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Rule 1001. Scope of Rules and Forms; Short Title

The Bankruptcy Rules and Forms govern procedure in cases under Title 31 of the Code of the Federated States of Micronesia. The rules shall be cited as the FSM Rules of Bankruptcy Procedure and the forms as the Official Bankruptcy Forms. These rules shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding.

PART I – START OF CASE: PROCEEDINGS RELATING TO APPLICATION AND ORDER FOR RELIEF

Rule 1002. Start of Case

An application starting a case under Title 31 shall be filed with the clerk.

Rule 1003. Involuntary Application

(a) **Transferor or transferee of claim.** A transferor or transferee of a claim shall annex to the original and each copy of the application a copy of all documents evidencing the transfer, whether transferred unconditionally, for security, or otherwise, and a signed statement that the claim was not transferred for the purpose of starting the case and setting forth the consideration for and terms of the transfer. An entity that has transferred or acquired a claim for the purpose of starting a case for liquidation under chapter 2 or for reorganization under chapter 3 shall not be a qualified applicant.

(b) **Joinder of applicants after filing.** If the answer to an involuntary application filed by at least three creditors avers the existence of more creditors, the debtor shall file with the answer a list of all creditors with their addresses, a brief statement of the nature of their claims, and the amounts thereof. The court shall afford a reasonable opportunity for other creditors to join in the application before a hearing is held thereon.

Rule 1004. Involuntary Application Against a Partnership

After filing of an involuntary application, (1) the applying partners or other applicants shall promptly send to or serve on each general partner who is not an applicant, a copy of the application; and (2) the clerk shall promptly issue a summons for service on each general partner who is not an applicant. Rule 1010 applies to the form and service of the summons.

Rule 1004.1 Application for an Infant or Incompetent Person

If an infant or incompetent person has a representative, including a general guardian, committee, conservator, or similar fiduciary, the representative may file a voluntary application on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may file a voluntary application by next friend or guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person who is a debtor and is not otherwise represented or shall make any other order to protect the infant or incompetent debtor.

Rule 1005. Caption of Application

The caption of an application starting a case under Title 31 shall contain the name of the court, the title of the case, and the docket number. The title of the case must include the following information about the debtor: name and all other names used within six years before filing the application. If the application is not filed by the debtor, it shall include all names used by the debtor which are known to applicants.

Rule 1006. Filing Fee

(a) **General requirement.** Every application shall be accompanied by the filing fee except as provided in subdivision (b). The filing fee is \$50.00, and is payable to the clerk upon the start of a case under Title 31.

(b) Payment of filing fee in installments.

(1) *Petition for permission to pay filing fee in installments.* A voluntary application by an individual shall be accepted for filing if accompanied by the debtor's signed petition stating that the debtor is unable to pay the filing fee except in installments. The application must state the proposed terms of the installment payments and that the applicant has neither paid any money nor transferred any property to an attorney for services in connection with the case.

(2) *Action on petition.* Before the meeting of creditors, the court may order the filing fee paid to the clerk or grant leave to pay in installments and fix the number, amount and dates of payment. The number of installments shall not exceed five, and the final installment shall be payable not later than 120 days after filing the application. For cause shown, the court may extend the time of any installment, provided the last installment is paid not later than 180 days after filing the application.

(3) *Postponement of attorney's fees.* The filing fee must be paid in full before the debtor or chapter 2 receiver may pay an attorney or any other person who renders services to the debtor in connection with the case.

Rule 1007. Lists, Schedules and Statements; Time Limits

(a) List of creditors and equity security holders, and corporate ownership statement.

(1) *Voluntary case.* In a voluntary case, the debtor shall file with the application a list containing the name and address of each creditor unless the application is accompanied by a schedule of liabilities. If the debtor is a corporation, the debtor shall file with the application a corporate ownership statement containing the information described in Rule 7007.1. The debtor shall file a supplemental statement promptly upon any change in circumstances that renders the corporate ownership statement inaccurate.

(2) *Involuntary case.* In an involuntary case, the debtor shall file within 15 days after entry of the order for relief under Rule 1013(b), a list containing the name and address of each creditor unless a schedule of liabilities has been filed.

(3) *Equity security holders.* In a chapter 3 reorganization case, unless the court orders otherwise, the debtor shall file within 15 days after entry of the order for relief a list of the debtor's equity security holders of each class showing the number and kind of interests registered in the name of each holder, and the last known address or place of business of each holder.

(4) *Extension of time.* Any extension of time for the filing of the lists required by this subdivision may be granted only on motion for cause shown and on notice to any receiver appointed under § 201 of Title 31 or any trustee appointed under § 302 of Title 31, or other party as the court may direct.

(b) **Schedules and statements required.** The debtor, unless the court orders otherwise, shall file schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts and unexpired leases, and a statement of financial affairs, prepared as prescribed by the appropriate Official Forms.

(c) **Time limits.** The schedules and statements shall be filed with the application in a voluntary case, or if the application is accompanied by a list of all the debtor's creditors and their addresses, within 15 days thereafter, except as otherwise provided in subdivisions (d), (e), (f), and (h). In an involuntary case, the schedules and statements shall be filed by the debtor within 15 days after entry of the order for relief under Rule 1013(b). Schedules and statements filed before the conversion of a case to another chapter shall be deemed filed in the converted case unless the court directs otherwise. Any extension of time for the filing of the schedules and statements may be granted only on motion for cause shown and on notice to the trustee, receiver, or other party as the court may direct. Notice of an extension must be given to the receiver or trustee and to any other party as the court may direct.

(d) **List of 20 largest creditors in chapter 3 reorganization case.** In addition to the list required by subdivision (a), a debtor in a voluntary chapter 3 reorganization case shall file with the application a list containing the name, address and claim of the creditors that hold the 20 largest

unsecured claims, excluding insiders, as prescribed by the appropriate Official Form. In an involuntary chapter 3 reorganization case, this list shall be filed by the debtor within 2 days after entry of the order for relief under Rule 1013(b).

(e) **Statement of social security number.** An individual debtor shall submit a verified statement that sets out the debtor's social security number, or states that the debtor does not have a social security number. In a voluntary case, the debtor shall submit the statement with the application. In an involuntary case, the debtor shall submit the statement within 15 days after the entry of the order for relief.

(f) **Partnership and partners.** The general partners of a debtor partnership shall prepare and file the schedules of the assets and liabilities, schedule of current income and expenditures, schedule of executory contracts and unexpired leases, and statement of financial affairs of the partnership. The court may order any general partner to file a statement of personal assets and liabilities within such time as the court may fix.

(g) **Interests acquired or arising after application.** If the debtor acquires or becomes entitled to acquire any interest in property, the debtor must within 10 days after the information comes to the debtor's knowledge or within such further time the court may allow, file a supplemental schedule in the case. If any of the property required to be reported under this subdivision is claimed by the debtor as exempt, the debtor shall claim the exemptions in the supplemental schedule. The duty to file a supplemental schedule in accordance with this subdivision continues notwithstanding the case's closing, except that the schedule need not be filed in a chapter 3 case with respect to property acquired after entry of the order confirming a chapter 3 plan.

(h) **Disclosure of list of security holders.** After notice and hearing and for cause shown, the court may direct an entity other than the receiver, debtor or trustee to disclose any list of security holders of the debtor in its possession or under its control, indicating the name, address and security held by any of them. The entity possessing this list may be required either to produce the list or a true copy thereof, or permit inspection or copying, or otherwise disclose the information contained on the list.

(i) **Impounding of lists.** On an interested party's motion and for cause shown the court may direct the impounding of the lists filed under this rule, and may refuse to permit inspection by any entity. The court may permit inspection or use of the lists, however, by any interested party on terms prescribed by the court.

(j) **Preparation of list, schedules, or statements on default of debtor.** If a list, schedule, or statement is not prepared and filed as required by this rule, the court may order the receiver, trustee, an applying creditor, or other party to prepare and file any of these papers within a time fixed by the court. The court may approve reimbursement of the cost incurred in complying with the order as an administrative expense.

(k) **Infants and Incompetent Persons.** If the debtor knows that a person on the list of creditors or schedules is an infant or incompetent person, the debtor also shall include the name, address, and legal relationship of any person upon whom process would be served in an adversary proceeding against the infant or incompetent person in accordance with Rule 7004(b)(2).

Rule 1008. Verification of Applications and Accompanying Papers

All applications, lists, schedules, statements, and amendments thereto shall be verified.

Rule 1009. Amendments of Voluntary Applications, Lists, Schedules and Statements

The debtor may amend a voluntary application, list, schedule, or statement as a matter of course at any time before the case is closed. The debtor shall give notice of the amendment to the receiver or trustee and to any entity affected thereby. On an interested party's motion, after notice and a hearing, the court may order any voluntary application, list, schedule, or statement to be amended and the clerk shall give notice of the amendment to entities designated by the court.

Rule 1010. Service of Involuntary Application and Summons

On the filing of an involuntary application, the clerk shall forthwith issue a summons for service. Service must be made on the debtor. The summons shall be served with a copy of the application in the manner provided for service of a summons and complaint by Rule 7004(a) or (b). If service cannot be so made, the court may order that the summons and application be served by mailing copies to the party's last known address, and by at least one publication under Rule 9008 in a manner and form directed by the court. The summons and application may be served on the party anywhere. Rule 7004(e) and FSM Civil Procedure Rule 4(g) and (h) apply when service is made or attempted under this rule.

Rule 1011. Responsive Pleading or Motion in Involuntary Cases

(a) **Who may contest application.** The debtor named in an involuntary application may contest the application. In the case of an application against a partnership under Rule 1004, a nonapplying general partner, or a person who is alleged to be a general partner but denies the allegation, may contest the application.

(b) **Defenses and objections; when presented.** Defenses and objections to the application shall be presented in the manner prescribed by FSM Civil Procedure Rule 12 and shall be filed and served within 20 days after service of the summons, except that if service is made by publication on a party or partner not residing or found within the state in which the court sits, the court shall prescribe the time for filing and serving the response.

(c) **Effect of motion.** Service of a motion under FSM Civil Procedure Rule 12(b) shall extend the time for filing and serving a responsive pleading as permitted by FSM Civil Procedure Rule 12(a).

(d) **Claims against applicants.** A claim against an applying creditor may not be asserted in the answer except for the purpose of defeating the application.

(e) **Other pleadings.** No other pleadings shall be permitted, but the court may order a reply to an answer and prescribe the time for filing and service.

Rule 1013. Hearing and Disposition of Application in Involuntary Cases

(a) **Contested application.** The court shall determine the issues of a contested application at the earliest practicable time and forthwith enter an order for relief, dismiss the application, or enter any other appropriate order.

(b) **Default.** If no pleading or other defense to an application is filed within the time provided by Rule 1011, the court, on the next day, or as soon thereafter as practicable, shall enter an order for the relief requested in the application.

Rule 1014. Dismissal and Change of Venue

(a) **Dismissal and Transfer of cases.**

(1) *Cases filed in proper state.* If an application is filed in a proper state, on an interested party's timely motion, and after hearing on notice to the applicants and other entities as directed by the court, the case may be transferred to any other state if the court determines that the transfer is in the interest of justice or for the parties' convenience.

(2) *Cases filed in improper state.* If an application is filed in an improper state, on an interested party's timely motion and after hearing on notice to the applicants and other entities as directed by the court, the case may be dismissed or transferred to any other state if the court determines that transfer is in the interest of justice or for the convenience of the parties.

(b) **Procedure when applications involving the same debtor or related debtors are filed in different states.** If applications starting cases under Title 31 are filed in different states by or against (1) the same debtor, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, on motion filed in the state in which the application filed first is pending and after hearing on notice to the applicants and other entities as directed by the court, the court may determine, in the interest of justice or for the convenience of the parties, the state or states in which the case or cases should proceed.

Except as otherwise ordered by the court in the state in which the application filed first is pending, the proceedings on the other applications shall be stayed by the courts in which they have been filed until the determination is made.

Rule 1015. Consolidation of Cases Pending in Same State

(a) **Cases involving same debtor.** If two or more applications are pending in the same state by or against the same debtor, the court may order consolidation of the cases.

(b) **Cases involving two or more related debtors.** If a joint application or two or more applications are pending in the same court by or against (1) a husband and wife, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Before entering an order, the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of a husband and wife shall, if one spouse has elected the exemptions under § 209(1) of Title 31 and the other has elected the exemptions under § 209(2), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by § 209(2).

(c) **Expediting and protective orders.** When an order for consolidation or joint administration of two or more cases is entered under this rule, while protecting the rights of the parties under Title 31, the court may enter orders as may tend to avoid unnecessary costs and delay.

Rule 1016. Death or Incompetency of Debtor

The debtor's death or incompetency shall not abate a liquidation case under chapter 2 of Title 31. In such event, the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

Rule 1017. Dismissal or Conversion of Case; Suspension

(a) **Voluntary dismissal; dismissal for want of prosecution or other cause.** A case shall not be dismissed on the applicant's motion, or for want of prosecution, or other cause, or by the parties' consent before a hearing on notice as provided in Rule 2002. For such notice the debtor shall file a list of all creditors with their addresses within the time fixed by the court unless the list was previously filed. If the debtor fails to file the list, the court may order the preparing and filing by the debtor or other entity.

(b) **Dismissal for failure to pay filing fee.**

(1) For failure to pay any installment of the filing fee, the court may after hearing on notice to the debtor and the trustee dismiss the case.

(2) If the case is dismissed or the case closed without full payment of the filing fee, the installments collected shall be distributed in the same manner and proportions as if the filing fee had been paid in full.

(3) Notice of dismissal for failure to pay the filing fee must be given within 30 days after the dismissal to creditors appearing on the list of creditors and to those who have filed claims, in the manner provided in Rule 2002.

(c) **Suspension.** A case shall not be dismissed or proceedings suspended under Rule 5011 before a hearing on notice as provided in Rule 2002(a).

(d) **Procedure for dismissal or conversion.** A proceeding to dismiss a case or convert a case to another chapter of Title 31, is governed by Rule 9014. Conversion or dismissal shall be on motion filed and served as required by Rule 9013.

(e) **Dismissal of individual debtor's chapter 2 case for substantial abuse.** The court may dismiss an individual debtor's case for substantial abuse only on the receiver's motion or on the court's own motion and after a hearing on notice to the debtor, the receiver, and any other entities as the court directs.

Rule 1018. Contested Involuntary Applications; Proceedings to Vacate Order for Relief; Applicability of Rules in Part VII Governing Adversary Proceedings

The following rules in Part VII apply to all proceedings relating to a contested involuntary application and to all proceedings to vacate an order for relief: Rules 7005, 7008-7010, 7015, 7016, 7024-7026, 7028-7037, 7052, 7054, 7056, and 7062, except as otherwise provided in Part I of these rules and unless the court otherwise directs. The court may direct that other rules in Part VII shall also apply. For the purposes of this rule a reference in the Part VII rules to adversary proceedings shall be read as a reference to proceedings relating to a contested involuntary application or proceedings to vacate an order for relief. Reference in the FSM Rules of Civil Procedure to the complaint shall be read as a reference to the application.

Rule 1019. Conversion of Chapter 3 Reorganization Case to Chapter 2 Liquidation Case

When a chapter 3 case has been converted or reconverted to a chapter 2 case:

(1) **Filing of lists, inventories, schedules, statements.** Lists, inventories, schedules, and statements of financial affairs theretofore filed shall be deemed to be filed in the chapter 2 case, unless the court directs otherwise. If they have not been previously filed, the debtor shall comply with Rule 1007 as if an order for relief had been entered on an involuntary application on the date of the entry of the order directing that the case continue under chapter 2.

