palau, any state or other governmental entity, or any officer or agency of any governmental entity are not required to give security.

(d) Contents and Scope of Every Injunction and Restraining Order.

(1) Contents. Every order granting an injunction and every restraining order must:

(A) state the reasons why it was issued;

(B) state its terms specifically; and

(C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

(2) Persons Bound. The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties' officers, agents, servants, employees, attorneys, and trial counselors; and

(C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

Comment: Subsection (b)(2) has been amended to change the time period from 10 days to 14 days. All other amendments to Rule 65 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 65.1. Proceedings Against a Security Provider

Whenever these rules require or allow a party to give security, and security is given with one or more security providers, each provider submits to the court's jurisdiction and irrevocably appoints the Clerk of Courts as its agent for receiving service of any papers that affect its liability on the security. The security provider's liability may be enforced on motion without an independent action. The motion and any notice that the court orders may be served on the Clerk of Courts, who must promptly send a copy of each to every security provider whose address is

known.

Comment: The amendments to Rule 65.1 are intended to be stylistic changes to make the rule more easily understood and to make it consistent with the current version of the Federal Rules.

Rule 66. Receivers

These rules govern an action in which the appointment of a receiver is sought or a receiver sues or is sued. An action in which a receiver has been appointed may be dismissed only by court order.

Comment: The amendments to Rule 66 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 67. Deposit Into Court

If any part of the relief sought is a money judgment or the disposition of a sum of money or some other deliverable thing, a party—on notice to every other party and by leave of court—may deposit with the court all or part of the money or thing, whether or not that party claims any of it. The depositing party must deliver to the Clerk of Courts a copy of the order permitting deposit.

Comment: Rule 67 has been amended to require the depositing party to deliver to the Clerk of Courts a copy of the order permitting deposit. All other amendments to Rule 67 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 68. Offer of Judgment

(a) Making an Offer; Judgment on an Accepted Offer. At least 14 days before the date set for trial, a party defending against a claim may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued. If, within 14 days after being served, the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The Clerk of Courts must then enter judgment.

(b) Unaccepted Offer. An unaccepted offer is considered withdrawn, but it does not preclude a later offer. Evidence of an unaccepted offer is not admissible except in a proceeding to determine costs.

(c) Offer After Liability is Determined. When one party's liability to another has been determined but the extent of liability remains to be determined by further proceedings, the party held liable may make an offer of judgment. It must be served within a reasonable time—but at least 14 days—before the date set for a hearing to determine the extent of liability.

(d) Paying Costs After an Unaccepted Offer. If the

judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made.

Comment: Subsections (a) and (c) have been amended to change the time period from 10 days to 14 days. All other amendments to Rule 68 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 69. Execution

(a) Money Judgment; Applicable Procedure. A money judgment is enforced by a writ of execution unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the court existing at the time the remedy is sought, but a statute of the Republic of Palau governs to the extent it applies.

(b) Obtaining Discovery. In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in these rules within one year of the entry of judgment or, if the judgment is more than one year old, with leave of court.

Comment: The amendments to Rule 69 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 70. Enforcing a Judgment for a Specific Act

(a) Party's Failure to Act; Ordering Another to Act. If a judgment requires a party to convey land, to deliver a deed or other document, or to perform any other specific act and the party fails to comply within the time specified, the court may order the act to be done—at the disobedient party's expense—by another person appointed by the court. When done, the act has the same effect as if done by the party.

(b) Vesting Title. If the real or personal property is within the Republic of Palau, the court—instead of ordering a conveyance—may enter a judgment divesting any party's title and vesting it in others. That judgment has the effect of a legally executed conveyance.

(c) Obtaining a Writ of Attachment or Sequestration. On application by a party entitled to performance of an act, the court or the Clerk of Courts must issue a writ of attachment or sequestration against the disobedient party's property to compel obedience.

(d) Obtaining a Writ of Execution or Assistance. On application by a party who obtains a judgment or order for possession, the court or the Clerk of Courts must issue a writ of execution or assistance.

(e) Holding in Contempt. The court may also hold the

disobedient party in contempt.

Comment: The amendments to Rule 70 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 71. Enforcing Relief for or Against a Nonparty

When an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party.

