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

Promulgated by the Palau Supreme Court
August 15, 2007

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU

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

These Rules of Appellate Procedure are promulgated by the Supreme Court of the Republic of Palau pursuant to Article X, Section 14 of the Constitution and 4 PNC § 101. They take effect September 1, 2007, and supersede all previously promulgated Rules of Appellate Procedure. These Rules are immediately applicable to all pending cases except to the extent that. they adversely affect the substantive rights of any party.

So ordered this 15th day of August, 2007.

/s/
ARTHUR NGIRAKLSONG
Chief Justice

/s/
LARRY W. MILLER
Associate Justice

/s/
KATHLEEN M. SALII
Associate Justice

/s/
LOURDES F. MATERNE
Associate Justice

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RULES OF APPELLATE PROCEDURE

TITLE I
GENERAL PROVISIONS

RULE 1. SCOPE OF RULES

(a) Applicability. These rules govern procedure in appeals to the Appellate Division of the Supreme Court of the Republic of Palau from the Court of Common Pleas, the Land Court, and the Trial Division of the Supreme Court; and in applications for writs or other relief which the Appellate Division or a justice thereof is competent to give. These rules shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

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

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

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

(e) Effective date. These rules take effect on September 1, 2007. They govern all appellate proceedings thereafter commenced and as far as is just and practicable in all proceedings then pending.

Comment: These rules are promulgated pursuant to Art. X, Section 14, Palau Constitution. They follow the format of the Federal Rules of Appellate Procedure for the United States courts of appeals [hereinafter, "the Federal Rules"]. Where appropriate, these Rules adopt language similar to Federal Rules. Previous Rule 48 stating the title of these rules has been deleted and replaced by subsection (d) of Rule 1.

RULE 2. SUSPENSION OF RULES

In the interest of expediting a decision, or for other good cause, the Appellate Division may suspend the requirements of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction.

Comment: The amendments are technical. No substantive change is intended.

TITLE II and III
APPEALS FROM JUDGMENTS AND ORDERS OF THE TRIAL COURT

RULE 3. NOTICE OF APPEAL

(a) Filing the Notice of Appeal. An appeal shall be taken by filing a notice of appeal with the Clerk of Courts within the time allowed by Rule 4. The notice of appeal shall bear the caption of the Appellate Division. It shall also note the number assigned to the case in the trial court. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the Appellate Division deems appropriate, which may include dismissal of the appeal.

(b) Joint or Consolidated Appeals. If two or more persons are entitled to appeal from a judgment or order of a trial court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the Appellate Division upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(c) Contents of the Notice of Appeal. The notice of appeal shall specify the party or parties taking the appeal, shall designate the judgment, order or part thereof appealed from, and shall specify the party or parties against whom the appeal is filed. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

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

(e) Payment of Fees. Upon the filing of any separate or joint notice of appeal from a trial court, the appellant shall-pay-to the Clerk of Courts such fees as have been established by the Supreme Court of the Republic of Palau.

Comment: The title of the Rule has been changed to "Notice of Appeal". No changes have been made to subsections (a), (b), and (e) from the 1994 Rules. Subsection (c) now requires the party filing the appeal to specify the party or parties against whom the appeal is filed. Subsection (d) has been changed to have service accomplished according to Rule 25 instead of ROP R.Civ.P. 5.

RULE 4. APPEAL: WHEN TAKEN

(a) Time to File. Every appeal shall be directed to the Appellate Division of the Supreme Court. The notice of appeal shall be filed within thirty (30) days after the imposition of sentence in a criminal case or service of a judgment or order in a civil case, unless otherwise provided by law. The time for filing an appeal is terminated by the timely filing, in accordance with the Rules of Civil Procedure or Rules of Criminal Procedure, of a motion to alter or amend the judgment or a motion for a new trial or in a criminal action, a motion in arrest of judgment. The full time for appeal commences to run and is to be computed from the service of an order granting or denying

a motion to alter or amend the judgment or the denying of a motion for a new trial or motion in arrest of judgment.

(b) Cross-Appeals. If a notice of appeal is filed by a party, any other party may file a notice of appeal within fourteen (14) days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by Rule 4(a), whichever period expires last.

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

Comment: The amendments are technical. No substantive change is intended.

[Rules 5-6 Reserved]

RULE 7. BOND FOR COSTS ON APPEAL IN CIVIL CASES

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

Comment: The changes in this rule adopt the changes found in the 1998 Amendments to Rule 7 of the Federal Rules. The language of the rule is amended to make the rule more easily understood; no substantive change is intended.

RULE 8. STAY OR INJUNCTION PENDING APPEAL

(a) Stay Must Ordinarily Be Sought in the First Instance in the Trial Court; Motion for Stay in Appellate Division. Application for a stay of the judgment or order of a trial court pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the trial court. A motion for such relief may be made to the Appellate Division or to a justice thereof, but the motion shall show that application to the trial court for the relief sought is not practicable, or that the trial court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the trial court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. Reasonable notice of any hearing on the motion shall be given to all parties. In the absence of unusual circumstance, a showing that the appeal raises a substantial question of law shall be sufficient cause for granting a stay upon reasonable terms.