(2) **New filing periods.** A new time period for filing claims, a complaint objecting to discharge, or a complaint to obtain a determination of dischargeability of any debt shall start under Rules 3002, 4004, or 4007, except a new time period shall not start if a chapter 2 case had been converted to a chapter 3 case and thereafter reconverted to a chapter 2 case and the time for filing claims, a complaint objecting to discharge, or a complaint to obtain a determination of the dischargeability of any debt, or any extension thereof, expired in the original chapter 2 case.

(3) **Claims filed before conversion.** All claims actually filed by a creditor before conversion of the case are deemed filed in the chapter 2 case.

(4) **Turnover of records and property.** After qualification of, or assumption of duties by the chapter 2 receiver, any debtor in possession or trustee previously acting in the chapter 3 case shall, forthwith, unless otherwise ordered, turn over to the chapter 2 receiver all records and property of the estate in the possession or control of the debtor in possession or trustee.

(5) **Filing final report and schedule of postapplication debts.**

(a) *Conversion of Chapter 3 case.* Unless the court directs otherwise, if a chapter 3 case is converted to chapter 2, the debtor in possession or, if the debtor is not a debtor in possession, the trustee serving at the time of conversion, shall not later than 15 days after conversion of the case, file a schedule of unpaid debts incurred after the application's filing and before conversion of the case, including the name and address of each holder of a claim.;

(b) *Conversion after confirmation of a plan.* Unless the court orders otherwise, if a chapter 3 case is converted to chapter 2 after confirmation of a plan, the debtor shall file:

(i) a schedule of property not listed in the final report and account acquired after the application's filing but before conversion.

(ii) a schedule of unpaid debts not listed in the final report and account incurred after confirmation but before the conversion; and

(iii) a schedule of executory contracts and unexpired leases entered into or assumed after the application's filing but before conversion.

(6) **Filing of postapplication claims; notice.** On the filing of the unpaid debts schedule, the clerk, or some other person as the court may direct, shall give notice to those entities, including the Federated States of Micronesia, any state, or any subdivision thereof, that their claims may be filed under Rules 3001(a)-(d) and 3002. Unless a notice of insufficient assets to pay a dividend is mailed under Rule 2002(e), the court shall fix the time for filing claims arising from the rejection of executory contracts or unexpired leases under § 202(1)(c) of Title 31.

PART II – OFFICERS AND ADMINISTRATION; NOTICES; MEETINGS; EXAMINATIONS;

ELECTIONS; ATTORNEYS AND ACCOUNTANTS

Rule 2001. Appointment of Interim Receiver Before Order for Relief in a Chapter 2 Liquidation Case

(a) **Appointment.** At any time after the start of an involuntary liquidation case and before an order for relief, the court on an interested party's written motion may order the appointment of an interim receiver. The motion shall set forth the necessity for the appointment and may be granted only after hearing on notice to the debtor, the applying creditors, and other interested parties as the court may designate.

(b) **Movant's bond.** An interim receiver may not be appointed under this rule unless the movant furnishes a bond in an amount approved by the court, conditioned to indemnify the debtor for costs, attorney's fee, expenses, and damages.

(c) **Appointment Order.** The order directing the appointment of an interim receiver shall state the reason the appointment is necessary and shall specify the receiver's duties.

(d) **Turnover and report.** After qualification of the receiver selected under § 201(1) of Title 31, the interim receiver, unless otherwise ordered, shall (1) forthwith deliver to the receiver all of the estate's records and property in the interim receiver's possession or control and, (2) within 30 days thereafter file a final report and account.

Rule 2002. Notices to Creditors, Equity Security Holders, and Federated States of Micronesia

(a) **Twenty-day notices to interested parties.** Except as provided in subdivisions (h), (i), and (k), the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 20 days' notice by mail of:

(1) the creditors' meeting under § 308 of Title 31, which notice, unless the court orders otherwise, shall include the debtor's employer identification number and any other FSM taxpayer identification number;

(2) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice;

(3) the hearing on approval of a compromise or settlement of a controversy other than approval of an agreement under Rule 4001(d), unless the court for cause shown directs that notice not be sent;

(4) the hearing on the case's dismissal or the conversion of the case to another chapter;

(5) the time fixed to accept or reject a proposed modification of a plan;

(6) a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds \$500; and

(7) the time fixed for filing proofs of claims under Rule 3003(c).

(b) **Twenty-five-day notices to interested parties.** Except as provided in subdivision (1), the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 25 days notice by mail of

(1) the time fixed for filing objections and the hearing to consider approval of a disclosure statement; and

(2) the time fixed for filing objections and the hearing to consider confirmation of a chapter 3 plan.

(c) **Content of notice.**

(1) *Proposed use, sale, or lease of property.* Subject to Rule 6004, the notice of a proposed use, sale, or lease of property required by subdivision (a)(2) shall include the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections. The notice of a proposed use, sale, or lease of property, including real estate, is sufficient if it generally describes the property.

(2) *Notice of hearing on compensation.* The notice of a hearing on an application for compensation or reimbursement of expenses required by subdivision (a)(6) shall

identify the applicant and the amounts requested.

(3) *Notice of Hearing on Confirmation When Plan Provides for an Injunction.* If a plan provides for an injunction against conduct not otherwise enjoined under Title 31, the notice required under Rule 2002(b)(2) shall:

(A) include in conspicuous language (bold, italic, or underlined text) a statement that the plan proposes an injunction;

(B) describe briefly the nature of the injunction; and

(C) identify the entities that would be subject to the injunction.

(d) **Notice to equity security holders.** In a chapter 3 reorganization case, unless otherwise ordered by the court, the clerk, or some other person as the court may direct, shall in the manner and form directed by the court give notice to all equity security holders of

(1) the order for relief;

(2) any meeting of equity security holders;

(3) the hearing on the proposed sale of all or substantially all of the debtor's assets;

(4) the hearing on the dismissal or conversion of a case to another chapter;

(5) the time fixed for filing objections to and the hearing to consider approval of a disclosure statement;

(6) the time fixed for filing objections to and the hearing to consider confirmation of a plan; and

(7) the time fixed to accept or reject a proposed modification of a plan.

(e) **Notice of no dividend.** In a chapter 2 liquidation case, if it appears from the schedules that there are no assets from which a dividend can be paid, the notice may include a statement to that effect; that it is unnecessary to file claims; and that if sufficient assets become available for the payment of a dividend, further notice will be given for the filing of claims.

(f) **Other notices.** Except as provided in subdivision (l), the clerk, or some other person as the court may direct, shall give the debtor and all creditors notice by mail of:

(1) the order for relief;

(2) the dismissal or the conversion of the case to another chapter;

(3) the time allowed for filing claims under Rule 3002;

(4) the time fixed for filing a complaint objecting to the debtor's discharge under § 208 of Title 31 as provided in Rule 4004;

(5) the time fixed for filing a complaint to determine the dischargeability of a debt under § 208 of Title 31 as provided in Rule 4007;

(6) the waiver, denial, or revocation of a discharge as provided in Rule 4006;

(7) entry of a order confirming a chapter 3 plan; and

(8) a summary of the receiver's final report in a chapter 2 case if the net proceeds realized exceed \$1,500.

Notice of the time fixed for accepting or rejecting a plan under Rule 3017(c) shall be given in accordance with Rule 3017(d).

(g) **Addresses of notices.**

(1) Notices required to be mailed under Rule 2002 to a creditor or equity security holder shall be addressed as the entity or an authorized agent has directed in its last request filed in the particular case. For the purposes of this subdivision:

(A) a proof of claim filed by a creditor that designates a mailing address constitutes a filed request to mail notices to that address, unless a notice of no dividend has been given under Rule 2002(e) and a later notice of possible dividend under Rule 3002(c)(5) has not been given; and

(B) a proof of interest filed by an equity security holder that designates a mailing address constitutes a filed request to mail notices to that address.

(2) If a creditor or indenture trustee has not filed a request designating a mailing address under Rule 2002(g)(1), the notices shall be mailed to the address shown on the list of creditors or schedule of liabilities, whichever is filed later. If an equity security holder has not filed a request designating a mailing address under Rule 2002(g)(1), the

notices shall be mailed to the address shown on the list of equity security holders.

(3) If a list or schedule filed under Rule 1007 includes the name and address of a legal representative of an infant or incompetent person, and a person other than that representative files a request or proof of claim designating a name and mailing address that differs from the name and address of the representative included in the list or schedule, unless the court orders otherwise, notices under Rule 2002 shall be mailed to the representative included in the list or schedules and to the name and address designated in the request or proof of claim.

(h) **Notices to creditors whose claims are filed.** In a chapter 2 case, after 90 days after the first date set for the meeting of creditors under § 308 of Title 31, the court may direct that all notices required by subdivision (a) be mailed only to the debtor, the trustee, creditors that hold claims for which proofs of claim have been filed, and creditors, if any, that are still permitted to file claims by reason of an extension granted under Rule 3002(c)(1) or (c)(2). In a case where notice of insufficient assets to pay a dividend has been given to creditors under subdivision (e), after 90 days after the mailing of a notice of the time for filing claims under Rule 3002(c)(5), the court may direct that notices be mailed only to the entities specified in the preceding sentence.

(i) **Notices to committees.** Copies of all notices required to be mailed under this rule shall be mailed to creditors' committees, if any are formed

(j) **Notices to the Federated States of Micronesia.** Copies of notices required to be mailed to all creditors under this rule shall be mailed

(1) in a chapter 3 reorganization case, to the Registrar of Corporations at any place the Registrar designates, if the Registrar has filed either a notice of appearance in the case or a written request to receive notices;

(2) in a chapter 3 case, to the FSM Department of Finance office for the state in which the case is pending; or

(3) if the papers in the case disclose a debt to the Federated States of Micronesia other than for taxes, to the Federated States of Micronesia Department of Justice and to the Federated States of Micronesia department, agency, or instrumentality to which the debtor became indebted.

(k) **Notice by publication.** The court may order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice. Notice by publication may include, but cannot be limited to, announcements on the state's radio stations.

(l) **Orders designating matter of notices.** The court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules.

(m) **Caption.** The caption of every notice given under this rule shall comply with Rule 1005.

Rule 2003. Meeting of Creditors or Equity Security Holders

(a) **Date and place.** In a chapter 2 liquidation or a chapter 3 reorganization case, the receiver or the trustee shall call a meeting of creditors to be held no fewer than 20 and no more than 40 days after the order for relief. If there is an appeal from or a motion to vacate the order for relief, or if there is a motion to dismiss the case, the receiver or trustee may set a later date for the meeting. The meeting may be held at a regular place for holding court or at any other place designated by the receiver or trustee within the state convenient for the interested parties.

(b) **Order of meeting.**

(1) *Meeting of creditors.* The receiver or trustee shall preside at the meeting of creditors. The meeting's business shall include the examination of the debtor, or in the case of a corporation or partnership of the debtor's representative, under oath and, in a chapter 2 liquidation case, may include the election of a creditors' committee. The trustee or receiver shall have the authority to administer oaths.

(2) *Meeting of equity security holders.* If the receiver or trustee convenes a meeting of equity security holders, the receiver or trustee shall fix a date for the meeting and shall preside.

(3) *Right to vote.* In a chapter 3 case, a creditor is entitled to vote at a meeting if, at or before the meeting, the creditor has filed a proof of claim or a writing setting forth facts evidencing a right to vote under § 308(1) of Title 31 unless objection is made to the claim or the proof of claim is insufficient on its face. In the event of an objection to the amount or allowability of a claim for the purpose of voting, unless the court orders otherwise, the trustee shall tabulate the votes for each alternative presented by the dispute and, if resolution of this dispute is necessary to determine the result of the election, the tabulations for each alternative shall be reported to the court.

(c) **Record of meeting.** Any examination under oath at the meeting of creditors held under this rule shall be recorded verbatim by using electronic sound recording equipment or other means of recording, and the record shall be preserved by the receiver or trustee and available for public access until two years after the conclusion of the creditors' meeting. Upon any entity's request, the receiver or trustee shall certify and provide a copy or transcript of the recording at the entity's expense.

(d) **Adjournment.** The meeting may be adjourned from time to time by announcement at the meeting of the adjourned date and time without further written notice.

(f) **Special meetings.** The receiver or trustee may call a special meeting of creditors on an interested party's request or on the receiver's or trustee's own initiative.

(g) **Final meeting.** If the receiver or trustee calls a final creditors' meeting in a case in which the net proceeds realized exceed \$1,500, the clerk shall mail a summary of the receiver's or trustee's final account to the creditors with a notice of the meeting, together with a statement of the amount of the claims allowed. The receiver or trustee shall attend the final meeting and shall, if requested, report on the administration of the estate.

Rule 2004. Examination

(a) **Examination on motion.** On any interested party's motion, the court may order the examination of any entity.

(b) **Scope of examination.** The examination of an entity or of the debtor under this rule may relate only to the debtor's acts, conduct, or property or to the debtor's liabilities and financial condition, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a reorganization case under chapter 3 of Title 31, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

(c) **Compelling attendance and production of documentary evidence.** The attendance of an entity for examination and for the production of documents, whether the examination is to be conducted within or without the state in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial.

(d) **Time and place of debtor's examination.** The court may for cause shown and on terms as it may impose order the debtor to be examined under this rule at any time or place it designates, whether within or without the state wherein the case is pending.

Rule 2005. Apprehension and Removal of Debtor to Compel Attendance for Examination

(a) **Order to compel attendance for examination.** On any interested party's motion supported by an affidavit alleging

(1) that the debtor's examination is necessary for the estate's proper administration and that there is reasonable cause to believe that the debtor is about to leave or has left the debtor's residence or principal place of business to avoid examination, or

(2) that the debtor has evaded service of a subpoena or of an order to attend for examination, or

(3) that the debtor has willfully disobeyed a duly served subpoena or order to

attend for examination,
the court may issue to some officer authorized by law, an order directing the officer to bring the debtor before the court without unnecessary delay. If, after hearing, the court finds the allegations to be true, the court shall thereupon cause the debtor to be examined forthwith. If necessary, the court shall fix conditions for further examination and for the debtor's obedience to all orders made in reference thereto.

(b) **Conditions of release.** In determining what conditions will reasonably assure attendance or obedience under subdivision (a), the court shall be governed by the provisions and policies of FSM Criminal Procedure Rule 46.

Rule 2006. Solicitation and Voting of Proxies in Chapter 2 Liquidation Cases

(a) **Applicability.** This rule applies only in a liquidation case pending under chapter 2 of Title 31.

(b) **Definitions.**

(1) *Proxy.* A proxy is a written power of attorney authorizing any entity to vote the claim or otherwise act as the owner's attorney in fact in connection with the administration of the estate.

(2) *Solicitation of proxy.* The solicitation of a proxy is any communication, other than one from an attorney to a regular client who owns a claim or from an attorney to the owner of a claim who has requested the attorney to represent the owner, by which a creditor is asked, directly or indirectly, to give a proxy after or in contemplation of the filing of an application by or against the debtor.

(c) **Authorized solicitation.**

(1) A proxy may be solicited only by a creditor owning an allowable unsecured claim against the estate on the date of the application's filing.

(2) A proxy may be solicited only in writing.

(d) **Solicitation not authorized.** This rule does not permit solicitation

(1) in any interest other than that of general creditors;

(2) by or on behalf of any custodian;

(3) by or on behalf of an attorney at law; or

(4) by or on behalf of a transferee of a claim for collection only.