Comment: The amendments to Rule 71 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 IX. SPECIAL PROCEEDINGS

Rule 72. Cases Involving the Election, Qualification, or Office of an Elected Official.

(a) In General. Any case in which the election, qualifications, or office of an elected official is disputed must proceed in an expedited manner.

(b) Responsive Pleading. A defendant must serve an answer within 10 days after being served with the pleading that states the claim disputing the election, qualifications, or office of an elected official.

(c) Dispositive Motions. A motion for judgment on the pleadings under Rule 12 or a motion for summary judgment under Rule 56 seeking judgment on the relevant claim must be filed within 10 days after the answer is served. An opposition must be filed within 10 days after the motion is served. A reply, if any, must be filed within 5 days after the opposition is served.

(d) Hearing or Trial. The motion for dispositive relief—or, if no motion is filed, trial—must occur at the earliest possible time and take precedence over all other matters except older matters of the same character and applications for temporary restraining orders under Rule 65.

(e) Extending Time. Extensions of time will be permitted only on a showing of extraordinary circumstances.

(f) Discovery. Discovery will proceed on a limited, expedited basis as provided by the court.

Comment: This new rule incorporates former Rule 9(i) concerning expedited proceedings for cases involving the election, qualifications, or office of an elected official. While former Rule 9(i) permitted discovery only in extraordinary circumstances, new Rule 72(f) leaves the scope of discovery to the court's discretion. All other amendments to former Rule 9(i) are intended to be stylistic changes to make the rule more easily understood.

Rule 73. Initiation of Mediation Proceedings

(a) Definition. Mediation is an extra judicial procedure for the resolution of disputes. A mediator facilitates negotiations between parties to a civil action and assists the parties in trying to reach a settlement, but does not have the authority to impose a settlement upon the parties.

(b) Authority to Order. The Court, sua sponte or upon motion by a party, may, in exercise of its discretion, order the parties to participate in a non-binding mediation process.

(1) Factors. Before ordering a case to mediation, the Court may consider factors, including, but not limited to:

(A) the current status of the case;

(B) whether the parties would be better served by a settlement conference held by the Court;

(C) whether the parties are willing to participate in the mediation;

(D) whether the parties have previously participated in alternative dispute resolution in the pending matter; and

(E) the availability of mediation resources and whether ordering a case to mediation would result in an unfair or unreasonable economic burden to any party.

(c) Appointment of Mediator. Upon an order for mediation, the Mediation Clerk shall appoint a qualified mediator. A single mediator shall be appointed unless the mediator determines otherwise.

(1) Declining Assignment. A mediator may decline a mediation assignment.

(2) Replacement. If any mediator becomes unwilling or unable to serve, the Mediation Clerk shall appoint another mediator. The appointment of a successor mediator shall be by the same procedures and upon the same terms as an initial appointment.

(d) Authority and Responsibility of the Mediator. In court-ordered mediations, the mediator shall be qualified and impartial.

(1) Qualifications. A mediator shall be deemed qualified if:

(A) He/she has been certified as a Mediator by the Palau Bar Association; or

(B) He/she has those qualifications the Court or Mediation Clerk may deem appropriate given the subject matter of the mediation.

(2) Authority. The mediator does not have authority to impose a settlement upon the parties, but the mediator shall attempt to help the parties reach a satisfactory resolution of their dispute. The mediator is authorized to:

(A) Conduct joint and separate meetings with the parties;

(B) Communicate offers between the parties as the parties authorize;

(C) Make oral and written recommendations for settlement at the parties' request;

(D) Obtain expert advice concerning technical aspects of the dispute whenever necessary, provided the parties agree to the mediator's obtaining such advice and assume the expenses of obtaining it; and

(i) Arrangements for obtaining such advice shall be made by the mediator or by the parties.

(E) End the mediation whenever, in the mediator's judgment, further efforts at mediation would not contribute to a resolution of the dispute between the parties.

(3) Impartiality. A mediator shall be deemed impartial if:

(A) He/she has no personal or financial interest in the underlying action; or

(B) He/she has a personal or financial interest in the underlying action, discloses such interest to all parties to the action and obtains a written waiver from all parties to the action.

(4) Appearance of Bias. Before accepting an appointment, the prospective mediator shall disclose to the parties any circumstances likely to create an appearance of bias or likely to prevent the mediation from commencing within a reasonable time. Upon receipt of such disclosure, the parties may request a different person as mediator.