(b) Stay May Be Conditioned Upon Giving of Bond; Proceedings Against Sureties. Relief may be conditioned upon the filing of a bond or other appropriate security in the trial court. If security is in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the trial court and irrevocably appoints the Clerk of Courts as the agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. A surety's liability may by enforced on motion in the trial court without an independent action. The motion and such notice of the motion as the trial court prescribes may be served on the Clerk of Courts, who shall mail copies to the sureties if their addresses are known.

(c) No Security Required of the Republic of Palau. When an appeal is taken by the Republic of Palau or an officer or agency thereof in an official capacity, no security shall be required for stay of execution of judgment pending appeal.

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

Comment: No changes have been made to subsections (a), (b), or (c) from the 1994 Rules. Subsection (d) has been added to address a stay in a criminal case and is an adaptation of Rule 38 of the Federal Rules of Criminal Procedure. No stay of a sentence of imprisonment will be granted unless the requirements of Rule 9(b) are met.

RULE 9. RELEASE IN CRIMINAL CASES

(a) Appeals From Orders Respecting Release Entered Prior to a Judgment of Conviction or Pending Certification of Court of Common Pleas Judgment. An appeal from an order refusing or imposing conditions of release shall be determined promptly. Upon service of an order refusing or imposing conditions of release, the trial court shall state in writing the reasons for the action taken. The appeal shall be heard without the necessity of briefs after reasonable notice to the appellee upon such papers, affidavits, and portions of the record as the parties shall present. The Appellate Division or a justice thereof may order the release of the appellant pending the appeal or certification.

(b) Release Pending Appeal From a Judgment of Conviction. Application for release after a judgment of conviction shall be made in the first instance in the trial court. The trial court shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal, be detained, unless the trial court finds: (1) that the person is not likely to flee or pose a danger to the safety of any person or the community if released; and (2) that the appeal raises a substantial question of law or fact which is sufficiently important to the merits that a contrary appellate ruling is likely to require the person's release or a new trial. If the trial court refuses release pending appeal, or imposes conditions of release, a motion for release, or for modification of the conditions of release, may be made to the Appellate

Division or to a justice thereof. The motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present and after reasonable notice to the appellee. The Appellate Division or a justice thereof may order the release of the appellant pending disposition of the motion.

Comment: No changes have been made from the 1994 Rules.

RULE 10. THE RECORD ON APPEAL

(a) Composition of Record. The original papers and exhibits filed in the Trial Division and the transcript or an audio recording of the proceedings, if any, shall constitute the record on appeal. The entire record shall be open for consideration on appeal to the Appellate Division.

(b) Record of Proceedings. At the time the notice of appeal is filed, an appellant may request an audio recording of the testimony or evidence adduced in the trial court. No later than fourteen (14) days after the audio recording is provided, any appellant desiring to raise an issue on appeal depending on the whole or any part of the testimony or evidence adduced in the trial court must either (I) order a transcript of such parts as the party considers necessary and file a copy of the transcript order with the Appellate Division or (ii) file a certificate stating that no transcript will be ordered and that the party will rely on the audio recording and provide a copy of the audio recording to all appellees. The party ordering the transcript shall order three (3) copies of the transcript of the evidence, one for the court, one for the party ordering them, and one for the opposing party. If there is more than one appellant, they may share a copy of the transcript and may share the costs of transcribing and copying the transcripts. If there is more than one opposing party, the party ordering the transcript must pay for sufficient copies to insure that each opposing party has a copy.

(c) Partial Transcript. Unless the entire transcript is ordered, the appellant, within the fourteen (14) days provided in Rule 10(b), must file a statement of the issues that the appellant intends to present in the appeal and the list of witnesses and testimony that will be included in the partial transcript. The appellant must serve on the appellee a copy of both the transcript order and the statement of the issues. If the appellee considers it necessary to have a transcript of other parts of the proceedings, the appellee must, within 20 days after the service of the transcript order and the statement of the issues, file and serve on the appellant a designation of additional parts to be ordered. Unless within 20 days after service of that designation the appellant has ordered all such parts, and has so notified the appellee, the appellee may within the following 20 days either order the parts or move in the Appellate Division for an order requiring the appellant to do so.

(d) Service of Transcript. The party-ordering the transcript mast ensure that the transcript is - filed and served in accordance with Rule 25. The transcript should be filed and served once it is prepared and must be filed and served within one-hundred twenty days (120) days after filing the notice of appeal unless otherwise ordered by the Appellate Division. The party should immediately file the transcript once it is prepared and shall not wait until the opening brief or any other pleading is completed before filing the transcript.

