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The Commonwealth Register provides a uniform system for making available to the public the regulations, rules, decisions, orders and notices issued by Commonwealth agencies and required to be published and other Commonwealth agency documents of public interest.

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PUBLIC NOTICE

Proposed Revenue Regulations No. 5901

The Director of Finance, in accordance with Public Law No. 1-8 and Public Law No. 1-30, is proposing to promulgate new regulations to be identified as Revenue Regulations No. 5901 of the Division of Revenue and Taxation.

The proposed regulations include the following subjects:

1. General Provisions
2. Definitions
3. Tax on Wages and Salaries
4. Deposit of Withheld Wage and Salary Taxes
5. Tax on Business Gross Revenue
6. Territorial Income Tax - Effective January 1, 1979

The proposed regulations may be inspected at the Division of Revenue and Taxation, Central Office, Chalan Piao, Commonwealth of the Northern Mariana Islands, Saipan, CM 96950. These regulations are published in the Commonwealth Register. Copies of the register may be obtained from the Attorney General's Office.

The Office of the Director of Finance is soliciting views, opinions, facts and data for or against the proposed Revenue Regulations No. 5901 from the general public.

Anyone interested in commenting on the proposed Revenue Regulations No. 5901 may do so by submitting in writing to the Director of Finance, Office of the Governor, Civic Center, Susupe, Commonwealth of the Northern Mariana Islands, Saipan, CM 96950, within thirty (30) days from the date this notice is published in the Commonwealth Register.

10/25/79
Date

S. A. Newman.
Saul A. Newman
Director of Finance

PROPOSED REVENUE REGULATIONS NO. 5901

OFFICE OF THE DIRECTOR OF FINANCE

DEPARTMENT OF FINANCE

DIVISION OF REVENUE AND TAXATION

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

GENERAL PROVISIONS

Section 1. Authority. The authority for the promulgation and issuance of Revenue Regulations No. 5901 is by virtue of Chapter 11, 77 TTC, as it applies to the Northern Mariana Islands; Section 8, Chapter 11 of Public Law 1-8 (CNMI); and Section 6, Chapter II of Public Law 1-30 (CNMI).

Section 2. Purpose. The purpose of the regulations is to establish policy and procedures to implement and provide uniform enforcement of taxation laws.

Section 3. Regulations Superseded. Rules and regulations in this Chapter supersede Public Regulations Release No. 10-73, Parts 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 (CNMI), which superseded all previously issued Budget and Finance Regulations.

PART 10.251.3. DEFINITIONS

(a) Moving Expenses - Moving expenses or allowances provided an employee for the convenience and at the direction of the employer are not to be included in determining the taxable wages or salaries of an employee. However, any portion of the moving expenses or allowance not used by the employee for his cost of moving will be deemed taxable wages or salaries.

Example (1). Mr. Jones is transferred to Rota from Saipan by his employer, the ABC Company. The ABC Company pays for his transportation, household effects

shipment, meals and temporary lodging. These payments made by the ABC Company are not taxable to Mr. Jones.

Example (2). Mr. Smith is transferred to Tinian from Rota. His employer, the Fish Company, pays Mr. Smith a $2,000.00 moving allowance. The cost of Mr. Smith's move, including personal transportation, household effects shipment and temporary lodging is $1,500.00. The unused portion of the moving allowance, $500.00, is taxable to Mr. Smith.

(b) Military and Naval Forces of the United States - "Wages and salaries received from the United States by members of the Military or Naval Forces of the United States or the Armed Forces of the United States" shall be exempt from tax on wages and salaries under Section 252, Title 77, TTC (CNMI), as a result of active duty service. Other wages and salaries earned in the Commonwealth of the Northern Mariana Islands shall be deemed taxable under the provisions of this Act.

(c) Payment to members of a Board of Directors - Compensation for personal services to any person who is a member of any board of directors shall be taxed pursuant to Section 252, 77 TTC (CNMI), as amended by Public Law 1-30.

PART 10.252. TAX ON WAGES AND SALARIES

Section 1. Tax on Wages and Salaries. There shall be assessed, levied, collected, and paid an annual tax upon all wages and salaries received by an employee, as defined. The tax shall be determined in accordance with the following schedule retroactive to January 1, 1979.