(A) Disagreement. In case of disagreement by the parties over whether a prospective mediator should serve, the Mediation Clerk shall appoint a different mediator.

(B) Standard. The appearance of bias shall be determined under the same standards applicable to judges of the Republic of Palau under the 2011 Code of Judicial Conduct.

(5) Immunity. A mediator shall be immune from suit for all conduct in the course of the mediation.

(6) Time and Place of Mediation. The Mediation Clerk shall fix the time of each mediation session. The mediation sessions shall be held at any convenient location agreeable to the mediator and the parties or as otherwise designated by the Mediation Clerk.

(e) Notice and Required Parties.

(1) Parties to be Present. Any party not represented by an attorney may be assisted by persons of his or her choice in the mediation. Each party, or that party's representative, must be prepared to discuss during mediation sessions the issues submitted to mediation and, unless otherwise expressly agreed upon by the parties or ordered by the Court before the first mediation session, someone with authority to settle those issues must be present at the mediation session or reasonably available to authorize settlement during the mediation session. Mediation sessions are private. Persons other than the parties and their representatives may attend mediation sessions only with the permission of the parties and with the consent of the mediator.

(2) Notice. No later than five business days before the first scheduled mediation, parties to the mediation shall submit to the mediator and to all other parties to the mediation a proposed list of persons to be present at such mediation.

(f) Mediation Statements. No later than five business days before the first scheduled mediation session, each party must submit to the mediator a confidential mediation statement. The statement must not be more than ten pages and shall state, concisely, the facts of the dispute, key legal issues in the case, and possible areas of agreement and options for settlement. The mediation statement shall not be filed with the court or served upon the parties to the lawsuit without their consent.

(g) Confidentiality. All information disclosed in the course of a mediation, including oral, documentary, or electronic information, shall be deemed confidential and shall not be divulged by anyone in attendance at the mediation except as permitted under this rule or by statute.

(1) Scope. The term "information disclosed in the course of a mediation" shall include, but not be limited to:

(A) views expressed or suggestions made by another party with respect to a possible settlement of the dispute;

(B) admissions made by another party in the course of the mediation proceedings;

(C) proposals made or views expressed by the mediator;

(D) the fact that another party had or had not indicated a willingness to accept a proposal for settlement made by the mediator; and

(E) all records, reports, or other documents received by a mediator while serving as mediator.

(2) Compelling Disclosure. A court shall neither inquire into nor receive information about the positions of the parties taken in mediation proceedings; the facts elicited or presented in mediation proceedings; or the cause or responsibility for termination or failure of the mediation process.

(A) A mediator shall not be compelled in any adversary proceeding or judicial forum, including, but not limited to, a hearing on sanctions brought by one party against another party, to divulge the contents of documents received, viewed, or drafted during mediation or the fact that such documents exist nor shall the mediator be otherwise compelled to testify in regard to statements made, actions taken, or positions stated by a party during the mediation.

(B) There shall be no record made of the mediation proceedings.

(3) Exceptions. Notwithstanding the foregoing:

(A) A mediator or a party to a mediation may disclose information discussed in the course of a mediation when the mediator and the parties to the mediation all agree to the disclosure.

(B) Information otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its use in mediation.

(C) This subsection also does not require exclusion of evidence that is offered for another purpose such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

(D) The confidentiality provisions of this rule shall not apply:

(i) to a communication made during a mediation that constitutes a threat to cause physical injury or unlawful property damage;

(ii) to a party or mediator who uses or attempts to use the mediation to plan or to commit a crime;

(iii) to the extent necessary if a party to the mediation files a claim or complaint

against a mediator or mediation program alleging professional misconduct by the mediator arising from the mediation; or

(iv) to the extent necessary if a party to the mediation seeks to enforce a settlement executed during the course of the mediation.

(h) Termination of Mediation.

(1) The mediation process may be terminated at any time after the initial mediation session by any party to the mediation. It also may be terminated by the mediator. Court-ordered mediations shall be terminated by filing with the Court one of the following:

(A) Notice that the parties concerned have executed a settlement agreement. Such a notice shall be signed by all parties concerned or by their attorneys; or

(B) A written declaration signed by the mediator stating that in the mediator's judgment further efforts at mediation will not contribute to a resolution of the dispute among the parties.