(e) **Data required from holders of multiple proxies.** At any time before the voting starts at any creditors' meeting under § 308(1) of Title 31, or at any other time as the court may direct, a holder of two or more proxies shall file and send to the trustee a verified list of the proxies to be voted and a verified statement of the pertinent facts and circumstances in connection with the execution and delivery of each proxy, including:

(1) a copy of the solicitation;

(2) identification of the solicitor, the forwarder, if the forwarder is neither the solicitor nor the owner of the claim, and the proxyholder, including their connections with the debtor and with each other.

(3) a statement that no consideration has been paid or promised by the proxyholder for the proxy;

(4) a statement on whether there is any agreement and, if so, the particulars thereof, between the proxyholder and any other entity for the payment of any consideration in connection with voting the proxy, or for the sharing of compensation with any entity, or for the employment of any person as attorney, accountant, appraiser, auctioneer, or other employee for the estate;

(5) if the proxy was solicited by an entity other than the proxyholder, or forwarded to the holder by an entity who is neither a solicitor of the proxy nor the owner of the claim, a statement signed and verified by the solicitor or forwarder that no consideration has been paid or promised for the proxy, and whether there is any agreement, and, if so, the particulars thereof, between the solicitor or forwarder and any other entity for the payment of any consideration in connection with voting the proxy, or for sharing compensation with any entity, or for the employment of any person as attorney, accountant, appraiser,

auctioneer, or other employee for the estate;

(6) if the solicitor, forwarder, or proxyholder is a committee, a statement signed and verified by each member about the amount and source of any consideration paid or to be paid to the member in connection with the case other than by way of dividend on the member's claim.

(f) **Enforcement of restrictions on solicitation.** On any interested party's motion or on its own initiative, the court may determine whether there has been a failure to comply with the this rule's provisions or any other impropriety in connection with the solicitation or voting of a proxy. After notice and a hearing the court may reject any proxy for cause, vacate any order entered in consequence of the voting of any proxy which should have been rejected, or take any other appropriate action.

Rule 2007. Review of Appointment of Creditors' Committee Organized Before Case's Start

(a) **Motion to review appointment.** If a committee consists of the members organized by creditors before the start of a chapter 3 case, on an interested party's motion and after a hearing on notice to entities as the court may direct, the court may determine whether the appointment of the committee is satisfactory.

(b) **Selection of members of committee.** The court may find that a committee organized by unsecured creditors before the start of a chapter 3 case was fairly chosen if:

(1) it was selected by a majority in number and amount of claims of unsecured creditors who may vote under § 308(1) of Title 31 and were present in person or represented at a meeting of which all creditors having unsecured claims of over \$1,000 or the 100 unsecured creditors having the largest claims had at least five days notice in writing, and of which meeting written minutes reporting the names of the creditors present or represented and voting and the amounts of their claims were kept and are available for inspection;

(2) all proxies voted at the meeting for the elected committee were solicited under Rule 2006 and the lists and statements required by subdivision (e) thereof have been sent to the trustee; and

(3) the organization of the committee was in all other respects fair and proper.

(c) **Failure to comply with requirements for appointment.** After a hearing on notice under subdivision (a), the court shall direct the trustee to vacate the committee's appointment and may order other appropriate action if the court finds that the appointment was not satisfactory.

Rule 2007.1. Appointment of Trustee or Examiner in a Chapter 3 Reorganization Case

Order to appoint trustee or examiner. In a chapter 3 reorganization case, a motion for an order to appoint an examiner or a trustee under § 302 of Title 31 shall be made in accordance with Rule 9014.

Rule 2008. Notice to Receiver or Trustee of Selection

The court shall immediately notify the person selected as trustee how to qualify and, if applicable, the amount of the receiver's or trustee's bond. A trustee that has filed a blanket bond under Rule 2010 and has been selected as receiver in a chapter 2 case that does not notify the court in writing of rejection of the office within five days after receipt of notice of selection shall be deemed to have accepted the office. Any other person selected as trustee shall notify the court in writing of acceptance of the office within five days after receipt of notice of selection or shall be deemed to have rejected the office.

Rule 2009. Receivers or Trustees for Estates When Joint Administration Ordered

(a) **Selection of single trustee for estates being jointly administered.** If the court orders a joint administration of two or more estates under Rule 1015(b), it may appoint a single receiver or trustee for the estates being jointly administered.

(b) Appointment of receivers or trustees for estates being jointly administered.

(1) *Chapter 2 liquidation cases.* The court may appoint one or more interim receivers for estates being jointly administered in chapter 2 cases.

(2) *Chapter 3 reorganization cases.* If the appointment of a trustee is ordered, the court may appoint one or more trustees for estates being jointly administered in chapter 3 cases.

(c) **Potential conflicts of interest.** On a showing that creditors or equity security holders of the different estates will be prejudiced by conflicts of interest of a common receiver or trustee who has been appointed, the court shall order the selection of separate receivers or trustees for estates being jointly administered.

(d) **Separate accounts.** The receiver or receivers or trustee or trustees of estates being jointly administered shall keep separate accounts of the property and distribution of each estate.

Rule 2010. Qualification by Receiver or Trustee; Proceeding on Bond

(a) **Blanket bond.** A blanket bond may be authorized in favor of the Federated States of Micronesia conditioned on the faithful performance of the receiver's or trustee's official duties to cover (1) a person who qualifies as trustee in a number of cases, and (2) a number of receivers or trustees each of whom qualifies in a different case.

(b) **Proceeding on bond.** A proceeding on the trustee's bond may be brought by any interested party in the name of the Federated States of Micronesia for the use of the entity injured by the breach of the condition.

Rule 2011. Evidence of Debtor in Possession or Qualification of Trustee

(a) Whenever evidence is required that a debtor is a debtor in possession or that a trustee has qualified, the clerk may so certify and the certificate shall constitute conclusive evidence of that fact.

(b) If a person appointed as trustee does not qualify within seven days of appointment, the clerk shall so notify the court.

Rule 2012. Substitution of Receiver or Trustee; Successor; Accounting

(a) **Trustee.** If a trustee is appointed in a chapter 3 case or the debtor is removed as debtor in possession, the trustee is substituted automatically for the debtor in possession as a party in any pending action, proceeding, or matter.

(b) **Successor receiver or trustee.** When a receiver or trustee dies, resigns, is removed, or otherwise ceases to hold office during the pendency of a case under Title 31

(1) the successor is automatically substituted as a party in any pending action, proceeding, or matter; and

(2) the successor receiver or trustee shall prepare, file, and send to the court an accounting of the estate's prior administration.

Rule 2013. Public Record of Compensation Awarded to Trustees and Receivers, Examiners, and Professionals

(a) **Record to be kept.** The clerk shall maintain a public record listing fees awarded by the court (1) to trustees and receivers and attorneys, accountants, appraisers, auctioneers and other professionals employed by trustees, and (2) to examiners. The record shall include the name and docket number of the case, the name of the individual or firm receiving the fee and the amount of the fee awarded. The record shall be maintained chronologically and shall be kept current and open to examination by the public without charge. "Trustees," as used in this rule, does not include debtors in possession.

(b) **Summary of record.** At the close of each annual period, the clerk shall prepare a summary of the public record by individual or firm name, to reflect total fees awarded during the preceding year. The summary shall be open to examination by the public without charge.

Rule 2014. Employment of Professional Persons

(a) **Application for an order of employment.** An order approving the employment of attorneys, accountants, appraisers, auctioneers, agents, or other professionals under § 111 of Title 31 shall be made only on application of the debtor, receiver, or trustee. The application shall be filed. The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other interested party, and their respective attorneys and accountants. The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other interested party, and their respective attorneys and accountants.

(b) **Services rendered by member or associate of firm of attorneys or accountants.** If, under Title 31 and this rule, a law partnership or corporation is employed as an attorney, or an accounting partnership or corporation is employed as an accountant, or if a named attorney or accountant is employed, any partner, member, or regular associate of the partnership, corporation or individual may act as attorney or accountant so employed, without further court order.

Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case

(a) **Receiver, trustee, or debtor in possession.** A receiver, trustee, or debtor in possession shall

(1) in a chapter 2 liquidation case and, if the court directs, in a chapter 3 reorganization case file a complete inventory of the debtor's property within 30 days after qualifying as a trustee or debtor in possession, unless such an inventory has already been filed;

(2) keep a record of receipts and the disposition of money and property received;

(3) file the reports and summaries required by FSM income and social security tax laws, which shall include a statement, if payments are made to employees, of the amounts of deductions for all taxes required to be withheld or paid for and on behalf of employees and the place where these amounts are deposited;

(4) as soon as possible after the case's start, give notice of the case to every entity known to be holding money or property subject to the debtor's withdrawal or order, including every bank, credit union, public utility company, and landlord with whom the debtor has a deposit, and to every insurance company which has issued a policy having a cash surrender value payable to the debtor, but notice need not be given to any entity who has knowledge or has previously been notified of the case;

(5) in a chapter 3 reorganization case, on or before the last day of the month after each calendar quarter during which there is a duty to pay fees under Rule 1006, file a statement of any disbursements made during such calendar that quarter and of any fees payable under Rule 1006 for that quarter.

(b) **Transmission of reports.** In a chapter 3 case the court may direct that copies or summaries of annual reports and copies or summaries of other reports be mailed to the creditors, equity security holders, and indenture trustees.

Rule 2016. Compensation for Services Rendered and Reimbursement of Expenses

(a) **Application for compensation or reimbursement.** An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file an application setting forth a detailed statement of the services rendered, time expended and expenses incurred, and the amounts requested. An application for compensation shall include

(1) a statement about what payments have theretofore been made or promised to the applicant for services rendered or to be rendered in any capacity whatsoever in connection with the case,

(2) the source of the compensation so paid or promised,

- (3) whether any compensation previously received has been shared,
- (4) whether an agreement or understanding exists between the applicant and any other entity for the sharing of compensation received or to be received for services rendered in or in connection with the case,
- (5) and the particulars of any sharing of compensation or agreement or understanding therefor, but details of any agreement by the applicant for the sharing of compensation as a member or regular associate of a firm of lawyers or accountants shall not be required.

This subdivision's requirements shall apply to an application for an attorney's or accountant's compensation for services rendered even though the application is filed by a creditor or other entity.

(b) **Disclosure of compensation paid or promised to debtor's attorney.** Every attorney for a debtor in a Title 31 case, whether or not the attorney applies for compensation, shall file within 15 days after the order for relief, or at another time as the court may direct, a statement of the compensation paid to or agreed to be paid, if the payment or agreement was made within one year before the bankruptcy application was filed, for services rendered or to be rendered in contemplation of or in connection with the Title 31 case. It shall include whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed within 15 days after any payment or agreement not previously disclosed.

(c) **Disclosure of compensation paid or promised to bankruptcy application preparer.** Every bankruptcy application preparer for a debtor shall file a sworn declaration under § 104(3) of Title 31 within 10 days after the application's filing date, or at another time as the court may direct. The declaration must disclose any fee, and the source of any fee, received from or on the debtor's behalf within 12 months of the case's filing and all unpaid fees charged to the debtor. The declaration must describe the services performed and documents prepared or caused to be prepared by the bankruptcy application preparer. A supplemental statement shall be filed within 10 days after any payment or agreement not previously disclosed.

Rule 2017. Examination of Debtor's Transactions with Debtor's Attorney

(a) **Payment or transfer to attorney before order for relief.** On any interested party's motion or on the court's own initiative, the court, after notice and a hearing, may determine whether any payment of money or any transfer of property by the debtor, made directly or indirectly and in contemplation of the filing of an application under Title 31 by or against the debtor or before entry of the order for relief in an involuntary case, to an attorney for services rendered or to be rendered is excessive.

(b) **Payment or transfer to attorney after order for relief.** On the debtor's, receiver's, or trustee's motion or on the court's own initiative, the court, after notice and a hearing, may determine whether any payment of money or any transfer of property, or any agreement therefor, by the debtor to an attorney after entry of an order for relief in a Title 31 case is excessive, whether the payment or transfer is made or is to be made directly or indirectly, if the payment, transfer, or agreement therefor is for services in any way related to the case.

Rule 2018. Intervention; Right to Be Heard

(a) **Permissive intervention.** In a case under Title 31, after hearing on such notice as the court directs and for cause shown, the court may permit any interested entity to intervene generally or with respect to any specified matter.

(b) **Intervention by Attorney General of a State.** The Attorney General of a State may appear and be heard on behalf of consumer creditors if the court determines the appearance is in the public interest, but the Attorney General may not appeal from any judgment, order, or decree in the case.

(c) **Service on entities covered by this rule.** The court may enter orders governing the

service of notice and papers on entities permitted to intervene or be heard under this rule.

Rule 2019. Representation of Creditors and Equity Security Holders in Chapter 3 Reorganization Cases

(a) **Data required.** In a chapter 3 reorganization case, every entity or committee representing more than one creditor or equity security holder, unless otherwise directed by the court, shall file a verified statement setting forth:

(1) the name and address of the creditor or equity security holder;

(2) the nature and amount of the claim or interest and the time of acquisition thereof unless it is alleged to have been acquired more than one year before the application's filing;

(3) a recital of the pertinent facts and circumstances in connection with the employment of the entity, and, in the case of a committee, the name or names of the entity or entities at whose instance, directly or indirectly, the employment was arranged or the committee was organized or agreed to act; and

(4) with reference to the time of the employment of the entity, the organization or formation of the committee, or the appearance in the case of any indenture trustee, the amounts of claims or interests owned by the entity, the committee members or the indenture trustee, the times when acquired, the amounts paid therefor, and any sales or other disposition thereof. The statement shall include a copy of the instrument, if any, whereby the entity, committee, or indenture trustee is empowered to act on behalf of creditors or equity security holders. A supplemental statement shall be filed promptly, setting forth any material changes in the facts contained in the statement filed under this subdivision.

(b) **Failure to comply; effect.** On any interested party's motion or on its own initiative, the court may

(1) determine whether there has been a failure to comply with subdivision (a) or with any other applicable law regulating the activities and personnel of any entity or committee or any other impropriety in connection with any solicitation and, if it so determines, the court may refuse to permit that entity or committee to be heard further or to intervene in the case;

(2) examine any representation provision of a deposit agreement, proxy, trust mortgage, trust indenture, or deed of trust, or committee or other authorization, and any claim or interest acquired by any entity or committee in contemplation or in the course of a Title 31 case and grant appropriate relief; and

(3) hold invalid any authority, acceptance, rejection, or objection given, procured, or received by an entity who has not complied with this rule or with Rule 1007

PART III – CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY INTEREST HOLDERS; PLANS

Rule 3001. Proof of Claim

(a) **Form and content.** A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.

(b) **Who may execute.** A proof of claim shall be executed by the creditor or the creditor's authorized agent except as provided in Rules 3004 and 3005.

(c) **Claim based on a writing.** When a claim, or an interest in the debtor's property securing the claim, is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction must be filed with the claim.

(d) **Evidence of perfection of security interest.** If a security interest in the debtor's property is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected.

(e) **Transferred claim.**

(1) *Transfer of claim other than for security before proof filed.* If a claim has been transferred other than for security before proof of the claim has been filed, the proof of claim may be filed only by the transferee or an indenture trustee.

(2) *Transfer of claim other than for security after proof filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred other than for security after the proof of claim has been filed, evidence of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 20 days of the mailing of the notice or within any additional time allowed by the court. If the alleged transferor files a timely objection and the court finds, after notice and a hearing, that the claim has been transferred other than for security, it shall enter an order substituting the transferee for the transferor. If a timely objection is not filed by the alleged transferor, the transferee shall be substituted for the transferor.