If the gross annual wages and salaries of an employee are:	The wage and salary tax is:
(a) Not over $5,000	No tax.

(b) Over $5,000 but not over $7,000	3% of amount over $5,000.
(c) Over $7,000 but not over $15,000	Tax computed in accordance with (b) plus 4% of amount over $7,000.
(d) Over $15,000 but not over $22,000	Tax computed in accordance with (b) and (c) plus 5% of amount over $15,000.
(e) Over $22,000	Tax computed in accordance with (b), (c) and (d) plus 6% of amount over $22,000.

Section 2. The Employer's Income Tax Quarterly Withholding Return for 1979, Form OS-3705, requires the employee's U.S. Social Security number, employee's name, taxable wages and tax withheld for each employee. Form OS-3705A is the continuation sheet for Form OS-3705. For proper withholding of wage and salary tax, see Employer's Tax Guide.

Section 3. Deposit of Withheld Wage and Salary Taxes. Withholding taxes (Trust Funds) must be deposited with the Division of Revenue and Taxation pursuant to the following instructions:

(a) If at the end of a quarter, the total amount of undeposited taxes is less than $200, you are not required to make a deposit. Pay the taxes directly to the Division of Revenue and Taxation along with your quarterly Form OS-3705 on or before the last day of the first month after the end of the quarter.

(b) If at the end of any month of the quarter, with exception to the third month, the cumulative amount of undeposited taxes is $200 or more, you must deposit the taxes with the Division of Revenue and Taxation, using Form 500, within 15 days after the end of the month.

(c) If the cumulative amount of undeposited taxes exceed $200 in the third month of any quarter, payment of the tax may be made along with your quarterly Form OS-3705 on or before the last day of the first month after the end of the quarter.

Section 4. Annual Reconciliation of Employer's Income Tax Quarterly Withholding. Employers are required to file the original copy of Form OS-3710 "Annual Reconciliation of Employers Income Tax Quarterly Withholding" on or before January 31 after the close of the taxable year with the Division of Revenue and Taxation. The A copy of Form 1169 or Copy A of Form W-2, Wage and Tax Statement, is required to be attached to the reconciliation form.

Section 5. Effective Date. Withholding tax on wages and salaries by employers pursuant to Section 253 of Title 77 TTC (CNMI) shall commence on the first day of each employer's first payroll period beginning after December 31, 1978. The tax rate shall be in accordance with Section 252, 77 TTC (CNMI), as amended by Public Law No. 1-30. Employers shall not change their customary payroll periods if such change would result in the postponement of the effective date on which to commence withholding the tax on wages and salaries.

Example (1). An employer's customary payroll period is weekly from Sunday to the following Saturday. The first payroll period for which tax is to be withheld is the payroll period beginning December 31, 1978.

Example (2). An employer's customary payroll period is semimonthly from the first day to the fifteenth day of each month and from the sixteenth day to the last day of each month. The first payroll period for which tax is to be withheld is the payroll period beginning January 1, 1979.

Section 6. Place of Payment and Filing. Employers who have their principal place of business outside the

Commonwealth of the Northern Mariana Islands shall file all returns and make all payments of the tax in accordance with Chapter 11, Title 77 TTC (CNMI), to the Director of Finance, Commonwealth of the Northern Mariana Islands, Saipan, CM 96950.

Section 7. Record Maintenance. All books and payroll records necessary to determine employee's wages and salaries and respective withholding taxes imposed by the Commonwealth Government are to be maintained in the Senatorial District within the Commonwealth where the business operation is conducted and shall be made available for examination not later than ten (10) days beginning with the date when the request is received.

Section 8. Employee's Annual Wage and Salary Tax Return.

(a) Every employee subject to withholding tax under Section 252 is required to file an Employee's "Annual Wage and Salary Tax Return," Form OS-3810 on or before April 15, after the end of the taxable year. Any additional tax due is payable upon the filing of this return. Any tax determined to be overwithheld or overpaid will be refunded without the necessity of filing an application for refund. Copy B of Form 1169 or Copy 1 of Form W-2 must be attached to Form OS-3810. No refund will be made without the Wage and Tax Statement attached.