(2) The fact that mediation has once been terminated as to a particular dispute shall not bar the entry of a later order to mediate that dispute.

(i) Sanctions. The Court may, upon petition of a party or upon the recommendation of the mediator, award sanctions against any party or attorney for failure to comply with any provision of this rule. Before imposition of a sanction, the Court shall issue an order to show cause as to why a sanction should not be imposed. Sanctions may include costs and attorneys' fees reasonably incurred by all other parties to the mediation and in the prosecution of the petition or recommendation for sanctions.

(j) Mediation Fee. Each party participating in mediation shall pay a $30.00 Mediation Fee that may be reduced or waived by the presiding judge as justice and equity compels. The fee entitles the parties to two mediation sessions. An additional mediation fee is due for any further mediation.

(1) Timing. The mediation fee shall be paid by the date ordered in the court order for mediation, which shall be before the mediation or when mediation is requested by a party.

(2) Refunds. Mediation fees are nonrefundable; however, when a mediation session is not held due to failure of one or more participants to appear, the Court may reschedule the mediation session at no additional cost and/or impose sanctions.

Comment: Rule 73 was formerly Rule 72 in the previous ROP Rules of Civil Procedure and has been renumbered and reformatted for stylistic purposes. Rule 72 was adopted through Standing Order 13-01. Subsection (j)(2) has been added to note that mediation fees are nonrefundable.

[Rules 74–76 Reserved]

TITLE X. COURTS AND CLERKS: CONDUCTING BUSINESS; ISSUING ORDERS

Rule 77. Conducting Business; Clerk's Authority; Notice of an Order or Judgment

(a) When Court Is Open. The courts are considered always open for filing any paper, issuing and returning process, making a motion, or entering an order.

(b) Place for Trial and Other Proceedings. Every trial on the merits must be conducted in open court and, so far as convenient, in a regular courtroom. The court, at its discretion, may hold trials or hearings remotely by video or telephone conference or other remote means. Any other act or proceeding may be done or conducted by a judge or justice in chambers, without the attendance of the Clerk of Courts or other court official.

(c) Clerk's Office Hours; Clerk's Orders.

(1) Hours. The Clerk of Court's office—with a clerk or an assistant on duty—must be open during business hours every day except Saturdays, Sundays, and legal holidays.

(2) Orders. Subject to the court's power to suspend, alter, or rescind the Clerk of Court's action for good cause, the Clerk of Courts may:

(A) issue process;

(B) enter a default;

(C) enter a default judgment under Rule 55(b)(1); and

(D) act on any other matter that does not require the court's action.

(d) Serving Notice of an Order or Judgment.

(1) Service. Immediately after entering an order or judgment, the Clerk of Courts must serve notice of the entry, as provided in Rule 5(b), on each party who is not in default for failing to appear. The clerk must record the service on the docket. A party also may serve notice of the entry as provided in Rule 5(b).

(2) Time to Appeal Not Affected by Lack of Notice. Lack of notice of the entry does not affect the time for appeal or relieve—or authorize the court to relieve—a party for failing to appeal within the time allowed, except as allowed by Rule of Appellate Procedure (4)(a).

Comment: Subsection (b) has been amended to give the court discretion to conduct judicial business remotely. Subsection (e) on deficient filings has been moved to Rule 5(d)(4). All other amendments to Rule 77 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 78. Officials

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

Comment: The amendments to Rule 78 are intended to be stylistic changes to make the rule more easily understood.

Rule 79. Records Kept by the Court

(a) Civil Docket.

(1) In General. The Clerk of Courts must keep a record known as the "civil docket" in the form and manner prescribed by the Administrative Director. The Clerk of Courts must enter each civil action in the docket. Actions must be assigned consecutive file numbers, which must be noted in the docket where the first entry of the action is made.

(2) Items to be Entered. The following items must be marked with the file number and entered chronologically in the docket:

(A) papers filed with the clerk;

(B) process issued, and proofs of service or other returns showing execution; and

(C) appearances, orders, verdicts, and judgments.

(3) Contents of Entries. Each entry must briefly show the nature of the paper filed or writ issued, the substance of each proof of service or other return, and the substance and date of entry of each order and judgment.