(e) Correction of Record. If any party considers that the record as assembled by the Clerk of Courts is inaccurate or incomplete in any important respect, he or she shall notify the other parties of the alleged error or omission and endeavor to secure written agreement as to what correction or addition should be made in the record. If such agreement is made, it shall be promptly filed with the Clerk of Courts and shall become a part of the record. If the parties cannot agree upon such correction or addition, the party claiming the error shall arrange with the trial judge for a hearing and shall notify the other parties of the time and place. Any party unable to be present or represented may submit views in writing at or before that time. After giving all parties an opportunity to be heard, the trial judge will correct or add to the record as the facts warrant and will notify each party. If any party still feels that the record, as amended by agreement of the parties or by the trial judge, is incorrect or incomplete in any important aspect, he or she may by written motion, supported by affidavits, request the Appellate Division to make further change, specifying particularly the change desired.

Comment: Subsection (a) has been changed to allow for the use of audio recordings as part of the record. The last sentence of (a) from the 1994 Rules pertaining to the scope of the judgment has been moved to Rule 36. Subsections (b), (c), and (d) have been changed to make them similar to Rule 10(b) 6f the Federal Rules. Previously, the parties could only order the transcript through the Court. The changes to Rule 10 give the parties the option to order the transcript themselves or to use the audio recording instead of a transcript. No changes to subsection (e) have been made from the 1994 Rules. Rule 11 from the 1994 Rules has been deleted and reserved.

[Rules 11-20 Reserved]

TITLE IV
EXTRAORDINARY WRITS

RULE 21. WRITS OF MANDAMUS AND PROHIBITION DIRECTED TO A COURT AND OTHER EXTRAORDINARY WRITS

(a) Mandamus or Prohibition to a Court; Petition for Writ; Service and Filing. A party petitioning for a writ of mandamus or prohibition directed to a court must file a petition with the Clerk of Courts with proof of service on all parties to the proceeding in the trial court. The party must also provide a copy to the trial court judge. All parties to the proceeding in the trial court other than the petitioner are respondents for all purposes. The petition shall state the facts necessary to understand the issues presented by the application; the issues presented and the relief sought; the reasons why the writ should issue; and copies of any order or opinion or parts of the record which may be essential to understand the matters in the petition.

(b) Denial; Order Directing Answer. If the Appellate Division is of the opinion that the writ should not be granted, it shall deny the petition. Otherwise, it shall order that an answer to the petition be filed by the respondents within the time fixed by the order. If briefs are required, two or more respondents may answer jointly. The Appellate Division shall advise the parties of the dates on which briefs are to be filed, and of the date of oral argument, if any. The Appellate Division may invite or order the trial court judge to address the petition or may invite an amicus curiae to do so. The trial court judge may request permission to address the petition but may not

do so unless permission is granted by the Appellate Division. The proceeding shall be given preference over ordinary civil cases.

(c) Other Extraordinary Writs. Application for extraordinary writs other than those provided for in subdivision (a) shall be made by petition filed with the Clerk of Courts with proof of service on the parties named as respondents. Proceedings on such application shall conform, so far as practicable, to the procedure prescribed in subdivisions (a) and (b).

(d) Form of Papers; Number of Copies. All papers must be typewritten. Three (3) copies shall be filed with the original, but the Appellate Division may direct that additional copies be furnished.

Comment: The changes in this rule adopt the changes found in the 1996 Amendments to Rule 21 of the Federal Rules. The rule is amended so that the judge is not treated as a respondent. The amendments to subsection (a) require the petitioner to provide a copy of the petition to the trial court judge to alert him of the filing of the petition. Subsection (b) provides that even if the judge requests permission to respond, the judge may not do so unless the court invites or orders a response. No changes have been made to subsection (c) and (d) from the 1994 Rules.

TITLE V
HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS

RULE 22. HABEAS CORPUS PROCEEDINGS

An application for a writ of habeas corpus shall be made to the appropriate trial court. The proper remedy is by appeal to the Appellate Division from an order of the trial court denying the writ.

Comment: No changes hare been made from the 1994 Rules.

RULE 23. CUSTODY OF PRISONERS IN HABEAS CORPUS PROCEEDINGS

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

(b) Detention or Release of Prisoner Pending Review of Decision Failing to Release. Pending review of a decision failing or refusing to release a prisoner in such a proceeding, the prisoner may be detained in the custody from which release is sought, or in other appropriate custody, or may be released upon his or her recognizance, with or without surety, as may appear fitting to the court, justice or judge rendering the decision.

(c) Release of Prisoner Pending Review of Decision. Pending review of a decision ordering the release of a prisoner in such a proceeding, the prisoner shall be released upon his or her recognizance, with or without-surety; unless court, justice or judge rendering the decision shall otherwise order.

Comment: The changes to subsection (a) of this rule adopt the changes found in the 1998 Amendments to Rule 23(a) of the Federal Rules. The language of the rule is amended to make the rule more easily understood; no substantive change is intended. No changes have been made to subsection (b) and (c) from the 1994 Rules.