(b) Employees who perform services during the taxable year, both as an employee receiving salary and wages subject to withholding pursuant to Section 252 and as an individual not subject to withholding tax pursuant to Section 257, are required to file the Employee's Annual Wage and Salary Tax Return, Form OS-3810.

An individual subject to tax under Section 257 must file quarterly returns during the period his/her wages are not subject to withholding taxes. When employment is terminated, a final quarterly return must be filed, reporting wages paid to the date employement is terminated.

The combined salary and wages earned both as an employee subject to withholding tax and as an individual not subject to withholding tax must be reported on the Employee's Annual Wage and Salary Tax Return. Forms 1169 and W-2 must be attached to the Tax Return. Credit will be given for taxes paid on the Individual Income Tax Quarterly Return.

PART 10.257. INDIVIDUAL TO FILE RETURN ON EARNED INCOME

A total of $1,250 will be allowed each quarter as a statutory exemption, cumulative by quarter, to a total of $5,000 per annum. The total statutory exemption of $5,000 will be allowed on the fourth quarterly return for the taxable year. Effective tax rates have been established for calculating the tax for each quarter. Individual taxpayers who terminate their employement and permanently depart the Commonwealth during any quarter in the taxable year are required to file a fourth quarterly return and pay any tax due thereon as well as to receive a refund for any tax overpaid. Individual taxpayers who terminate their employment and permanently depart the Commonwealth during any quarter in the taxable year will not be subject to the Failure to File Penalty pursuant to Section 265(1) for interim quarterly returns. The departure date must be clearly indicated on the tax return in the space provided. No additional application is necessary in order to receive a refund of any tax overpaid, other than filing the fourth quarterly return, unless the individual received salary and wages as an employee during the same taxable year. In such case, an Employee's Annual Wage and Salary Tax Return must be filed pursuant to Section 8(b), Part 10.252 and the fourth quarter Individual Income Tax Quarterly Return is not required.

PART 10.258. TAX ON BUSINESS GROSS REVENUES

Section 1. Tax on Gross Revenues. There shall be assessed, levied, collected and paid an annual tax upon gross revenues earned by every business subject to the provisions of Chapter 11, Title 77 TTC (CNMI). The tax shall be determined in accordance with the following schedules on the basis of three separate categories of business activities. The following forms are available at the Division of Revenue and Taxation to accommodate the three separate categories of business activities:

(a) General business - Form OS-3105
(b) Banks and banking institutions - Form OS-3106
(c) Agricultural producers and fisheries - Form OS-3107

Section 2. General Business.

If the annual gross revenues earned are:	The annual gross revenue tax is:
(a) Not over $5,000	No tax.
(b) Over $5,000 but not over $50,000	1% of the amount over $5,000.
(c) Over $50,000 but not over $100,000	Tax computed in accordance with (b) plus 2% of amount over $50,000.
(d) Over $100,000 but not over $250,000	Tax computed in accordance with (b) and (c) plus 3% of amount over $100,000.
(e) Over $250,000	Tax computed in accordance with (b), (c) and (d) plus 4% of amount over $250,000.

A total of $1,250 will be allowed general business taxpayers each quarter as a statutory exemption, cumulative by quarter, to a total of $5,000 per annum. The total statutory exemption of $5,000 will be allowed on the fourth quarterly return for the taxable year. Effective tax rates have been established for calculating the tax for each quarter. General business taxpayers who terminate, dissolve or sell their business during a taxable year must conform to Section 7 of this Part. In addition, a fourth quarter return must be filed in order to receive a refund that may be due for any tax overpaid. No additional application will be necessary to receive a refund of any overpayment of tax.

Section 3. Banks and Banking Institutions. The tax on the operation of any bank, banking institutions, building and loan association or lending institutions, shall be equivalent to four percent (4%) of the net income received from such business or one percent (1%) of the gross revenue whichever is greater.

Section 4. Agricultural Producers and Fisheries. The tax on agricultural producers and fisheries is at the rate of one percent (1%) of gross revenues in excess of $20,000. Agricultural producers and fisheries will be allowed an exemption of $5,000 each quarter, cumulative by quarter to a total of $20,000 per annum. The total statutory exemption of $20,000 will be allowed on the fourth quarterly return for the taxable year. Taxpayers who terminate, dissolve or sell their business during a taxable year must conform to Section 7 of this Part. In addition, a fourth quarter return must be filed to receive a refund that may be due for any tax overpaid. No additional application will be necessary to receive a refund of any overpayment of tax.