(b) Civil Judgments and Orders. The Clerk of Courts must keep a copy of every final judgment and appealable order; of every order affecting title to or a lien on real or personal property; and of any other order that the court directs to be kept.

(c) Indexes; Calendars. Under the court's direction, the Clerk of Courts must:

(1) keep indexes of the docket and of the judgments and

orders described in Rule 79(b); and

(2) prepare calendars of all actions ready for trial.

(d) Other Records. The Clerk of Courts must keep any other records required by the Administrative Director.

Comment: The amendments to Rule 79 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 80. Stenographic Transcript as Evidence

If stenographically reported or electronically recorded testimony at a hearing or trial is admissible in evidence at a later trial, the testimony may be proved by a transcript or audio recording certified by the person who reported or recorded it.

Comment: The amendments to Rule 80 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 81. Appearances, Substitutions, and Withdrawals of Attorneys

(a) In General. An attorney seeking to file a document in this Court in a representative capacity must first be admitted to practice before the courts of the Republic of Palau as provided in Rules 2-3, and 5 of the Rules of Admission.

(1) Nonacceptance. The clerk will not accept any paper signed by an attorney for filing unless the attorney is eligible to appear and has entered the attorney's appearance.

(b) Appearances. When a party has appeared by an attorney or trial counselor, that party may not then appear or act on the party's own behalf in the action, unless the court orders substitution, after notice to the attorney or trial counselor of the party and to all other parties. The court may, at its discretion, hear a party in open court, even though the party has appeared or is represented by an attorney or trial counselor.

(1) Notice of Appearance by Counsel. An attorney representing a party shall enter a notice of appearance as counsel of record indicating the name of the party represented, the attorney's address, email address, and telephone number. A separate notice of appearance shall also be entered whenever an attorney is substituted as counsel of record in a particular case.

(2) Notice of Leave of Counsel. An attorney of record who plans to leave the jurisdiction while litigation is pending shall inform the Court by filing an "Off-Island Notice" with the Clerk of Courts prior to their departure.

(c) Substitutions. When an attorney or trial counselor of

record for any reason ceases to act for a party, that party must appear in person or appoint another attorney or trial counselor either:

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

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

(d) Withdrawals.

(1) Generally. No attorney or trial counselor of record for a party may withdraw from representing that party without leave of court. Before an attorney or trial counselor is granted leave to withdraw, the attorney or trial counselor must serve a copy of the motion on the client and must present to the court a proposed order permitting the attorney or trial counselor to withdraw and directing the client to appoint another attorney or to appear in person by filing a written notice stating how the party will be represented.

(2) Motions. All motions to withdraw must be accompanied by a written showing setting forth the manner that notice was given to the client, the client's last known address and telephone number, and that reasonable efforts have been made to give notice to the client:

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

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

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

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

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

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

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

(H) the client's obligation, within 30 days of entry of an order granting a motion to

withdraw, to file a written notice with the court stating how the client will be represented;

(3) Notice by Client. After the court has entered an order granting a motion to withdraw, the client must, within 30 days of the order, file a written notice with the court stating how the client will be represented.

(4) Further Proceedings. After the court has entered an order granting a motion to withdraw, no further proceedings may be held in the action which may affect the rights of the party represented by the withdrawing attorney or trial counselor for a period of 30 days. If, by the conclusion of this 30-day period, said party has failed to appear through a newly appointed attorney or trial counselor or has failed to inform the court that the party intends to proceed pro se, such failure may be grounds for, in the court's discretion, the entry of a default against such party or dismissal of the action.

Comment: Subsections (b)(1) and (b)(2) have been amended to require Notices of Appearance and Off-Island Notices. Otherwise, the amendments to Rule 81 are intended to be stylistic changes to make the rule more easily understood.

[Rule 82 Reserved]

Rule 83. Citation to Authority Not Contained in the Palau Supreme Court Library

If a party relies on or cites to any authority not contained in the Palau Supreme Court Library 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 court. If the authority is a court decision or opinion, then a copy of the entire decision or opinion must be appended.

Comment: Rule 83 has been amended to provide that cited authorities available on electronic databases such as Westlaw or Lexis do not need to be appended to a party's brief.