RULE 24. PROCEEDINGS IN FORMA PAUPERIS

(a) Motion for Leave in the Trial Court. A party to an action in a trial court who desires to proceed on appeal in forma pauperis shall file in the trial court a motion for leave so to proceed, together with an affidavit showing his or her inability to pay fees or to give security therefor, his or her belief that he or she is entitled to redress, and a statement of the issues which he or she intends to present on appeal. If the motion is granted, the party may proceed without further application to the Appellate Division and without prepayment of fees in either court or the giving of security therefor; provided that, absent further order of the Appellate Division, the party shall remain responsible for the cost of any transcript he or she has ordered. If the motion is denied, the trial court shall state in writing the reasons for the denial.

(b) Motion for Leave Unnecessary. Notwithstanding the provisions of the preceding paragraph, a party who has been permitted to proceed in an action in the trial court in forma pauperis, or who has been permitted to proceed there as one who is financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization unless, before or after the notice of appeal is filed, the trial court shall certify that the appeal is not taken in good faith or that the party is otherwise not entitled so to proceed, in which event the trial court shall state in writing the reasons for such certification or finding.

(c) Motion for Leave in the Appellate Division. If a motion for leave to proceed on appeal in forma pauperis is denied by the trial court, or if the trial court certifies that the appeal is not taken in good faith or that the party is otherwise not entitled to proceed in forma pauperis, the Clerk of Courts shall serve notice of such action. A motion for leave so to proceed may be filed in the Appellate Division within ten (10) days after such service. The motion shall be accompanied by a copy of the affidavit filed in the trial court, or by the affidavit prescribed by the first paragraph of this subdivision if no affidavit has been filed in the trial court, and by a copy of the statement of reasons given by the trial court for its action.

Comment: No changes have been made from the 1994 Mules.

TITLE VI
GENERAL PROVISIONS

RULE 25. FILING AND SERVICE

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

> **(1) Mail.** Filing may be accomplished by mail addressed to the Clerk of Courts, but filing shall not be timely unless the papers are received by the Clerk within the time fixed for filing.
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> **(2) Facsimile transmission.** The Clerk of Courts will accept for filing documents copied by telephone facsimile machine, either presented to the Clerk of Courts for filing or transmitted directly to the Clerk of Courts' office by telephone facsimile machine; provided, however, that the party filing such documents also transmits at the same time a cover letter from counsel of record stating that on the day the transmission was sent, the original documents were mailed to the Clerk of Courts by first-class or express mail or sent by courier. Counsel must also provide proof of service in accordance with subsection (d) of this rule. Upon receipt of the original documents, the copies sent by facsimile transmission shall be discarded by the Clerk of Courts, and replaced by the original documents. Such documents will be deemed filed as of the date of the receipt of the facsimile transmission. The risk of non-delivery of documents sent by facsimile transmission because of power outages, telecommunications interruptions, and the like shall be on the party attempting the transmission.

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

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

(d) Proof of Service. Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service

and of the names of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed.

(e) Electronic Service. Upon the agreement of the parties, any party may serve papers upon another party by electronic means. Before any papers may be served electronically, the party or counsel who consents to electronic service must file a signed written statement with the Appellate Division stating their agreement to receive service electronically in that case.

(f) Number of Copies. An original and three (3) copies of the notice of appeal and designation of the record and an original and four (4) copies of all briefs must be filed unless the court requires a different number in a particular case. For all other documents, only an original must be filed unless the court requires a different number in a particular case.

Comment: Subsection (a) has been expanded to include filing by facsimile transmission in accordance with Rules of Civil Procedure 5(f). The changes to subsection (b) of this rule adopt the changes found in the 1998 Amendments to Rule 25(b) of the Federal Rules. The language of subsection (b) is amended to make the rule more easily understood; no substantive change is intended. In the 1994 Rules, subsection (c) incorporated the manner of service in the ROP R.Civ.P. 5. Subsection (c) now details the manner of service, although they remain the same as the ROP R.Civ.P. 5. No changes have been made to subsection (d) from the 1994 Rules. Subsection (e) has been added to allow parties to electronically serve documents on one another. This rule is similar to Rule 25(c)(1)(D) of the Federal Rules added in the 2002 Amendments. No party may be served electronically unless the party has consented in writing to such service. At this time, the Appellate Division does not accept electronic filing or service, including proof of service which must be filed in accordance with subsection (d). Subsection (f) has been added requiring an original and three copies of the notice of appeal and designation of record. An original and four copies of all briefs must be filed. For all other documents, only the original needs to be filed.

Notes

Supreme Court Order dated June 28, 2012 amends Rule 25 subsection (e) to delete the following language: "No papers may be filed electronically with the Appellate Division".