Section 5. Business taxpayers in all three categories are required to file quarterly tax returns, reporting their gross revenue, even though no tax liability is due. Books and records must be maintained on the business premises in the Senatorial District within the Commonwealth where the business operations are conducted.

Section 6. Form of Business Subject to Taxation.

(a) Unincorporated "Unitary Business" - A "unitary business" is one carrying on one kind of business of which the component parts are too closely connected and necessary to each other to justify division or separate consideration. Unincorporated "unitary businesses" will be assessed, levied, collected, and the tax shall be paid as required under Section 258 of Title 77 TTC (CNMI), Chapter 11 as amended by Public Law No. 1-30.

Example - Mr. Walker owns a movie theater and in the theater he has a snack bar serving refreshments to the patrons of the theater. The gross income from the theater and the snack bar would be taxed as one business since it is a "unitary business."

(b) Unincorporated "Non-Unitary Business" - A "non-unitary business" is one which shows units of substantial separateness and completeness, such as might be maintained as an independent business and capable of producing profit in and of themselves. A "non-unitary business" will be assessed, levied, collected and the tax shall be paid as required under Section 258 of Title 77 TTC (CNMI), Chapter 11, as amended by Public Law No. 1-30, on each unit of substantial separateness and completeness.

Example - Mr. Johnson owns a grocery store and next to the grocery store he owns a restaurant. Mr. Johnson would have to pay tax on the gross revenue of the grocery store and a separate tax on the gross revenue of the restaurant because it would be a "non-unitary business" with each unit being substantially separate and complete.

(c) Incorporated Businesses - A corporation consisting of two or more separate and distinct businesses would pay the tax on the combined gross revenues of all the business since it is a "unitary business."

Example - Mr. Stein is the sole stockholder of a corporation which consists of a restaurant, grocery store, and a fast food outlet. The combined gross revenues of the three (3) businesses would be taxed as one business.

Section 7. Businesses Dissolving During a Taxable Year. Any person who dissolves a business during a taxable year is required to make a final return within fifteen (15) days following the dissolution of the business. A penalty of ten percent (10%) of the tax due shall be added for each thirty (30) days or fraction thereof elapsing between the due date of the return and the date on which it is actually filed; provided, however, that the minimum penalty shall be twenty-five dollars ($25.00). Interest of six percent (6%) per annum shall also be imposed on the total amount paid after the deadline prescribed in this section.

Section 8. Definitions Relating to Gross Revenues of Business.

(a) Exclusion of Taxes Collected - Gross revenue as defined by Section 251(7), Title 77 TTC (CNMI), Chapter 11, does not include business revenue or receipts which represent taxes imposed upon the purchaser by a taxing authority and collected by the seller. Taxes imposed by Chapter 11, Title 77 TTC (CNMI), are not imposed upon the purchaser of goods, but are imposed upon the gross revenue of a business.

Example (1) - Mr. Z owns a movie theater. The price of a ticket is 75¢ per person which includes a Municipal imposed 10¢ head tax on each ticket. Mr. Z would report his gross revenue on the basis of 65¢ per ticket and exclude the amount of the head tax.

Example (2) - Mr. X owns a grocery store. He is subject to the Business Gross Revenue Tax pursuant to Section 258, Title 77 TTC (CNMI) as re-enacted by Public Law No. 1-30. In this case, the Business Gross Revenue Tax is imposed upon the gross revenue of the business and may not be added as a tax upon the sale price of goods and collected from the purchaser.

(b) Exclusions of Amounts Not Collected - Gross revenue as defined by Section 251(7), Title 77 TTC (CNMI), Chapter 11, does not include revenues which are accrued but which subsequently are found to be uncollectible. The amounts of such accrued revenue which are determined to be uncollectible may be deducted from gross revenue in the year in which it is determined that the revenue is not collectible, provided that the uncollectible amounts were accrued after April 1, 1976. No deduction will be allowed unless a serious effort was made to collect the debt. This may include legal action or other collection efforts.