(3) *Transfer of claim for security before proof filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security before proof of the claim has been filed, the transferor or transferee or both may file a proof of claim for the full amount. The proof shall be supported by a statement setting forth the terms of the transfer. If either the transferor or the transferee files a proof of claim, the clerk shall immediately notify the other by mail of the right to join in the filed claim. If both transferor and transferee file proofs of the same claim, the proofs shall be consolidated. If the transferor or transferee does not file an agreement regarding its relative rights respecting voting of the claim, payment of dividends thereon, or participation in the administration of the estate, on motion by an interested party and after notice and a hearing, the court shall enter such orders respecting these matters as may be appropriate.

(4) *Transfer of claim for security after proof filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security after the proof of claim has been filed, evidence of the terms of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 20 days of the mailing of the notice or within any additional time allowed by the court. If a timely objection is filed by the alleged transferor, the court, after notice and a hearing, shall determine whether the claim has been transferred for security. If the transferor or transferee does not file an agreement regarding its relative rights respecting voting of the claim, payment of dividends thereon, or participation in the administration of the estate, on motion by an interested party and after notice and a hearing, the court shall enter such orders respecting these matters as may be appropriate.

(5) *Service of objection or motion; notice of hearing.* A copy of an objection filed under paragraph (2) or (4) or a motion filed under paragraph (3) or (4) together with a notice of a hearing shall be mailed or otherwise delivered to the transferor or transferee, whichever is appropriate, at least 30 days before the hearing.

(f) **Evidentiary effect.** A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

Rule 3002. Filing Proof of Claim or Interest

(a) **Necessity for filing.** An unsecured creditor or an equity security holder must file a proof of claim or interest for the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004, and 3005.

(b) **Place of filing.** A proof of claim or interest shall be filed in accordance with Rule 5005.

(c) **Time for filing.** In a chapter 2 liquidation case, a proof of claim is timely filed if it is filed not later than 180 days after the date of the order for relief except as follows:

(1) On a governmental unit's motion before the expiration of this period and for cause shown, the court may extend the time for the governmental unit to file a claim.

(2) In the interest of justice and if it will not unduly delay the administration of the case, the court may extend the time for filing a proof of claim by an infant or incompetent

person or the representative of either.

(3) An unsecured claim which arises in favor of an entity or becomes allowable as a result of a judgment may be filed within 30 days after the judgment becomes final if the judgment is for the recovery of money or property from that entity or denies or avoids the entity's interest in property. If the judgment imposes a liability which is not satisfied, or a duty which is not performed within this period or such further time as the court may permit, the claim shall not be allowed.

(4) A claim arising from the rejection of an executory contract or unexpired lease of the debtor may be filed within such time as the court may direct.

(5) If notice of insufficient assets to pay a dividend was given to creditors under Rule 2002(e), and subsequently the receiver notifies the court that payment of a dividend appears possible, the clerk shall notify the creditors of that fact and that they may file proofs of claim within 90 days after the mailing of the notice.

Rule 3003. Filing Proof of Claim or Equity Security Interest in Chapter 3 Reorganization Cases

(a) **Applicability of rule.** This rule applies in chapter 3 cases.

(b) **Schedule of liabilities and list of equity security holders.**

(1) *Schedule of liabilities.* The schedule of liabilities filed under § 104(3) of Title 31 shall constitute prima facie evidence of the validity and amount of the claims of creditors, unless they are scheduled as disputed, contingent, or unliquidated. It shall not be necessary for a creditor or equity security holder to file a proof of claim or interest except as provided in subdivision (c)(2).

(2) *List of equity security holders.* The list of equity security holders filed under Rule 1007(a)(3) shall constitute prima facie evidence of the validity and amount of the equity security interests and it shall not be necessary for the holders of these interests to file a proof of interest.

(c) **Filing proof of claim.**

(1) *Who may file.* Any creditor or indenture trustee may file a proof of claim within the time prescribed by subdivision (c)(3).

(2) *Who must file.* Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3); any creditor who fails to do so shall not be treated as a creditor with respect to the claim for the purposes of voting and distribution.

(3) *Time for filing.* The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed. Notwithstanding the expiration of such time, a proof of claim may be filed to the extent and under the conditions stated in Rule 3002(c)(2), (c)(3), and (c)(4).

(4) *Effect of filing claim or interest.* A proof of claim or interest executed and filed in accordance with this subdivision shall supersede any scheduling of that claim or interest under § 104(3) of Title 31.

(d) **Proof of right to record status.** For the purposes of Rules 3017, 3018 and 3021 and for receiving notices, an entity who is not the record holder of a security may file a statement setting forth facts which entitle that entity to be treated as the record holder. Any interested party may file an objection to the statement.

Rule 3004. Filing of Claims by Debtor or Receiver or Trustee

If a creditor fails to file a proof of claim, the debtor or receiver or trustee may do so in the creditor's name within 30 days after expiration of the time for filing claims prescribed by Rule 3002(c) if applicable. The clerk shall forthwith mail notice of the filing to the creditor, the debtor and the receiver or trustee. A proof of claim filed by a creditor under Rule 3002 or Rule 3003(c), shall supersede the proof filed by the debtor or receiver or trustee.

Rule 3005. Filing of Claim, Acceptance, or Rejection By Guarantor, Surety, Indorser, or Other Co-debtor

(a) **Filing of claim.** If a creditor has not filed a proof of claim under Rule 3002 or 3003(c), an entity that is or may be liable with the debtor to that creditor, or who has secured that creditor, may, within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c) whichever is applicable, execute and file a proof of claim in the name of the creditor, if known, or if unknown, in the entity's own name. No distribution shall be made on the claim except on satisfactory proof that the original debt will be diminished by the amount of distribution. A proof of claim filed by a creditor under Rule 3002 or Rule 3003(c) shall supersede the proof of claim filed under the first sentence of this subdivision.

(b) **Filing of acceptance or rejection; substitution of creditor.** An entity which has filed a claim under the first sentence of subdivision (a) may file an acceptance or rejection of a plan in the creditor's name, if known, or if unknown, in the entity's own name but if the creditor files a proof of claim within the time permitted by Rule 3003(c) or files a notice before confirmation of a plan of the creditor's intention to act in the creditor's own behalf, the creditor shall be substituted for the obligor with respect to that claim.

Rule 3006. Withdrawal of Claim; Effect on Acceptance or Rejection of Plan.

A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule. If after a creditor has filed a proof of claim, an objection is filed thereto or a complaint is filed against that creditor in an adversary proceeding, or the creditor has accepted or rejected the plan or otherwise has participated significantly in the case, the creditor may not withdraw the claim except on order of the court after a hearing on notice to the receiver, trustee, or debtor in possession. The court order shall contain such terms and conditions as the court deems proper. Unless the court orders otherwise, an authorized withdrawal of a claim shall constitute withdrawal of any related acceptance or rejection of a plan.

Rule 3007. Objections to Claims

An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession and the receiver or trustee at least 30 days before the hearing. If an objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding.

Rule 3008. Reconsideration of Claims

An interested party may move for reconsideration of an order allowing or disallowing a claim against the estate. The court after a hearing on notice shall enter an appropriate order.

Rule 3009. Declaration and Payment of Dividends in a Chapter 2 Liquidation Case

In a chapter 2 case, dividends to creditors shall be paid as promptly as practicable. Dividend checks shall be made payable to and mailed to each creditor whose claim has been allowed, unless a power of attorney authorizing another entity to receive dividends has been executed and filed in accordance with Rule 9010. In that event, dividend checks shall be made payable to the creditor and to the other entity and shall be mailed to the other entity.

Rule 3010. Small Dividends and Payments in Chapter 2 Liquidation Cases

In a chapter 2 case no dividend in an amount less than \$5 shall be distributed by the receiver to any creditor unless authorized by court order. Any dividend not distributed to a creditor shall be treated as unclaimed funds.

Rule 3011. Unclaimed Funds in Chapter 2 Liquidation Cases

The receiver shall file a list of all known names and addresses of the entities and the

amounts which they are entitled to be paid from remaining property of the estate. The unclaimed funds shall be treated as abandoned property.

Rule 3012. Valuation of Security

On any interested party's motion and after a hearing on notice to the holder of the secured claim and any other entity as the court may direct, the court may determine the value of a claim secured by a lien on property in which the estate has an interest.

Rule 3013. Classification of Claims and Interests

For the purposes of the plan and its acceptance, the court may, on motion after hearing on notice as the court may direct, determine classes of creditors and equity security holders.

Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 3 Reorganization Case

(a) **Identification of plan.** Every proposed plan and any modification thereof shall be dated and identified with the name of the entity or entities submitting or filing it.

(b) **Disclosure statement.** In a chapter 3 case, a disclosure statement or evidence showing compliance with § 104(3) of Title 31 shall be filed with the plan or within a time fixed by the court.

(c) **Injunction Under a Plan.** If a plan provides for an injunction against conduct not otherwise enjoined under Title 31, the plan and disclosure statement shall describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined and identify the entities that would be subject to the injunction.

Rule 3017. Court Consideration of Disclosure Statement in a Chapter 3 Reorganization Case

(a) **Hearing on disclosure statement and objections.** Except as provided in Rule 3017.1, after a disclosure statement is filed in accordance with Rule 3016(b), the court shall hold a hearing on at least 25 days' notice to the debtor, creditors, equity security holders and other interested parties as provided in Rule 2002 to consider the disclosure statement and any objections or modifications thereto. The plan and the disclosure statement shall be mailed with the notice of the hearing only to the debtor, any trustee under Title 31, and any interested party who requests in writing a copy of the statement or plan. Objections to the disclosure statement shall be filed and served on the debtor, the trustee under Title 31, and any other entity designated by the court, at any time before the disclosure statement is approved or by an earlier date as the court may fix.

(b) **Determination on disclosure statement.** After the hearing the court shall determine whether the disclosure statement should be approved.

(c) **Dates fixed for voting on plan and confirmation.** On or before the disclosure statement's approval, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation.

(d) **Transmission and notice to creditors and equity security holders.** Upon approval of a disclosure statement, "except to the extent that the court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders" the debtor in possession, trustee, proponent of the plan, or clerk as the court orders shall mail to all creditors and equity security holders,

(1) the plan or a court-approved summary of the plan;

(2) the disclosure statement approved by the court;

(3) notice of the time within which acceptances and rejections of the plan may be filed; and

(4) any other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion.

In addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders in accordance with Rule 2002(b), and a form of

ballot conforming to the appropriate Official Form shall be mailed to creditors and equity security holders entitled to vote on the plan. If the court opinion is not sent or only a summary of the plan is sent, the court opinion or the plan shall be provided on an interested party's request at the plan proponent's expense. If the court orders that the disclosure statement and the plan or a summary of the plan shall not be mailed to any unimpaired class, notice that the class is designated in the plan as unimpaired and notice of the name and address of the person from whom the plan or summary of the plan and disclosure statement may be obtained upon request and at the plan proponent's expense, shall be mailed to members of the unimpaired class together with the notice of the time fixed for filing objections to and the hearing on confirmation. For the purposes of this subdivision, creditors and equity security holders shall include holders of stock, bonds, debentures, notes, and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.

(e) **Transmission to beneficial holders of securities.** At the hearing held under subdivision (a), the court shall consider the procedures for sending the documents and information required by subdivision (d) to beneficial holders of stock, bonds, debentures, notes, and other securities, determine the adequacy of the procedures, and enter any orders the court deems appropriate.

(f) **Notice and Transmission of Documents to Entities Subject to an Injunction Under a Plan.** If a plan provides for an injunction against conduct not otherwise enjoined under Title 31 and an entity that would be subject to the injunction is not a creditor or equity security holder, at the hearing held under Rule 3017(a), the court shall consider procedures for providing the entity with:

- (1) at least 25 days' notice of the time fixed for filing objections and the hearing on confirmation of the plan containing the information described in Rule 2002(c)(3); and
- (2) to the extent feasible, a copy of the plan and disclosure statement.

Rule 3017.1. Court Consideration of Disclosure Statement

(a) **Conditional approval of disclosure statement.** The court may, on the plan proponent's application, conditionally approve a disclosure statement filed in accordance with Rule 3016(b). On or before conditional approval of the disclosure statement, the court shall:

- (1) fix a time within which the holders of claims and interests may accept or reject the plan;
- (2) fix a time for filing objections to the disclosure statement;
- (3) fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and
- (4) fix a date for the hearing on confirmation.

(b) **Application of Rule 3017.** Rule 3017(a), (b), (c), and (e) do not apply to a conditionally approved disclosure statement. Rule 3017(d) applies to a conditionally approved disclosure statement, but conditional approval is considered approval of the disclosure statement for the purpose of applying Rule 3017(d).

(c) **Final approval.**

(1) *Notice.* Notice of the time fixed for filing objections and the hearing to consider final approval of the disclosure statement shall be given in accordance with Rule 2002 and may be combined with notice of the hearing on confirmation of the plan.

(2) *Objections.* Objections to the disclosure statement shall be filed and served on the debtor, the trustee, any committee appointed under Title 31, and any other entity designated by the court at any time before final approval of the disclosure statement or by an earlier date as the court may fix.

(3) *Hearing.* If a timely objection to the disclosure statement is filed, the court shall hold a hearing to consider final approval before or combined with the hearing on confirmation of the plan.

Rule 3018. Acceptance or Rejection of Plan in a Chapter 3 Reorganization Case

(a) **Entities entitled to accept or reject plan; time for acceptance or rejection.** A plan may be accepted or rejected in accordance with § 308 of Title 31 within the time fixed by the court under Rule 3017. Subject to subdivision (b), an equity security holder or creditor whose claim is based on a security of record shall not be entitled to accept or reject a plan unless the equity security holder or creditor is the holder of record of the security on the date the order approving the disclosure statement is entered or on another date fixed by the court, for cause, after notice and a hearing. For cause shown, the court after notice and hearing may permit a creditor or equity security holder to change or withdraw an acceptance or rejection. Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.

(b) **Acceptances or rejections obtained before application.** An equity security holder or creditor whose claim is based on a security of record who accepted or rejected the plan before the start of the case shall not be deemed to have accepted or rejected the plan unless the equity security holder or creditor was the holder of record of the security on the date specified in the solicitation of the acceptance or rejection for the purposes of the solicitation. A holder of a claim or interest who has accepted or rejected a plan before the start of the case under Title 31 shall not be deemed to have accepted or rejected the plan if the court finds after notice and hearing that the plan was not sent to substantially all creditors and equity security holders of the same class, that an unreasonably short time was prescribed for the creditors and equity security holders to accept or reject the plan.

(c) **Form of acceptance or rejection.** An acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent, and conform to the appropriate Official Form. If more than one plan is sent under Rule 3017, an acceptance or rejection may be filed by each creditor or equity security holder for any number of plans sent and if acceptances are filed for more than one plan, the creditor or equity security holder may indicate a preference or preferences among the plans so accepted.

(d) **Acceptance or rejection by partially secured creditor.** A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim shall be entitled to accept or reject a plan in both capacities.

Rule 3019. Modification of Accepted Plan Before Confirmation in a Chapter 3 Reorganization Case

In a chapter 3 case, after a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, the creditors, and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.

Rule 3020. Deposit; Confirmation of Plan in a Chapter 3 Reorganization Case

(a) **Deposit.** In a chapter 3 case, before entry of the order confirming the plan, the court may order the deposit with the trustee or debtor in possession of the consideration required by the plan to be distributed on confirmation. Any money deposited shall be kept in a special account established for the exclusive purpose of making the distribution.