RULE 26. COMPUTATION AND EXTENSION OF TIME

(a) Computation of Time. In computing any period of time prescribed by these rules, by an order of the Appellate Division, or by any applicable statute, exclude the day of the act, event, or default that begins the period. Include the last day of the period unless it is a Saturday, a Sunday, or a legal holiday, in which event the period extends until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. For electronic filing, the last day of the period shall end at midnight in Palau. Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days, unless stated in calendar days. As used in this rule, "legal holiday" means any day appointed as a holiday by the President or the Olbiil Era Kelulau of the Republic of Palau.

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

(c) Enlargement. When by these rules or by a notice given thereunder or by order of the court

an act is required or allowed to be done at or within a specified time, the court in its discretion may (1) with or without motion or notice, for good cause shown order the period enlarged if the first request is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rule 4 or Rule 31(d), except to the extent and under the conditions stated therein. No successive motions for enlargement will be granted absent the showing of extraordinary circumstances.

Comment: The changes to subsection (a) of this rule adopt the changes found in the 1998 and 2002 Amendments to Rule 26(a)(1) and (2) of the Federal Rules. The language of the rule is amended to make the rule more easily understood; no substantive change is intended. No changes have been made to subsection (b) from the 1994 Rules. Subsection (c) has been added and is an adaptation of ROP R.Civ.P. 6(b). The major change is that after the first enlargement of time is granted, no further enlargements will be granted absent the showing of extraordinary circumstances.

Notes

Supreme Court Order dated June 28, 2012 amends Rule 26 subsection (a) to add the following sentence: "For electronic filing, the last day of the period shall end at midnight in Palau".

RULE 27. MOTIONS

(a) Content of Motions; Response; Reply. Unless another form is elsewhere prescribed by these rules an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion within seven (7) days after service of the motion, but motions authorized by Rules 8 and 9 may be acted upon after reasonable notice. The Appellate Division may shorten or extend the time for responding to any motion.

(b) Determination of Motions for Procedural Orders. Notwithstanding the provisions of the preceding paragraph as to motions generally, motions for procedural orders may be acted upon at any time, without awaiting a response thereto. A party adversely affected by the Appellate Division's action may file a motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.

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

(d) Number of Copies. Only the original version of the motion must be filed unless the court requires a different number of copies in a particular case.

Comment: The changes to subsection (a) of this rule adopt the changes found in the 1998 Amendments to

Rule 27(a)(2)(A) of the Federal Rules. The language of the rule is amended to make the rule more easily understood; no substantive change is intended. The changes to subsection (b) of this rule adopt the changes found in the 1998 Amendment to Rule 27(b) of the Federal Rules. A new sentence is added indicating that if a motion is granted before the filing of timely opposition to the motion, the filing of the opposition is not treated as a request for reconsideration. The party must file a new motion that addresses the order granting the motion. New subsection (c) has been added to conform with Rule 27(c) of the Federal Rules. Subsection (c) from the 1994 Rules stating the number of copies is now subsection (d), and has been to changed to eliminate the requirement of filing three copies in addition to the original motion. Subsection (d) now only requires that the original motion be filed.

RULE 28. BRIEFS

(a) Form and Content. An original and four (4) copies of all briefs shall be filed with the Appellate Division unless the Appellate Division orders otherwise. All briefs submitted by counsel who is a lawyer or trial counselor shall conform with the following requirements for form and content of briefs on appeal:

(1) The first page of each brief shall be the cover sheet. The cover sheet shall set forth the name of the Appellate Division, the full title of the case, the number assigned in the trial court, the number of the appeal, names of all appellant(s) and appellee(s), the party on whose behalf the brief is filed, a designation of the nature of the brief, a request for oral argument if so desired, the court from which appeal is taken, the name of the judge or justice thereof, and the names, addresses, and telephone numbers of counsel for the respective parties. The cover sheet shall not be numbered.

(2) Pages shall be of uniform size throughout each brief. The width of the pages shall be eight-and-a-half inches. The length of the pages shall be eleven inches.

(3) Briefs shall be typed and double spaced, except that footnotes and quotations of more than five lines may be indented and/or single-spaced.

(4) The body of each brief shall be preceded by a Table of Contents which shall indicate the first page number of each separate item required to be in the brief.

(5) The body of each brief shall be preceded by a Table of Authorities. The Table of Authorities shall list all authorities referred to in the brief and shall indicate the page(s) of the brief where each authority is cited.

(6) In the body of all briefs shall be a list of the questions presented in the appeal. This list shall set forth, in clear and concise terms, each question the party submitting the brief deems to be presented in the appeal. Each question presented shall be set forth in a separately numbered paragraph. At its option, the Appellate Division may consider a plain error not among the questions presented but evident from the record.

(7) In the body of all briefs shall be the Statement of the Case. This shall set forth, in clear and concise terms and in substantially the following order, the following: the nature of the action, suit, or proceeding, the relief sought, and, in criminal cases, the information

including citation to the applicable statute(s); the nature of the judgment, decree, or other order to be reviewed; a concise but complete statement of all facts material to the determination of the question(s) presented for appellate decision, such statement to be presented in narrative form, with reference to the portion of the record or recording of the hearing where such facts appear; and any other matters necessary to inform the Appellate Division concerning the questions and contentions raised in the appeal. The appellee may, in lieu of the above, state acceptance of the Statement of the Case as it appears in the appellant's brief, or may cite any alleged omissions or inaccuracies, and may also state such relevant facts or other matters as may apply to the decision, referring to portions of the record in support thereof, but without unnecessary repetition of the appellant's statement. "Points and Authorities" shall not be given in this portion of the brief.

(8) In the body of all briefs shall be the argument. The argument shall be divided into major sections. Each major section shall be immediately preceded by a caption, which shall indicate briefly the substance of each issue discussed.

(9) Appended to all briefs shall be the judgment(s) or order(s) appealed from or, if the judgment or order was conveyed orally from the bench, the portion of the transcript or audio recording where such judgment or order appears.

(10) If determination of the issues presented requires the study of statutes, rules, regulations, etc., or relevant parts thereof, they shall be reproduced in the brief or in an addendum at the end, or they may be supplied to the Appellate Division in pamphlet form.

(11) Except by permission of the Appellate Division, the appellant's opening brief and the appellee's responsive brief shall not exceed forty (40) pages, and appellant's reply brief shall not exceed twenty-five (25) pages, exclusive of pages containing the Table of Contents, Table of Authorities, and any addendum containing the judgment(s) or order(s) appealed from, statutes, rules, regulations, etc.

(b) Reply Briefs. The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. No further briefs may be filed except with leave of the Appellate Division.

(c) Signing. All written arguments must be signed by a lawyer, trial counselor, or pro se party. By so signing any written argument or notice of appeal as a pro se party or counsel for the appellant, the signatory represents that in his or her opinion the appeal raises a substantial question of law.

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

(e) References to the Record. References to evidence must be followed by a pinpoint citation to the page, transcript line, or recording time in the record. Only clear abbreviations may be used. Any pinpoint citation to an audio recording must include the day, hour, minute, and second the testimony was offered. Factual arguments or references to the record not supported by such an adequately precise pinpoint citation may not be considered by the Appellate Division. A party referring to evidence whose admissibility is in controversy must specifically identify the point at which the evidence was identified, offered, and received or rejected.

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

(g) Citation of Supplemental Authorities. If pertinent and significant authorities come to a party's attention after the party's brief has been filed, or after oral argument but before decision, a party may promptly advise the Clerk of Courts by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. Any response must be made promptly and must be similarly limited.

Comment: Subsection (a) now requires that the request for oral argument on the cover sheet of the brief in subsection (a)(1). The only other changes to subsection (a) are the inclusion of audio recordings to (7) and (9). Pro se parties have been added as signatories to subsection (c). No changes have been made to subsections (b), and (f) from the 1994 Rules. The changes to subsection (d) and (g) of this rule adopt the changes found in the 1998 Amendments to Rule 28(I) and (j) of the Federal Rules. The language of the rules is amended to make them more easily understood; no substantive change is intended. Subsection (e) of the 1994 Rules dealing with the citation of supplemental authorities has been moved to new subsection (g). New subsection (e) is similar to Rule 28(e) of the Federal Rules and has-been added to ensure counsel includes pinpoint citations to the record in their briefs.

RULE 29. BRIEF OF AMICUS CURIAE

(a) When Permitted. The Republic of Palau or its officer or agency, or a State may file an amicus curiae brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing.

(b) Motion for Leave to File. The motion must be accompanied by the proposed brief and state the movant's interest and the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

(c) Contents and Form. An amicus brief must comply with Rule 28. In addition to the requirements of Rule 28, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. An amicus brief must include a table of contents, a table of authorities, a concise statement of the identity of the amicus curiae, its

interest in the case, the source of its authority to file, and an argument.

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

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

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

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

Comment: This rule has been expanded and revised to adopt the changes found in the 1998 Amendments to Rule 29 of the Federal Rules. In subsection (a), when a brief, is filed with the consent of all parties, it is no longer necessary to obtain the parties' written consent and to file the consents with the brief. Subsection (b) requires that the brief accompany the motion. The provisions in subsection (c) and (d) are entirely new and are intended to provide guidance in how to prepare a brief. In subsection (e), the time limit for filing a brief is changed to allow seven days after the principal brief that it supports. In subsection (g), the Appellate Division may permit an amicus to argue.

[Rule 30 Reserved]

RULE 31. FILING AND SERVICE OF BRIEF.

(a) Place of Filing. All briefs and written arguments shall be filed with the Clerk of Courts.