(b) **Objection to and hearing on confirmation in a Chapter 3 case.**

(1) *Objection.* An objection to confirmation of the plan shall be filed and served on the debtor, the trustee, the proponent of the plan, any committee appointed under Title 31, and any other entity designated by the court, within a time fixed by the court. A copy of every objection to confirmation shall be sent by the objecting party to the trustee within the time fixed for filing objections. An objection to confirmation is governed by Rule 9014.

(2) *Hearing.* The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on these issues.

(c) **Order of confirmation.**

(1) The order of confirmation shall conform to the appropriate Official Form. If the plan provides for an injunction against conduct not otherwise enjoined under Title 31, the order of confirmation shall (1) describe in reasonable detail all acts enjoined; (2) be specific in its terms regarding the injunction; and (3) identify the entities subject to the injunction.

(2) Notice of entry of the order of confirmation shall be mailed promptly to the debtor, the trustee, creditors, equity security holders, other interested parties, and, if known, to any identified entity subject to an injunction provided for in the plan against conduct not otherwise enjoined under Title 31.

(d) **Retained power.** Notwithstanding the entry of the order of confirmation, the court may issue any other order necessary to administer the estate.

Rule 3021. Distribution Under Plan

After confirmation of a plan, distribution shall be made to creditors whose claims have been allowed, to interest holders whose interests have not been disallowed, and to indenture trustees who have filed claims under Rule 3003(c)(5) that have been allowed. For the purpose of this rule, creditors include holders of bonds, debentures, notes, and other debt securities, and interest holders include the holders of stock and other equity securities, of record at the time of start of distribution unless a different time is fixed by the plan or the order confirming the plan.

Rule 3022. Final Decree in Chapter 3 Reorganization Case

After an estate is fully administered in a chapter 3 reorganization case, the court, on its own motion or on an interested party's motion, shall enter a final decree closing the case.

PART IV – THE DEBTOR: DUTIES AND BENEFITS

Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements

(a) **Relief from stay; prohibiting or conditioning the use, sale, or lease of property.**

(1) *Motion.* A motion for relief from an automatic stay provided by Title 31 or a motion to prohibit or condition the use, sale, or lease of property under § 202(1)(a) shall be made in accordance with Rule 9014 and, if the case is a chapter 3 reorganization case, on the creditors included on the list filed under Rule 1007(d), and on other entities as the court may direct.

(2) *Ex parte relief.* Relief from a stay under § 106(1) or a request to prohibit or condition the use, sale, or lease of property under § 202(1)(a) may be granted without prior notice only if

(A) it clearly appears from specific facts shown by affidavit or by a verified motion that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party or the adverse party's attorney can be heard in opposition, and

(B) the movant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons why notice should not be required.

The party obtaining relief under this subdivision and § 106(4) of Title 31 shall immediately give oral notice thereof to the receiver, trustee, or debtor in possession and to the debtor and forthwith mail or otherwise send to such adverse party or parties a copy of the order granting relief. On two days notice to the party who obtained relief from the stay without notice or on shorter notice to that party as the court may prescribe, the adverse party may appear and move for the stay's reinstatement or reconsideration of the order prohibiting or

conditioning the use, sale, or lease of property. In that event, the court shall proceed expeditiously to hear and determine the motion.

(b) Use of cash collateral.

(1) *Motion; service.* A motion for authorization to use cash collateral shall be made in accordance with Rule 9014 and shall be served on any entity which has an interest in the cash collateral, or, if the case is a chapter 3 reorganization case, on the creditors included on the list filed under Rule 1007(d), and on other entities as the court may direct.

(2) *Hearing.* The court may start a final hearing on a motion for authorization to use cash collateral no earlier than 15 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before the 15 day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

(3) *Notice.* Notice of hearing under this subdivision shall be given to the parties on whom service of the motion is required by paragraph (1) and to other entities as the court may direct.

(c) Obtaining credit.

(1) *Motion; service.* A motion for authority to obtain credit shall be made in accordance with Rule 9014 and shall be served on the creditors or, if the case is a chapter 3 reorganization case, on the creditors included on the list filed under Rule 1007(d), and on other entities as the court may direct. The motion shall be accompanied by a copy of the agreement.

(2) *Hearing.* The court may start a final hearing on a motion for authority to obtain credit no earlier than 15 days after service of the motion. If the motion so requests, the court may conduct a hearing before the 15 day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

(3) *Notice.* Notice of hearing under this subdivision shall be given to the parties on whom service of the motion is required by paragraph (1) and to other entities as the court may direct.

(d) Agreement relating to relief from the automatic stay, prohibiting or conditioning the use, sale, or lease of property, providing adequate protection, use of cash collateral, and obtaining credit.

(1) *Motion; service.* A motion for approval of an agreement

(A) to provide adequate protection,

(B) to prohibit or condition the use, sale, or lease of property,

(C) to modify or terminate the stay provided for in § 106,

(D) to use cash collateral, or

(E) between the debtor and an entity that has a lien or interest in property of the estate under which the entity consents to the creation of a lien senior or equal to the entity's lien or interest in the property

shall be served on any committee under § 308 of Title 31 or its authorized agent, or, if the case is a chapter 3 reorganization case, on the creditors included on the list filed under Rule 1007(d), and on other entities as the court may direct. The motion shall be accompanied by a copy of the agreement.

(2) *Objection.* Notice of the motion and the time within which objections may be filed and served on the debtor in possession or trustee shall be mailed to the parties on whom service is required by paragraph (1) and to other entities as the court may direct. Unless the court fixes a different time, objections may be filed within 15 days of the mailing of notice.

(3) *Disposition; Hearing.* If no objection is filed, the court may enter an order approving or disapproving the agreement without conducting a hearing. If an objection is filed or if the court determines a hearing is appropriate, the court shall hold a hearing on no less than five days' notice to the objector, the movant, the parties on whom service is required by paragraph (1) and other entities as the court may direct.

(4) *Agreement in settlement of motion.* The court may direct that the procedures prescribed in paragraphs (1), (2), and (3) shall not apply and the agreement may be approved without further notice if the court determines that a motion made under subdivisions (a), (b), or (c)

was sufficient to afford reasonable notice of the agreement's material provisions and opportunity for a hearing.

Rule 4002. Debtor's Duties

In addition to performing other duties prescribed by Title 31 and rules, the debtor shall:

- (1) attend and submit to an examination at the times ordered by the court;
- (2) attend the hearing on a complaint objecting to discharge and, if called as a witness, testify;
- (3) inform the receiver or trustee immediately in writing about the location of real property in which the debtor has an interest and the name and address of every person holding money or property subject to the debtor's withdrawal or order if a schedule of property has not yet been filed under Rule 1007;
- (4) cooperate with the trustee in the preparation of an inventory, the examination of proofs of claim, and the administration of the estate, and
- (5) file a statement of any change of the debtor's address.

Rule 4003. Exemptions

(a) **Claim of exemptions.** A debtor shall list the property claimed as exempt under § 209 of Title 31 on the schedule of assets required to be filed by Rule 1007. If the debtor fails to claim exemptions or file the schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days thereafter.

(b) **Objections to claim of exemptions.** An interested party may file an objection to the list of property claimed as exempt only within 30 days after the creditors' meeting held under Rule 2003 is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, an interested party files a request for an extension. Copies of the objections shall be delivered or mailed to the receiver, the person filing the list, and that person's attorney.

(c) **Burden of proof.** In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.

(d) **Avoidance by debtor of transfers of exempt property.** A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 209 of Title 31 shall be by motion in accordance with Rule 9014.

Rule 4004. Grant or Denial of Discharge

(a) **Time for filing complaint objecting to discharge; notice of time fixed.** In a chapter 2 liquidation case a complaint objecting to the debtor's discharge under § 208(1) of Title 31 shall be filed not later than 60 days after the first date set for the meeting of creditors held under § 308. In a chapter 3 reorganization case, the complaint shall be filed not later than the first date set for the hearing on confirmation. Not less than 25 days notice of the time so fixed shall be given to all creditors as provided in Rule 2002(f) and (k) and to the receiver and the receiver's attorney.

(b) **Extension of time.** On any interested party's motion, after hearing on notice, the court may extend for cause the time for filing a complaint objecting to discharge. The motion shall be made before the time has expired.

(c) **Grant of discharge.**

(1) In a chapter 2 case, on expiration of the time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge unless:

- (A) the debtor is not an individual,
- (B) a complaint objecting to the discharge has been filed,
- (C) the debtor has filed a waiver,

(D) a motion to dismiss the case under Rule 1017 is pending,
(E) a motion to extend the time for filing a complaint objecting to the discharge is pending,
(F) a motion to extend the time for filing a motion to dismiss the case under Rule 1017(e) is pending, or

(G) the debtor has not paid in full the filing fee prescribed by Rule 1006.

(2) Notwithstanding Rule 4004(c)(1), on the debtor's motion, the court may defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may defer entry of the order to a date certain.

(d) **Applicability of rules in Part VII.** A proceeding started by a complaint objecting to discharge is governed by Part VII of these rules.

(e) **Discharge order.** A discharge order shall conform to the appropriate Official Form.

(f) **Registration in other states.** A discharge order that has become final may be registered in any other state by filing a certified copy of the order in the clerk's office in that state. When so registered the order of discharge shall have the same effect as a court order in the state where registered.

(g) **Notice of discharge.** The clerk shall promptly mail a copy of the final order of discharge to those specified in subdivision (a).

Rule 4005. Burden of Proof in Objecting to Discharge

At the trial on a complaint objecting to a discharge, the plaintiff has the burden of proving the objection.

Rule 4006. Notice of No Discharge

If an order is entered denying or revoking a discharge or if a waiver of discharge is filed, the clerk, after the order becomes final or the waiver is filed, shall promptly give notice thereof to all creditors in the manner provided in Rule 2002.

Rule 4007. Determination of Dischargeability of a Debt

(a) **Persons entitled to file complaint.** A debtor or any creditor may file a complaint to obtain a determination of the dischargeability of any debt.

(b) **Time for starting proceeding.** A complaint may be filed at any time. A case may be reopened without payment of an additional filing fee for the purpose of filing a complaint to obtain a determination under this rule.

(c) **Time for filing complaint under § 208(2)(a) in chapter 2 liquidation and chapter 3 reorganization cases; notice of time fixed.** A complaint to determine the dischargeability of any debt under § 208(2)(a) of Title 31 shall be filed not later than 60 days after the first date set for the meeting of creditors held under Rule 2003. The court shall give all creditors not less than 30 days notice of the time so fixed in the manner provided in Rule 2002. On any interested party's motion, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be made before the time has expired.

(d) **Applicability of Part VII rules.** A proceeding started by a complaint filed under this rule is governed by Part VII of these rules.

Rule 4008. Discharge and Reaffirmation Hearing

Not more than 30 days after the entry of an order granting or denying a discharge, or confirming a plan in a chapter 3 reorganization case and on not less than 10 days notice to the debtor and the receiver or trustee, the court may hold a hearing at which it shall inform the debtor that a discharge has been granted or the reason why a discharge has not been granted. A debtor's motion for approval of a reaffirmation agreement shall be filed before or at the hearing.

PART V Ä COURTS AND CLERKS

Rule 5001. Courts and Clerks' Offices

(a) **Court always open.** The court shall be deemed always open for the purpose of filing

any pleading or other proper paper, issuing and returning process, and filing, making, or entering motions, orders and rules.

(b) **Trials and hearings; orders in chambers.** All trials and hearings shall be conducted in open court and so far as convenient in a regular court room. All other acts or proceedings may be done or conducted by a judge in chambers and at any place either within or without the state, but no hearing, other than one ex parte, shall be conducted outside the state without the consent of all parties affected thereby.

(c) **Clerk's office.** The clerk's office with the clerk or an assistant in attendance shall be open during business hours on all days except Saturdays, Sundays and the legal holidays listed in Rule 9006(a).

Rule 5002. Restrictions on Appointments

(a) **Approval of appointment of relatives prohibited.** The appointment of an individual as a trustee or receiver under § 203 of Title 31 or as a trustee under § 302 of Title 31 shall not be approved by the court if the individual is a relative of the judge approving the appointment. The employment of an individual as attorney, accountant, appraiser, auctioneer, or other professional person under § 111 shall not be approved by the court if the individual is a relative of the judge approving the employment. Whenever under this subdivision an individual may not be approved for appointment or employment, the individual's firm, partnership, corporation, or any other form of business association or relationship, and all members, associates and professional employees thereof also may not be approved for appointment or employment.

(b) **Judicial determination that approval of appointment or employment is improper.** A judge may not approve the appointment of a person as a receiver or trustee under § 203 of Title 31 or as a trustee under § 302 of Title 31 or approve the employment of a person as an attorney, accountant, appraiser, auctioneer, or other professional person under § 111 of Title 31 if that person is or has been so connected with that judge as to render the appointment or employment improper.

Rule 5003. Records Kept By the Clerk

(a) **Bankruptcy dockets.** The clerk shall keep a docket in each case under Title 31 and shall enter thereon each judgment, order, and activity in that case as prescribed by the Chief Clerk of Court. The entry of a judgment or order in a docket shall show the date the entry is made.

(b) **Claims register.** The clerk shall keep in a claims register a list of claims filed in a case when it appears that there will be a distribution to unsecured creditors.

(c) **Judgments and orders.** The clerk shall keep, in the form and manner as the Chief Clerk of Court may prescribe, a correct copy of every final judgment or order affecting title to or lien on real property or for the recovery of money or property, and any other order which the court may direct to be kept. On request of the prevailing party, a correct copy of every judgment or order affecting title to or lien upon real or personal property or for the recovery of money or property shall be kept and indexed with the civil judgments of the court.

(d) **Index of cases; certificate of search.** The clerk shall keep indices of all cases and adversary proceedings as prescribed by the Chief Clerk of Court. On request, the clerk shall make a search of any index and papers in the clerk's custody and certify whether a case or proceeding has been filed in or transferred to the court or if a discharge has been entered in its records.

(e) **Other books and records of the clerk.** The clerk shall also keep such other books and records as may be required by the Chief Clerk of Court.

Rule 5004. Disqualification

(a) **Disqualification of judge.** A judge shall be governed by 4 F.S.M.C. 124, and disqualified from presiding over the proceeding or contested matter in which the disqualifying circumstances arises or, if appropriate, shall be disqualified from presiding over the case.

(b) **Disqualification of judge from allowing compensation.** A judge shall be disqualified from allowing compensation to a person who is the judge's relative or with whom the judge is so connected as to render it improper for the judge to authorize the compensation.

Rule 5005. Filing

(a) **Filing; Place of filing.** The lists, schedules, statements, proofs of claim or interest, complaints, motions, applications, objections and other papers required to be filed by these rules, shall be filed with the clerk in the state where the case under Title 31 is pending. The judge of that court may permit the papers to be filed with the judge, in which event the filing date shall be noted thereon, and they shall be forthwith sent to the clerk. The clerk shall not refuse to accept for filing any application or other paper presented for the purpose of filing solely because it is not presented in proper form as required by these rules or any local rules or practices.

(b) **Error in filing.** A paper intended to be filed with the clerk but erroneously delivered to the trustee, the trustee's attorney, a trial judge, or the clerk in another state shall, after the date of its receipt has been noted thereon, be sent forthwith to the clerk where the case is pending. In the interest of justice, the court may order that a paper erroneously delivered shall be deemed filed with the clerk as of the date of its original delivery.

Rule 5006. Certification of Copies of Papers

The clerk shall issue a certified copy of the record of any proceeding in a case under Title 31 or of any paper filed with the clerk on payment of any prescribed fee.

Rule 5007. Record of Proceedings and Transcripts.