(b) Time for Filing. Appellant's brief shall be filed within forty-five (45) days after the appellant has received an audio recording of the trial court proceedings or, if ordered, after the service of a transcript of the testimony and evidence. If no recording or transcript has been requested, then the appellant's brief shall be filed within forty-five (45) days after the filing of the notice of appeal. The appellee's or cross-appellee's brief, if any, shall be filed and served thirty (30) days after the filing of the appellant's or cross-appellant's brief. Reply briefs, if any, shall be served and filed fifteen (15) days after the filing of the brief to which the reply is directed.

(c) Consequences of Failure to File Briefs. If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal, or the Appellate Division may so dismiss on its own motion. If oral argument is scheduled, an appellee who fails to file a brief must attend, but will not be heard unless the Appellate Division grants permission.

(d) Expedited Filing For Election of Public Officials; Qualifications or Office of Elected Officials. Any appeal in which the election of a public official or the qualifications or office of a

elected official is disputed shall proceed in an expedited manner. Appellant's brief shall be filed within fifteen (15) days after the appellant has received an audio recording or a transcript of the testimony and evidence. If no recording or transcript has been requested, then the appellant's brief shall be filed within fifteen (15) days after the filing of the notice of appeal. The appellee's or cross-appellee's brief, if any, shall be served and filed fifteen (15) days after filing of the appellant's or cross-appellant's brief. Reply briefs, if any, shall be served and filed five (5) days after the filing of the brief to which the reply is directed. No enlargement of time will be granted absent a showing of extraordinary circumstances.

Comment: No changes have been made to subsections (a) from the 1994 Rules. The changes to subsection (b) are minor in order to match changes to Rule 10(b). The changes to subsection (c) of this rule adopt the changes found in the 1998 Amendments to Rule 31 (c) of the Federal Rules. If there is oral argument, an appellee who fails to file a brief is required to appear at oral argument, but will not be heard unless the Appellate Division grants permission. Subsection (d) has been added to expedite cases involving an election of a public official or the qualification or office of a elected official. It is in the interests of justice to expeditiously resolve election and qualification disputes; therefore, the briefing schedule is shorter and no enlargement of time will be granted absent a showing of extraordinary circumstances.

[Rule 32 Reserved]

RULE 33. PREHEARING CONFERENCE

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

Comment: No changes have been made from the 1994 Rules.

RULE 34. ORAL ARGUMENT

(a) Request for Argument. An appeal will include oral argument only upon the request of a party. If no request is made, the case will be submitted on briefs without oral argument. Parties must make their request on the cover sheet of the opening brief pursuant to Rule 28(a)(1). The Appellate Division on its own motion may hold oral argument or order a case submitted on briefs without oral argument even if oral argument is requested.

(b) Time and Place. If oral argument has been requested or ordered by the Appellate Division, the Appellate Division will assign a time and place for oral argument and notify each party or that party's counsel. If any party is neither present nor represented at the oral argument, the Appellate Division may proceed to hear the other parties, and then proceed to decide the appeal

without further notice.

(c) Order of Argument. The appellant opens and concludes the argument. When there are cross-appeals, they shall be argued together and in such order as the Appellate Division may direct.

(d) Length of Argument. Unless otherwise ordered, the appellant shall have not more than thirty (30) minutes for argument, and the appellee shall also have not more than thirty (30) minutes; provided, the appellant may reserve not more than ten (10) minutes of the time allowed for argument in which to reply. A motion to allow longer argument must be filed at least five (5) days before the time set for argument. A motion to postpone the argument must be filed reasonably in advance of the hearing date.

Comment: The change to subsection (a) is significant as previously every appeal automatically received oral argument unless the parties or the Appellate Division chose not to have argument. Now, no appeal will receive oral argument unless one of the parties requests oral argument and the Appellate Division decides to hold oral argument. The request must be on the cover of the brief and can be as simple as "Oral Argument Requested". The first sentence of subsection (b) has been slightly modified to harmonize it with subsection (a). The changes to subsection (c) and (d) of this rule adopt the changes found in the 1998 Amendments to Rule 34(b) and (c) of the Federal Rules. The language of the rules is amended to make them more easily understood; no substantive change is intended.

[Rule 35 Reserved]

RULE 36. JUDGMENTS

The Appellate Division may modify any sentence, judgment or order, except that a sentence may not be increased unless a new trial has been granted.

Comment: Rule 36 was formerly a part of Rule 10(a) but has been moved for purposes of clarity.

RULE 37. INTEREST ON JUDGMENTS

Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the trial court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the trial court, the mandate shall contain instructions with respect to allowance of interest.

Comment: No changes have been made from the 1994 Rules.

RULE 38. DAMAGES FOR FILING FRIVOLOUS APPEAL

If the Appellate Division determines that an appeal is frivolous, it may award just damages, including attorney's fees, to the appellee.

Comment: No changes have been made from the 1994 Rules.

RULE 39. COSTS

(a) To Whom Allowed. Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the Appellate Division.

(b) Costs For and Against the Republic of Palau. In cases involving the Republic of Palau or an agency or officer thereof, if an award of costs against the Republic of Palau is authorized by law, costs shall be awarded in accordance with the provisions of subdivision (a); otherwise, costs shall not be awarded for or against the Republic of Palau.