(a) **Filing of record or transcript.** The reporter or operator of a recording device shall certify the original notes of testimony, tape recording, or other original record of the proceeding and promptly file them with the clerk. The person preparing any transcript shall promptly file a certified copy.

(b) **Transcript fees.** The fees for copies of transcripts shall be charged at rates prescribed by FSM General Court Order 1991-3. No fee may be charged for the certified copy filed with the clerk.

(c) **Admissibility of record in evidence.** A certified sound recording or a transcript of a proceeding shall be admissible as prima facie evidence to establish the record.

Rule 5009. Closing Chapter 2 Liquidation Cases

If in a chapter 2 case the receiver has filed a final report and final account and has certified that the estate has been fully administered, and if within 30 days no objection has been filed by an interested party, there shall be a presumption that the estate has been fully administered.

Rule 5010. Reopening Cases

A case may be reopened on motion of the debtor or other interested party under § 311(2) of Title 31. In a chapter 2 case, a receiver shall not be appointed unless the court determines that a receiver is necessary to protect the interests of creditors and the debtor or to insure efficient administration of the case.

Rule 5011. Abstention from Hearing a Proceeding

(a) **Abstention from hearing a proceeding.** A motion for abstention shall be governed by Rule 9014 and shall be served on the parties to the proceeding.

(b) **Effect of filing of motion for abstention.** The filing of a motion for abstention shall not stay the administration of the case or any proceeding therein before the trial judge but the trial judge may stay, on such terms and conditions as are proper, proceedings pending the motion's disposition.

PART VI – COLLECTION AND LIQUIDATION OF THE ESTATE

Rule 6001. Burden of Proof for Validity of Postapplication Transfer

Any entity asserting the validity of a transfer under §§ 205-206 of Title 31 shall have the burden of proof.

Rule 6002. Accounting by Prior Custodian of Property of the Estate

(a) **Accounting required.** Any custodian required by Title 31 to deliver property in the custodian's possession or control to the receiver or trustee shall promptly file a report and account with respect to the property of the estate and the administration thereof.

(b) **Examination of administration.** On the filing of the report and account required by subdivision (a) and after an examination has been made into the superseded administration, after notice and a hearing, the court shall determine the propriety of the administration, including the reasonableness of all disbursements.

Rule 6004. Use, Sale, or Lease of Property

(a) **Notice of proposed use, sale, or lease of property.** Notice of a proposed use, sale, or lease of property, other than cash collateral, not in the ordinary course of business shall be given under Rule 2002(a)(2), (c)(1), (i), and (k) and, if applicable, in accordance with § 202(1)(a) or § 303(a) of Title 31.

(b) **Objection to proposal.** Except as provided in subdivisions (c) and (d), an objection to a proposed use, sale, or lease of property shall be filed and served not less than five days before the date set for the proposed action or within the time fixed by the court. An objection to the proposed use, sale, or lease of property is governed by Rule 9014.

(c) **Sale free and clear of liens and other interests.** A motion for authority to sell property free and clear of liens or other interests shall be made in accordance with Rule 9014 and shall be served on the parties who have liens or other interests in the property to be sold. The notice required by subdivision (a) shall include the date of the hearing on the motion and the time within which objections may be filed and served on the debtor in possession or trustee.

(d) **Sale of property under \$2,500.** Notwithstanding subdivision (a), when all of the nonexempt property of the estate has an aggregate gross value less than \$2,500, it shall be sufficient to give a general notice of intent to sell the property other than in the ordinary course of business to all creditors, committees appointed under Title 31, the trustee and other persons as the court may direct. An objection to any such sale may be filed and served by an interested party within 15 days of the mailing of the notice, or within the time fixed by the court. An objection is governed by Rule 9014.

(e) **Hearing.** If a timely objection is made under subdivision (b) or (d), the date of the hearing thereon may be set in the notice given under subdivision (a).

(f) **Conduct of sale not in the ordinary course of business.**

(1) *Public or private sale.* All sales not in the ordinary course of business may be by private sale or by public auction. Unless it is impracticable, an itemized statement of the property sold, the name of each purchaser, and the price received for each item or lot or for the property as a whole if sold in bulk shall be filed on completion of a sale. If the property is sold by an auctioneer, the auctioneer shall file the statement, and furnish a copy to the receiver, trustee, or debtor in possession. If the property is not sold by an auctioneer, the receiver, trustee, or debtor in possession shall file the statement.

(2) *Execution of instruments.* After a sale in accordance with this rule, the debtor, the receiver, the trustee, or debtor in possession, as the case may be, shall execute any instrument necessary or ordered by the court to effectuate the transfer to the purchaser.

Rule 6005. Appraisers and Auctioneers

The court order approving the employment of an appraiser or auctioneer shall fix the amount or rate of compensation. No officer or employee of the judicial branch of the Federated States of Micronesia or the Federated States of Micronesia Department of Justice shall be eligible

to act as appraiser or auctioneer. No residence or licensing requirement shall disqualify an appraiser or auctioneer from employment.

Rule 6006. Assumption, Rejection and Assignment of Executory Contracts and Unexpired Leases

(a) **Proceeding to assume, reject, or assign.** A proceeding to assume, reject, or assign an executory contract or unexpired lease, other than as part of a plan, is governed by Rule 9014.

(b) **Proceeding to require trustee to act.** A proceeding by a party to an executory contract or unexpired lease in a chapter 3 reorganization case, to require the trustee, debtor in possession, or debtor to determine whether to assume or reject the contract or lease is governed by Rule 9014.

(c) **Notice.** Notice of a motion made under subdivision (a) or (b) shall be given to the other party to the contract or lease, and to other interested parties as the court may direct.

Rule 6007. Abandonment or Disposition of Property

(a) **Notice of proposed abandonment or disposition; objections; hearing.** Unless the court otherwise directs, the trustee or debtor in possession shall give notice of a proposed abandonment or disposition of property to all creditors. An interested party may file and serve an objection within 15 days of the mailing of the notice, or within the time fixed by the court. If a timely objection is made, the court shall set a hearing on notice as the court may direct.

(b) **Motion by interested party.** An interested party may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate.

Rule 6008. Redemption of Property from Lien or Sale

On motion by the debtor, trustee, or debtor in possession and after hearing on notice as the court may direct, the court may authorize the redemption of property from a lien or from a sale to enforce a lien in accordance with applicable law.

Rule 6009. Prosecution and Defense of Proceedings by Trustee or Debtor in Possession

With or without court approval, the trustee or debtor in possession may prosecute or may enter an appearance and defend any pending action or proceeding by or against the debtor, or start and prosecute any action or proceeding in behalf of the estate before any tribunal.

Rule 6010. Proceeding to Avoid Indemnifying Lien or Transfer to Surety

If a lien voidable under §§ 205-207 of Title 31 has been dissolved by the furnishing of a bond or other obligation and the surety thereon has been indemnified by the transfer of, or the creation of a lien upon, the debtor's nonexempt property, the surety shall be joined as a defendant in any proceeding to avoid the indemnifying transfer or lien. This proceeding is governed by the rules in Part VII.

PART VII – ADVERSARY PROCEEDINGS

Rule 7001. Scope of Rules of Part VII

An adversary proceeding is governed by the rules of this Part VII. It is a proceeding (1) to recover money or property, except a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 202(1)(d) of Title 31, Rule 2017, or Rule 6002, (2) to determine the validity, priority, or extent of a lien or other interest in property, other than a proceeding under Rule 4003(d), (3) to obtain approval under § 363(h) for the sale of both the interest of the estate and of a co-owner in property, (4) to object to or revoke a discharge, (5) to revoke an order of confirmation of a chapter 3 plan, (6) to determine the dischargeability of a debt, (7) to obtain an injunction or other equitable relief, (8) to subordinate any allowed claim or interest, unless subordination is provided in a chapter 3 plan, (9) to obtain a declaratory judgment relating to any

of the foregoing, or (10) to determine a claim or cause of action removed under FSM General Court Order 1992-2.

Rule 7002. References to FSM Rules of Civil Procedure

Whenever an FSM Rule of Civil Procedure applicable to adversary proceedings makes reference to another FSM Rule of Civil Procedure, the reference shall be read as a reference to the FSM Rule of Civil Procedure as modified in this Part VII.

Rule 7003. Start of Adversary Proceeding

FSM Civil Procedure Rule 3 applies in adversary proceedings.

Rule 7004. Process; Service of Summons, Complaint

(a) **Summons; service; proof of service.** FSM Civil Procedure Rule 4(a), (b), (c)(1), and (d)-(i) applies in adversary proceedings. Personal service under FSM Civil Procedure Rule 4(d)-(i) may be made by any person at least 18 years of age who is not a party, and the summons may be delivered by the clerk to any such person.

(b) **Service by first class mail.** Except as provided in subdivision (h), in addition to the methods of service authorized by FSM Civil Procedure Rule 4(d)-(i), service may be made within the Federated States of Micronesia by first class mail postage prepaid as follows:

(1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual or to where the individual regularly conducts a business or profession.

(2) Upon an infant or an incompetent person, by mailing a copy of the summons and complaint to the person upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state. The summons and complaint in that case shall be addressed to the person required to be served.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to 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 to the defendant.

(4) Upon the Federated States of Micronesia, by mailing a copy of the summons and complaint addressed to the Secretary of Justice of the Federated States of Micronesia at Palikir, Pohnpei, and in any action attacking the validity of an order of an officer or an agency of the Federated States of Micronesia not made a party, by also mailing a copy of the summons and complaint to that officer or agency. The court shall allow a reasonable time for service under this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the Federated States of Micronesia if the plaintiff has mailed a copy of the summons and complaint to the Secretary of Justice of the Federated States of Micronesia.

(5) Upon any officer or agency of the Federated States of Micronesia, by mailing a copy of the summons and complaint to the Federated States of Micronesia as prescribed in paragraph (4) and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3). The court shall allow a reasonable time for service under this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the Federated States of Micronesia if the plaintiff has mailed a copy of the summons and complaint to the Secretary of Justice.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief

executive officer thereof.

(7) Upon a defendant of any class referred to in paragraph (1) or (3), it is also sufficient if a copy of the summons and complaint is mailed to the entity upon whom service is prescribed to be served by any Federated States of Micronesia statute or by the law of the state in which service is made when an action is brought against such a defendant in the court of general jurisdiction of that state.

(8) Upon any defendant, it is also sufficient if a copy of the summons and complaint is mailed to an agent of such defendant authorized by appointment or by law to receive service of process and, if the authorization so requires, by mailing also a copy of the summons and complaint to the defendant as provided in this subdivision.

(9) Upon the debtor, after an application has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing a copy of the summons and complaint to the debtor at the address shown in the application or statement of affairs or to such other address as the debtor may designate in a filed writing and, if the debtor is represented by an attorney, to the attorney at the attorney's post-office address.

(c) **Service by publication.** If a party to an adversary proceeding to determine or protect rights in property in the custody of the court cannot be served as provided in FSM Civil Procedure Rule 4(d)-(i) or subdivision (b) of this rule, the court may order the summons and complaint to be served by mailing copies thereof by first class mail, postage prepaid, to the party's last known address, and by at least one publication in such manner and form as the court may direct.

(d) **Nationwide service of process.** The summons and complaint and all other process may be served anywhere in the Federated States of Micronesia.

(e) **Summons: time limit for service.** If service is made under FSM Civil Procedure Rule 4(d)-(i) it shall be made by delivery of the summons and complaint within 10 days after issuance of the summons. If service is made by any authorized form of mail, the summons and complaint shall be deposited in the mail within 10 days after issuance of the summons. If a summons is not timely delivered or mailed, another summons shall be issued and served.

(f) **Personal jurisdiction.** If the exercise of jurisdiction is consistent with the Federated States of Micronesia Constitution and laws, serving a summons in accordance with this rule or the subdivisions of FSM Civil Procedure Rule 4 made applicable by these rules is effective to establish personal jurisdiction over the person of any defendant with respect to a case under Title 31 or a civil proceeding arising under Title 31, or arising in or related to a case under Title 31.

Rule 7005. Service and Filing of Pleadings and Other Papers

FSM Civil Procedure Rule 5 applies in adversary proceedings.

Rule 7007. Pleadings Allowed

FSM Civil Procedure Rule 7 applies in adversary proceedings.

Rule 7007.1. Corporate Ownership Statement

(a) **Required disclosure.** Any corporation that is a party to an adversary proceeding, other than the debtor or a governmental unit, shall file two copies of a statement that identifies any corporation, other than a governmental unit, that directly or indirectly owns 10% or more of any class of the corporation's equity interests, or states that there are no entities to report under this subdivision.

(b) **Time for filing.** A party shall file the statement required under Rule 7007.1(a) with its first pleading in an adversary proceeding. A party shall file a supplemental statement promptly upon any change in circumstances that this rule requires the party to identify or disclose.

Rule 7008. General Rules of Pleading

(a) **Applicability of FSM Civil Procedure Rule 8.** FSM Civil Procedure Rule 8 applies in adversary proceedings. The allegation of jurisdiction required by Rule 8(a) shall also contain a reference to the name, number, and chapter of the case under Title 31 to which the adversary

proceeding relates and to the state where the Title 31 case is pending.

(b) **Attorney's fees.** A request for an award of attorney's fees shall be pleaded as a claim in a complaint, cross-claim, third-party complaint, answer, or reply as may be appropriate.

Rule 7009. Pleading Special Matters

FSM Civil Procedure Rule 9 applies in adversary proceedings.

Rule 7010. Form of Pleadings

FSM Civil Procedure Rule 10 applies in adversary proceedings, except that the caption of each pleading in such a proceeding shall conform substantially to the appropriate Official Form.

Rule 7012. Defenses and Objections – When and How Presented – By Pleading or Motion – Motion for Judgment on the Pleadings

(a) **When presented.** If a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, unless a different time is prescribed by the court. The court shall prescribe the time for service of the answer when service of a complaint is made by publication or upon a party in a foreign country. A party served with a pleading stating a cross-claim shall serve an answer thereto within 20 days after service. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The Federated States of Micronesia or an officer or agency thereof shall serve an answer to a complaint within 35 days after the issuance of the summons, and shall serve an answer to a cross-claim, or a reply to a counterclaim, within 35 days after service upon the Federated States of Micronesia Department of Justice of the pleading in which the claim is asserted. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by court order: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of a more definite statement.

(b) **Applicability of FSM Civil Procedure Rule 12(b)-(h).** FSM Civil Procedure Rule 12(b)-(h) applies in adversary proceedings.

Rule 7013. Counterclaim and Cross-Claim

FSM Civil Procedure Rule 13 applies in adversary proceedings, except that a party sued by a trustee or debtor in possession need not state as a counterclaim any claim that the party has against the debtor, the debtor's property, or the estate, unless the claim arose after the entry of an order for relief. A trustee or debtor in possession who fails to plead a counterclaim through oversight, inadvertence, or excusable neglect, or when justice so requires, may by leave of court amend the pleading, or start a new adversary proceeding or separate action.

Rule 7014. Third-Party Practice

FSM Civil Procedure Rule 14 applies in adversary proceedings.

Rule 7015. Amended and Supplemental Pleadings

FSM Civil Procedure Rule 15 applies in adversary proceedings.

Rule 7016. Pre-Trial Procedure; Formulating Issues

FSM Civil Procedure Rule 16 applies in adversary proceedings.

Rule 7017. Parties Plaintiff and Defendant; Capacity

FSM Civil Procedure Rule 17 applies in adversary proceedings, except as provided in Rule 2010(b).

Rule 7018. Joinder of Claims and Remedies

FSM Civil Procedure Rule 18 applies in adversary proceedings.

Rule 7019. Joinder of Persons Needed for Just Determination

FSM Civil Procedure Rule 19 applies in adversary proceedings, except that if an entity joined as a party properly and timely raises the defense of improper venue, the court shall determine, as provided in 6 F.S.M.C. 304, whether that part of the proceeding involving the joined party shall be transferred to another state, or whether the entire adversary proceeding shall be transferred to another state.

Rule 7020. Permissive Joinder of Parties

FSM Civil Procedure Rule 20 applies in adversary proceedings.

Rule 7021. Misjoinder and Non-Joinder of Parties

FSM Civil Procedure Rule 21 applies in adversary proceedings.

Rule 7022. Interpleader

FSM Civil Procedure Rule 22(1) applies in adversary proceedings.

Rule 7023. Class proceedings

FSM Civil Procedure Rule 23 applies in adversary proceedings.

Rule 7023.1. Derivative Proceedings by Shareholders

FSM Civil Procedure Rule 23.1 applies in adversary proceedings.

Rule 7023.2. Adversary Proceedings Relating to Unincorporated Associations

FSM Civil Procedure Rule 23.2 applies in adversary proceedings.

Rule 7024. Intervention

FSM Civil Procedure Rule 24 applies in adversary proceedings.

Rule 7025. Substitution of Parties

Subject to the provisions of Rule 2012, FSM Civil Procedure Rule 25 applies in adversary proceedings.

Rule 7026. General Provisions Governing Discovery

FSM Civil Procedure Rule 26 applies in adversary proceedings.

Rule 7027. Depositions Before Adversary Proceedings or Pending Appeal

FSM Civil Procedure Rule 27 applies to adversary proceedings.

Rule 7028. Persons Before Whom Depositions May be Taken

FSM Civil Procedure Rule 28 applies in adversary proceedings.

Rule 7029. Stipulations Regarding Discovery Procedure

FSM Civil Procedure Rule 29 applies in adversary proceedings.

Rule 7030. Depositions Upon Oral Examination

FSM Civil Procedure Rule 30 applies in adversary proceedings.

Rule 7031. Deposition Upon Written Questions

FSM Civil Procedure Rule 31 applies in adversary proceedings.

Rule 7032. Use of Depositions in Adversary Proceedings

FSM Civil Procedure Rule 32 applies in adversary proceedings.

Rule 7033. Interrogatories to Parties

FSM Civil Procedure Rule 33 applies in adversary proceedings.

Rule 7034. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

FSM Civil Procedure Rule 34 applies in adversary proceedings.

Rule 7035. Physical and Mental Examination of Persons

FSM Civil Procedure Rule 35 applies in adversary proceedings.

Rule 7036. Requests for Admission

FSM Civil Procedure Rule 36 applies in adversary proceedings.

Rule 7037. Failure to Make Discovery: Sanctions

FSM Civil Procedure Rule 37 applies in adversary proceedings.

Rule 7041. Dismissal of Adversary Proceedings

FSM Civil Procedure Rule 41 applies in adversary proceedings, except that a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the receiver or trustee, and such other persons as the court may direct, and only by court order containing terms and conditions which the court deems proper.

Rule 7042. Consolidation of Adversary Proceedings; Separate Trials

FSM Civil Procedure Rule 42 applies in adversary proceedings.

Rule 7052. Findings by the Court

FSM Civil Procedure Rule 52 applies in adversary proceedings.

Rule 7054. Judgments; Costs

(a) **Judgments.** FSM Civil Procedure Rule 54(a)-(c) applies in adversary proceedings.

(b) **Costs.** The court may allow costs to the prevailing party unless a Federated States of Micronesia statute or these rules otherwise provides. Costs against the Federated States of Micronesia, its officers and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day's notice; on motion served within five days thereafter, the action of the clerk may be reviewed by the court.

Rule 7055. Default

FSM Civil Procedure Rule 55 applies in adversary proceedings.

Rule 7056. Summary Judgment

FSM Civil Procedure Rule 56 applies in adversary proceedings.

Rule 7062. Stay of Proceedings to Enforce a Judgment

FSM Civil Procedure Rule 62 applies in adversary proceedings. An order granting relief from an automatic stay provided by § 106 of Title 31 and orders under § 202(1)(a) or § 303(a) authorizing or prohibiting the use of cash collateral or the use, sale or lease of the estate's property, or authorizing the trustee to obtain credit, or authorizing the assumption or assignment of an executory contract or unexpired lease shall be additional exceptions to Rule 62(a).

Rule 7064. Seizure of Person or Property

FSM Civil Procedure Rule 64 applies in adversary proceedings.

Rule 7065. Injunctions

FSM Civil Procedure Rule 65 applies in adversary proceedings, except that a temporary restraining order or preliminary injunction may be issued on application of a debtor, receiver, trustee, or debtor in possession without compliance with Rule 65(c).

Rule 7067. Deposit in Court

FSM Civil Procedure Rule 67 applies in adversary proceedings.

Rule 7068. Offer of Judgment

FSM Civil Procedure Rule 68 applies in adversary proceedings.

Rule 7069. Execution

FSM Civil Procedure Rule 69 applies in adversary proceedings.

Rule 7070. Judgment for Specific Acts; Vesting Title

FSM Civil Procedure Rule 70 applies in adversary proceedings and the court may enter a judgment divesting the title of any party and vesting title in others whenever the real or personal property involved is within the jurisdiction of the court.

Rule 7071. Process in Behalf of and Against Persons Not Parties

FSM Civil Procedure Rule 71 applies in adversary proceedings.

Rule 7087. Transfer of Adversary Proceeding

On motion and after a hearing, the court may transfer an adversary proceeding or any part thereof to another state under 6 F.S.M.C. 304, except as provided in Rule 7019(2).

PART VIII – APPEALS TO APPELLATE DIVISION

Rule 8001. Manner of Taking Appeal; Voluntary Dismissal

(a) **Appeal as of right; how taken.** An appeal from a trial division judgment, order, or decree to the appellate division as permitted by 4 F.S.M.C. 201(1) and FSM Appellate Rule 4(a)(1)(A) shall be taken by filing a notice of appeal with the clerk within the time allowed by Rule 8002. Three copies shall be filed with the original. An appellant's failure to take any step other than timely filing a notice of appeal does not affect the appeal's validity, but is ground only for such action as the appellate court deems appropriate, which may include the appeal's dismissal. The notice of appeal shall (1) conform substantially to the appropriate Official Form, and (2) contain the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys.

(b) **Appeal by leave; how taken.** An appeal from an interlocutory judgment, order, or decree as permitted by FSM Appellate Rule 5(a) shall be taken by filing a notice of appeal, as prescribed in subdivision (a) of this rule, accompanied by a motion for leave to appeal prepared in accordance with Rule 8003 and with proof of service in accordance with Rule 8008.

(c) **Voluntary dismissal.** If the parties to the appeal sign and file with the appellate division clerk an agreement that the appeal be dismissed and pay any court costs or fees that may be due, the appellate division clerk shall enter an order dismissing the appeal. An appeal may also be dismissed on the appellant's motion on terms and conditions fixed by the appellate division.

Rule 8002. Time for Filing Notice of Appeal

(a) **Ten-day period.** The notice of appeal shall be filed with the FSM Supreme Court trial division clerk in the state where the decision appealed from was made or, at the appellant's

option, directly with the FSM Supreme Court appellate division clerk, within 10 days of the date of the entry of the judgment, order, or decree appealed from. If a party files a timely notice of appeal, any other party may file a notice of appeal within 10 days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires. A notice of appeal filed after the announcement of a decision or order but before entry of the judgment, order, or decree shall be treated as filed after such entry and on the day thereof.

(b) **Effect of motion on time for appeal.** If any party makes a timely motion of a type specified immediately below, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision applies to a timely motion:

(1) to amend or make additional findings of fact under Rule 7052, whether or not granting the motion would alter the judgment;

(2) to alter or amend the judgment under Rule 9023;

(3) for a new trial under Rule 9023; or

(4) for relief under Rule 9024 if the motion is filed no later than 10 days after the entry of judgment. A notice of appeal filed after announcement or entry of the judgment, order, or decree but before disposition of any of the above motions is ineffective to appeal from the judgment, order, or decree, or part thereof, specified in the notice of appeal, until the entry of the order disposing of the last such motion outstanding. Appellate review of an order disposing of any of the above motions requires the party, in compliance with Rule 8001, to amend a previously filed notice of appeal. A party intending to challenge an alteration or amendment of the judgment, order, or decree shall file a notice, or an amended notice, of appeal within the time prescribed by this Rule 8002 measured from the entry of the order disposing of the last such motion outstanding.

(c) **Extension of time for appeal.**

(1) The trial court may extend the time for any party to file a notice of appeal, unless the judgment, order, or decree appealed from:

(A) grants relief from an automatic stay under § 106,

(B) authorizes the sale or lease of property or the use of cash collateral under § 202(1)(a);

(C) authorizes the obtaining of credit under § 202(1)(b);

(D) authorizes the assumption or assignment of an executory contract or unexpired lease under § 202(1)(c);

(E) approves a disclosure statement under Rule 3017; or

(F) confirms a plan under § 310 of Title 31.

(2) A request to extend the time for filing a notice of appeal must be made by written motion filed before the time for filing a notice of appeal has expired, but such a motion filed not later than 20 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect. An extension of time for filing a notice of appeal may not exceed 20 days from the expiration of the time for filing a notice of appeal otherwise prescribed by this rule or 10 days from the date of entry of the order granting the motion, whichever is later.

Rule 8003. Leave to Appeal

(a) **Petition for Permission to Appeal.** When a trial division justice, in making an order not otherwise appealable under Rule 8001(a), shall be of the opinion that the order involves a controlling question of law about which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the litigation's ultimate termination, the justice shall so state in writing in the order. An order may be amended to include the prescribed statement at any time, and permission to appeal may be sought within 10 days after entry of the order as amended.

(b) **Content of motion; answer.** An original and three copies of a motion for leave to appeal under this Rule, along with a notice of appeal, shall be filed in the appellate division and the motion must contain: (1) a statement of the facts necessary to an understanding of the

questions to be presented by the appeal; (2) a statement of those questions and of the relief sought; (3) a statement of the reasons why an appeal should be granted; and (4) a copy of the judgment, order, or decree complained of and of any opinion or memorandum relating thereto. Within 10 days after service of the motion, an adverse party may file with the appellate clerk an answer in opposition.

(c) **Determination of motion.** The remaining article XI, section 3 Supreme Court justice(s), acting as the appellate division, may permit an appeal to be taken from the order, if application is made to the appellate division within 10 days after the entry of the order with proof of service on all other parties to the action in the court from which the appeal is being taken. Application for an appeal under this Rule shall not stay proceedings in the trial division unless the trial division justice or the appellate division or a justice thereof shall so order. The motion and answer shall be submitted without oral argument unless otherwise ordered.

Rule 8004. Service of the Notice of Appeal

The appellant shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant or, if a party is not represented by counsel, to the party's last known address. Failure to serve notice shall not affect the validity of the appeal.

Rule 8005. Stay Pending Appeal

A motion for a stay of the judgment, order, or decree of the trial judge, for approval of a supersedeas bond, or for other relief pending appeal must ordinarily be presented to the trial judge in the first instance. Notwithstanding Rule 7062 but subject to the appellate court's power reserved hereinafter, the trial judge may suspend or order the continuation of other proceedings in the case under Title 31 or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all interested parties. A motion for such relief, or for modification or termination of relief granted by the trial judge, may be made to the appellate court, but the motion shall show why the relief, modification, or termination was not obtained from the trial judge. The appellate court may condition the relief it grants under this rule on the filing of a bond or other appropriate security with the trial division. When an appeal is taken by a trustee or receiver, a bond or other appropriate security may be required, but when an appeal is taken by the Federated States of Micronesia or an officer or agency thereof or by direction of any department of the Federated States of Micronesia government a bond or other security shall not be required.

Rule 8006. Record and Issues on Appeal

Within 10 days after filing the notice of appeal as provided by Rule 8001(a), entry of an order granting leave to appeal, or entry of an order disposing of the last timely motion outstanding of a type specified in Rule 8002(b), whichever is later, the appellant shall file with the clerk and serve on the appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented. Within 10 days after the service of the appellant's statement the appellee may file and serve on the appellant a designation of additional items to be included in the record on appeal and, if the appellee has filed a cross appeal, the appellee as cross appellant shall file and serve a statement of the issues to be presented on the cross appeal and a designation of additional items to be included in the record. A cross appellee may, within 10 days of service of the cross appellant's statement, file and serve on the cross appellant a designation of additional items to be included in the record. The record on appeal shall include the items so designated by the parties, the notice of appeal, the judgment, order, or decree appealed from, and any opinion, findings of fact, and conclusions of law of the court. Any party filing a designation of the items to be included in the record shall provide to the clerk a copy of the items designated or, if the party fails to provide the copy, the clerk shall prepare the copy at the party's expense. If the record designated by any party includes a transcript of any proceeding or a part thereof, the party shall, immediately after filing the designation, deliver to the reporter and file with the clerk a written request for the transcript and make satisfactory arrangements for

payment of its cost. All parties shall take any other action necessary to enable the clerk to assemble and transmit the record.

Rule 8007. Completion and Transmission of the Record; Docketing of the Appeal

FSM Appellate Procedure Rule 11 applies.

Rule 8008. Filing and Service

FSM Appellate Procedure Rule 25 applies.

Rule 8009. Briefs and Appendix; Filing and Service

(a) **Briefs.** Unless the appellate court by order excuses the filing of briefs or specifies different time limits:

(1) The appellant shall serve and file a brief within 15 days after appellate division clerk's issuance of notice of receipt of the "record ready certificate" from the clerk of the court appealed from under FSM Appellate Procedure Rule 11(c).

(2) The appellee shall serve and file a brief within 15 days after service of the appellant's brief. If the appellee has filed a cross appeal, the brief of the appellee shall contain the issues and argument pertinent to the cross appeal, denominated as such, and the response to the brief of the appellant.

(3) The appellant may serve and file a reply brief within 10 days after service of the appellee's brief, and if the appellee has cross-appealed, the appellee may file and serve a reply brief to the response of the appellant to the issues presented in the cross appeal within 10 days after service of the reply brief of the appellant. No further briefs may be filed except with leave of the appellate court.

(b) **Appendix to brief.** The appellant shall serve and file with the appellant's brief excerpts of the record as an appendix, which shall include the following:

- (1) The complaint and answer or other equivalent pleadings;
- (2) Any pretrial order;
- (3) The judgment, order, or decree from which the appeal is taken;
- (4) Any other orders relevant to the appeal;
- (5) The opinion, findings of fact, or conclusions of law filed or delivered orally by the court and citations of the opinion if published;
- (6) Any motion and response on which the court rendered decision;
- (7) The notice of appeal;
- (8) The relevant entries in the bankruptcy docket; and
- (9) The transcript or part thereof, if necessary and relevant to the appeal. An appellee may also serve and file an appendix which contains material required to be included by the appellant but omitted by appellant.

Rule 8010. Form of Briefs; Length

FSM Appellate Rules 28 and 29 apply and the appellant's brief shall also contain a statement of the basis of appellate jurisdiction.

Rule 8011. Motions

FSM Appellate Procedure Rule 27 applies. All motions will be decided without oral argument unless the court orders otherwise. A motion for a stay, or for other emergency relief may be denied if not presented promptly.

Rule 8012. Oral Argument

FSM Appellate Procedure Rule 34 applies.