Comment: No changes have been made from the 1994 Rules.

RULE 40. PETITION FOR REHEARING

(a) Time for Filing; Content; Answer; Action by Appellate Division if Granted. A petition for rehearing may be filed within fourteen (14) days after service of the Appellate Division's opinion or order unless the time is shortened or enlarged by order. The petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted. No response to a petition for rehearing will be received unless requested by the Appellate Division, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted, the Appellate Division may make a final disposition of the case without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(b) Form of Petition; Length. The petition shall be in the general form prescribed by Rule 28(a), and copies shall be served and filed as prescribed by Rule 31 for the service and filing of briefs. Except by permission of the Appellate Division, a petition for rehearing shall not exceed fifteen (15) pages.

Comment: The changes to subsection (a) of this rule adopt the changes found in the 1998 Amendments to Rule 40(a) of the Federal Rules. The language of the rule is amended to make the rule more easily understood; no substantive change is intended. No changes have been made to subsection (b) from the 1994 Rules.

[Rule 41 Reserved]

RULE 42. VOLUNTARY DISMISSAL

If the parties to an appeal or other proceeding shall sign and file with the Clerk of Courts an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the Appellate Division shall enter the case dismissed, but no mandate or other process shall issue without an order of the Appellate Division. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the court.

Comment: The changes to the last sentence of this rule adopt the changes found in the 1998 Amendments to Rule 42(b) of the Federal Rules. The language of the rule is amended to make the rule more easily understood; no substantive change is intended.

RULE 43. SUBSTITUTION OF PARTIES

(a) Death of a Party. If a party dies while a proceeding is pending in the Appellate Division, the decedent's personal representative may be substituted as a party on motion filed with the Clerk of Courts by the representative or by any party. A party's motion must be served on the representative in accordance with Rule 25. If the decedent has no representative, any party may suggest the death on the record, or the Appellate Division may sua sponte take notice of the death. The Appellate Division may then direct appropriate proceedings. If a party entitled to appeal dies before tiling a notice of appeal, the decedent's personal representative or, if there is no personal representative, the decedent's attorney of record, may file a notice of appeal within the time prescribed by these rules. If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court, but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. After the notice of appeal is filed, any party who died before that filing must be substituted in accordance with this rule.

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

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

Comment: This rule has been expanded and revised to conform with Rule 43 of the Federal Rules in an effort to give more guidance on how to substitute parties.

RULE 44. CASES INVOLVING CONSTITUTIONAL QUESTION WHERE THE REPUBLIC OF PALAU IS NOT A PARTY

If a party questions the constitutionality of any act of the Olbiil Era Kelulau in a proceeding in the Appellate Division in which the Republic of Palau or its agency, officer, or employee is not a party in an official capacity, the questioning party must give immediate notice in writing to the Attorney General of the existence of said question. The party shall contemporaneously file a certificate of service of such notice with the Clerk of Courts.

Comment: The changes to this rule adopt the changes found in the 1998 Amendments to Rule 44 of the Federal Rules. The language of the rule is amended to make the rule more easily understood; no substantive change is intended.

RULE 45. DUTIES OF CLERKS

(a) General Provisions. The Appellate Division shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process, and of making motions and orders. The office of the Clerk of Courts with the Clerk or assistant in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but the Appellate Division may provide by order that the office of the Clerk of Courts shall be open for specified hours on Saturdays or on particular holidays.

(b) The Docket; Calendar; Other Records Required. The Clerk of Courts shall keep a book known as the docket, in such form as may be prescribed by the Administrative Director, and shall enter therein each case. Cases shall be assigned consecutive file numbers. The file number of each case shall be noted on the docket whereon the first entry is made. All papers filed with the Clerk and all process, orders, and judgments shall be entered chronologically in the docket and database assigned to the case. Entries shall be brief but shall show the nature of each paper filed or judgment or order entered. The entry of an order or judgment shall show the date the entry is made. The Clerk shall keep a suitable index of cases contained in the docket. The Clerk shall keep such other books and records as may be required from time to time by the Administrative Director, or as may be required by the Appellate Division.

(c) Notice of Orders or Opinions. Immediately upon the entry of an order or opinion the Clerk of Courts shall serve the order or opinion upon each party to the proceeding and shall make a note in the docket of the service. Service on a party represented by counsel shall be made on counsel.

(d) Custody of Records and Papers. The Clerk of Courts shall have custody of the records and papers of the Appellate Division. The Clerk shall not permit any original record or papers to be taken from the Clerk's custody except as authorized by the orders or instructions of the Appellate Division. Original papers transmitted as the record on appeal or review shall upon disposition of the cases be returned to the court or agency from which they were received. The Clerk shall preserve copies of briefs and other printed papers filed.

Comment: The amendments are technical. No substantive change is intended.