Rule 8013. Disposition of Appeal; Weight Accorded Trial Judge's Findings of Fact

On an appeal, the appellate court may affirm, modify, or reverse the trial judge's judgment,

order, or decree or remand with instructions for further proceedings. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the witnesses' credibility.

Rule 8014. Costs

FSM Appellate Procedure Rule 39 applies.

Rule 8015. Motion for Rehearing

FSM Appellate Procedure Rule 40 applies.

Rule 8016. Appellate Clerk's Duties

FSM Appellate Procedure Rules 36 and 45 apply.

Rule 8019. Suspension of Rules in Part VIII

In the interest of expediting decision or for other cause, the appellate division may suspend the requirements or provisions of the rules in Part VIII, except Rules 8001, 8002, and 8013, and may order proceedings in accordance with the direction.

Rule 8020. Damages and Costs for Frivolous Appeal

If the appellate court determines that an appeal from an order, judgment, or decree of a trial judge is frivolous, it may, after a separately filed motion or after notice from the appellate court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

PART IX – GENERAL PROVISIONS

Rule 9001. General Definitions

The definitions of words and phrases in § 102 of Title 31 and the rules of construction in Public Law No. 13-73, § 1 govern their use in these rules. In addition, the following words and phrases used in these rules have the meanings indicated:

(1) "Debtor." When any act is required by these rules to be performed by a debtor or when it is necessary to compel attendance of a debtor for examination and the debtor is not a natural person:

(A) if the debtor is a corporation, "debtor" includes, if designated by the court, any or all of its officers, members of its board of directors or trustees or of a similar controlling body, a controlling stockholder or member, or any other person in control;

(B) if the debtor is a partnership, "debtor" includes any or all of its general partners or, if designated by the court, any other person in control.

(2) "Firm" includes a partnership or professional corporation of attorneys or accountants.

(3) "Judgment" means any appealable order.

(4) "Mail" means first class, postage prepaid.

(5) "Regular associate" means any attorney regularly employed by, associated with, or counsel to an individual or firm.

(6) "Title 31" means Title 31 of the Code of the Federated States of Micronesia.

(7) "Trustee" includes a debtor in possession in a chapter 3 case.

Rule 9002. Meanings of Words in the Rules of Civil Procedure When Applicable to Cases Under Title 31

The following words and phrases used in the FSM Rules of Civil Procedure made applicable to cases under Title 31 by these rules have the meanings indicated unless they are inconsistent with the context:

(1) "Action" or "civil action" means an adversary proceeding or, when appropriate, a contested application, or proceedings to vacate an order for relief or to determine any other contested matter.

(2) "Appeal" means an appeal as provided by FSM Appellate Procedure Rules 4(a)(1) and

5.

(3) "Clerk" means the court officer responsible for the bankruptcy records in the state.

(4) "Trial court," "court," "trial judge," or "judge" means the trial division justice before whom the case is pending.

(5) "Judgment" includes any order appealable to an appellate court.

Rule 9003. Prohibition of Ex Parte Contacts

Except as otherwise permitted by applicable law, any examiner, any interested party, and any interested party's attorney, accountant, or employee shall refrain from ex parte meetings and communications with the court concerning matters affecting a particular case or proceeding.

Rule 9004. General Requirements of Form; Filing

(a) **Legibility; abbreviations.** All applications, pleadings, schedules and other papers shall be clearly legible. Abbreviations in common use in the English language may be used.

(b) **Caption.** Each paper filed shall contain a caption setting forth the name of the court, the title of the case, the bankruptcy docket number, and a brief designation of the character of the paper.

(c) **Filing.** Pleadings and other documents shall be filed with the court in triplicate. All pleadings and documents should be filed on letter-size paper, not larger than 8½ x 11 inches, double spaced, each page beginning not less than 1¼ inches from the top, with side margins of not less than 1¼ inches.

Rule 9005. Harmless Error

FSM Civil Procedure Rule 61 applies in cases under Title 31. When appropriate, the court may order the correction of any error or defect or the cure of any omission which does not affect substantial rights.

Rule 9006. Time

(a) **Computation.** In computing any period of time prescribed or allowed by these rules or by the FSM Rules of Civil Procedure made applicable by these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the clerk's office inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 8 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in Rule 5001(c), "legal holiday" includes New Year's Day, Constitution Day, United Nations Day, Independence Day, Veterans Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the Federated States of Micronesia.

(b) Enlargement.

(1) *In general.* Except as provided in paragraphs (2) and (3), when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on 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.

(2) *Enlargement not permitted.* The court may not enlarge the time for taking action under Rules 1007(d), 1017(b)(3), 2003(a) and (d), 7052, 9023, and 9024.

(3) *Enlargement limited.* The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 8002, and 9033, only to the extent and

under the conditions stated in those rules.

(c) Reduction.

(1) *In general.* Except as provided in paragraph (2), when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.

(2) *Reduction not permitted.* The court may not reduce the time for taking action under Rules 2002(a)(7), 2003(a), 3002(c), 3014, 3015, 4001(b)(2), (c)(2), 4003(a), 4004(a), 4007(c), and 8002.

(d) **For motions & affidavits.** A written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than fourteen days before the time specified for the hearing, unless a different period is fixed by these rules or by court order. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 9023, opposing affidavits may be served not later than seven days before the hearing, unless the court permits them to be served at some other time.

(e) **Time of service.** Service of process and service of any paper other than process or of notice by mail is complete on mailing.

(f) **Additional time after service by mail.** When there is a right or requirement to do some act or undertake some proceedings within a prescribed period after service of a notice or other paper and the notice or paper other than process is served by mail, six days shall be added to the prescribed period.

Rule 9007. General Authority to Regulate Notices

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, the entities to whom, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Rule 9008. Service or Notice by Publication

Whenever these rules require or authorize service or notice by publication, the court shall, to the extent not otherwise specified in these rules, determine the form and manner thereof, including the newspaper or other medium to be used and the number of publications. Notice by publication can include, but must not be limited to, announcements on radio stations.

Rule 9009. Forms

The Official Forms attached to these Rules shall be observed and used with alterations as may be appropriate. Forms may be combined and their contents rearranged to permit economies in their use. The Court may issue additional forms for use under Title 31. The forms shall be construed to be consistent with these rules and Title 31.

Rule 9010. Representation and Appearances; Powers of Attorney

(a) **Authority to act personally or by attorney.** A debtor, creditor, equity security holder, committee, or other party may (1) appear in a case under Title 31 and act either in the entity's own behalf or by an attorney authorized to practice in the court, and (2) perform any act not constituting the practice of law, by an authorized agent, attorney in fact, or proxy.

(b) **Notice of appearance.** An attorney appearing for a party in a case under Title 31 shall file a notice of appearance with the attorney's name, address, and telephone number, unless the attorney's appearance is otherwise noted in the record.

(c) **Power of attorney.** The authority of any agent, attorney in fact, or proxy to represent a creditor for any purpose other than the execution and filing of a proof of claim or the acceptance or rejection of a plan shall be evidenced by a power of attorney conforming substantially to the appropriate Official Form. The execution of any such power of attorney shall be acknowledged

before a person authorized to administer oaths under the laws of the state where the oath is administered.

Rule 9011. Signing of Papers; Representations to the Court; Sanctions; Verification and Copies of Papers

(a) **Signing of papers.** Every application, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign all papers. Each paper shall state the signer's address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) **Representations to the court.** By presenting to the court (whether by signing, filing, submitting, or later advocating) an application, pleading, written motion, or other paper, an attorney or unrepresented party is certifying 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 or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to 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 a lack of information or belief.

(c) **Sanctions.** If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) *How initiated.*

(A) *By motion.* A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, but this limitation shall not apply if the conduct alleged is the filing of an application in violation of subdivision (b). If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) *On court's initiative.* On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) *Nature of sanction; limitations.* A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of the conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, 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 some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) *Order.* When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) **Inapplicability to discovery.** Subdivisions (a) through (c) do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 7026 through 7037.

(e) **Verification.** Except as otherwise specifically provided by these rules, papers filed in a case under Title 31 need not be verified..

(f) **Copies of signed or verified papers.** When these rules require copies of a signed or verified paper, it shall suffice if the original is signed or verified and the copies are conformed to the original.

Rule 9012. Oaths and Affirmations

(a) **Persons authorized to administer oaths.** The following persons may administer oaths and affirmations and take acknowledgments: a judge, clerk, assistant clerk, officer authorized to administer oaths in proceedings before the courts of the Federated States of Micronesia or under the laws of the state where the oath is to be taken, or a diplomatic or consular officer of the Federated States of Micronesia in any foreign country.

(b) **Affirmation in lieu of oath.** When in a case under Title 31 an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

Rule 9013. Motions

(a) **Form and Service.** A request for an order, unless an application is authorized by these rules, shall be by written motion, unless made during a hearing. The motion shall state, with particularity in a memorandum of points and authorities, the grounds therefor, and shall set forth the relief or order sought. Every written motion other than one which may be considered ex parte shall contain certification by the movant that a reasonable effort has been made to obtain the agreement or acquiescence of the other parties and that no agreement has been forthcoming and shall be served by the movant on the trustee or debtor in possession and on those entities specified by these rules or, if service is not required or the entities to be served are not specified by these rules, the moving party shall serve the entities the court directs.

(b) **Opposition.** A party opposing the motion shall not later than 10 days after the service of the motion upon that party, file and serve responsive papers. When a motion is opposed by affidavit, the affidavit shall be served with the responsive papers. The responsive papers shall consist of either (1) a memorandum of points and authorities, or (2) a written statement that the party does not oppose the motion.

(c) **Waiver and Consent.** Failure by the moving party to file the memorandum of points and authorities shall be deemed a waiver by the moving party of the motion; such failure by an opposing party shall constitute a consent to the granting of the motion.

Rule 9014. Contested Matters

(a) **Motion.** In a contested matter not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court directs otherwise.

(b) **Service.** The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004. Any paper served after the motion shall be served in the

manner provided by FSM Civil Procedure Rule 5(b).

(c) **Application of Part VII Rules.** Except as provided in this rule, and unless the court directs otherwise, the following rules shall apply: 7009, 7017, 7021, 7025, 7026, 7028-7037, 7041, 7042, 7052, 7054-7056, 7064, 7069, 7071. An entity that desires to perpetuate testimony may proceed in the same manner as provided in Rule 7027 for the taking of a deposition before an adversary proceeding. The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply. The court shall give the parties notice of any order issued under this paragraph to afford them a reasonable opportunity to comply with the procedures prescribed by the order.

(d) **Testimony of Witnesses.** Testimony of witnesses with respect to disputed material factual issues shall be taken in the same manner as testimony in an adversary proceeding.

(e) **Attendance of Witnesses.** The court shall provide procedures that enable parties to ascertain at a reasonable time before any scheduled hearing whether the hearing will be an evidentiary hearing at which witnesses may testify. In a contested matter in a case under Title 31 not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court orders an answer to a motion. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004, and, unless the court otherwise directs, the following rules shall apply: 7021, 7025, 7026, 7028-7037, 7041, 7042, 7052, 7054-7056, 7062, 7064, 7069, and 7071. The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply. An entity that desires to perpetuate testimony may proceed in the same manner as provided in Rule 7027 for the taking of a deposition before an adversary proceeding. The clerk shall give notice to the parties of the entry of any order directing that additional rules of Part VII are applicable or that certain of the rules of Part VII are not applicable. The notice shall be given within the time necessary to afford the parties a reasonable opportunity to comply with the procedures made applicable by the order.

Rule 9016. Subpoena

FSM Civil Procedure Rule 45 applies in cases under Title 31.

Rule 9017. Evidence

The FSM Rules of Evidence and FSM Civil Procedure Rule Rules 43, 44 and 44.1 apply in cases under Title 31.

Rule 9018. Secret Confidential, Scandalous, or Defamatory Matter

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information, (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under Title 31, or (3) to protect governmental matters that are made confidential by statute or regulation. If an order is entered under this rule without notice, any entity affected thereby may move to vacate or modify the order, and after a hearing on notice the court shall determine the motion.

Rule 9019. Compromise and Arbitration

(a) **Compromise.** On motion by the receiver or by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, and the debtor as provided in Rule 2002 and to any other entity as the court may direct.

(b) **Authority to compromise or settle controversies within classes.** After a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize the trustee or the receiver to compromise or settle controversies within such class or classes without further hearing or notice.

(c) **Arbitration.** On the parties' stipulation to any controversy affecting the estate the

court may authorize the matter to be submitted to final and binding arbitration.

Rule 9020. Contempt Proceedings

Rule 9014 governs a motion for an order of contempt made by an interested party.

Rule 9021. Entry of Judgment

Except as otherwise provided herein, FSM Civil Procedure Rule 58 applies in cases under Title 31. Every judgment entered in an adversary proceeding or contested matter shall be set forth on a separate document. A judgment is effective when entered as provided in Rule 5003. The reference in FSM Civil Procedure Rule 58 to FSM Civil Procedure Rule 79(a) shall be read as a reference to Rule 5003 of these rules.

Rule 9022. Notice of Judgment or Order

Immediately on the entry of a judgment or order the clerk shall serve a notice of entry in the manner provided in FSM Civil Procedure Rule 5(b) on the contesting parties and on other entities as the court directs. Service of the notice shall be noted in the docket. Lack of notice of the entry does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 8002.

Rule 9023. New Trials; Amendment of Judgments

FSM Civil Procedure Rule 59 applies in cases under Title 31, except as provided in Rule 3008.

Rule 9024. Relief from Judgment or Order

FSM Civil Procedure Rule 60 applies in cases under Title 31 but a motion to reopen a case under Title 31 or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one year limitation prescribed in Rule 60(b).

Rule 9025. Security: Proceedings Against Sureties

Whenever Title 31 or these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court, and liability may be determined in an adversary proceeding governed by the rules in Part VII.

Rule 9026. Exceptions Unnecessary

FSM Civil Procedure Rule 46 applies in cases under Title 31.

Rule 9027. Removal

The procedures in FSM General Court Order 1992-2 shall be used to effect removal. A notice of removal shall also be filed with the FSM Supreme Court trial division clerk located in the state where the state or municipal court civil action was pending if the FSM Supreme Court bankruptcy proceeding is pending in a different state.

Rule 9028. Judge's Disability

FSM Civil Procedure Rule 63 applies in cases under Title 31.

Rule 9030. Jurisdiction and Venue Unaffected

These rules shall not be construed to extend or limit the court's jurisdiction or the venue of any matters therein.

Rule 9031. Masters Not Authorized

FSM Civil Procedure Rule 53 does not apply in cases under Title 31.

Rule 9032. Effect of Amendment of FSM Rules of Civil Procedure

The FSM Rules of Civil Procedure which are incorporated by reference and made applicable by these rules are the FSM Rules of Civil Procedure in effect on the effective date of these rules and as thereafter amended, unless otherwise provided by the amendment or by these rules.

Rule 9035. Citation form.

These are the Rules of Bankruptcy Procedure for the Supreme Court of the Federated States of Micronesia and may be cited as: "FSM Bankr. R. ____."

Rule 9036. Notice by electronic transmission

Whenever the clerk or some other person as directed by the court is required to send notice by mail and the entity entitled to receive the notice requests in writing that, instead of notice by mail, all or part of the information required to be contained in the notice be sent by a specified type of electronic transmission, the court may direct the clerk or other person to send the information by such electronic transmission, except, if the type of electronic transmission is facsimile transmission, the clerk will not be required by court order to send any notice to a party not in the same state as the clerk unless the recipient has agreed to pay for the telephone charges. Notice by electronic transmission is complete, and the sender shall have fully complied with the requirement to send notice, when the sender obtains electronic confirmation that the transmission has been received.