Example - A business sells merchandise both for cash and on credit, establishing accounts receivable for the credit sales. In 1976, this business has the following sales:

Cash	$20,000
Credit	15,000
Total	$35,000

The business pays tax on $35,000 for 1976. As at December 31, 1976, the business had uncollected accounts receivable in the amount of $2,400 of which $1,000 represented sales accrued after April 1, 1976.

If in 1977, the business found that any part of the $1,000 could not be collected after a serious effort was made to collect the debt and so recorded

this in its accounting records, this amount written off would be deducted from the taxable gross revenue for 1977.

Section 9. Casual Sales. Except in connection with a trade or business, any person having annual gross revenue from the combined sales of any property, real or personal, tangible or intangible, of less than $5,000 shall be considered "casual sales" and therefore exempt from the tax on gross revenues.

(a) The lease or rental of one (1) or more properties as described above, of any type, such as furniture, machinery, equipment, automotive vehicles, land or buildings shall be considered within the definition of casual sales. Irrespective of the amount of gross revenue which may be exempt, a business gross revenue return must be filed. A refund, if due, will be made after the close of the taxable year pursuant to Section 267, Title 77 TTC (CNMI).

(b) The lease, rental or sale of real or personal property, tangible or intangible, in excess of $5,000.00, whether a one time or isolated sale or not connected with a trade or business, shall be deemed to be gross revenue and subject to the tax on gross revenue, pursuant to Section 258, 77 TTC (CNMI), as amended by Public Law No. 1-30.

Section 10. Sale or Transfer of Business. If a business is sold or transferred by one employer to another, each must file a separate return. But neither should report wages paid by the other. Such a transfer occurs, for example, if a sole proprietor forms a partnership or a corporation.

(a) If there has been a change of ownership or other transfer of the business during the quarter, attach a statement showing the name of the present owner; whether the present owner is an individual, a partnership, or a corporation; the nature of the change or transfer; and its date.

(b) When a statutory merger or consolidation occurs, the obligation of the continuing corporation to file a Form OS-3705 and report wages is the same as if the continuing and dissolved corporations constituted one person.

Section 11. Refund of Overpayment of Business Gross Revenue Tax. A refund of an overpayment of Business Gross Revenue Tax will be made after the fourth quarterly return has been filed and reviewed.

PART 10.260. APPORTIONMENT

Application for apportionment of taxes withheld by an employer on the wages and salaries of an employee or for Business Gross Revenue taxes paid for any quarter during the calendar year, must be filed within one year after the end of the calendar year in which the amount to be refunded was withheld or paid pursuant to Section 267(1)(c), 77 TTC (CNMI).

PART 10.272-IRC. TERRITORIAL INCOME TAX - EFFECTIVE JANUARY 1, 1979

Section 1. Citizens or Residents of the Northern Mariana Islands.

(a) Any person, citizen or resident of the Northern Mariana Islands, having gross income from any source, is subject to the Territorial Income Tax. However, such person having income solely from within the Northern Mariana Islands shall be entitled to a rebate of one hundred percent (100%) of such tax for each taxable year beginning January 1, 1979, through the taxable years prior to the termination of the Trusteeship Agreement, pursuant to Section 1, Chapter II of Public Law No. 1-30. No amount of such tax imposed on income derived from sources without the Northern Mariana Islands shall be rebated.

(b) Where an employee's wage and salary income arises solely from sources within the Northern Mariana Islands, no withholding

of Territorial Income Tax on such wage and salary income shall be required, provided Form W-4 indicating exempt status is filed with the withholding agent. However, pursuant to Section 3(a)(2) of Public Law No. 1-30, every person is required to file an income tax return on Form 1040A-CM on or before April 15, 1980.

(c) Any person, citizen or resident of the Northern Mariana Islands having gross income from both within and without the Northern Mariana Islands, who is a resident of the Northern Mariana Islands on the last day of the taxable year is subject to Territorial Income Tax on his gross income from without the Northern Mariana Islands. Such person shall file a Territorial Individual Income Tax Return on Form 1040CM on or before April 15, following the close of the taxable year. However, if such person permanently departs the territory between January 1 and April 15, a tax return must be filed prior to departure. In cases where all income data is not available, income from without the Northern Mariana Islands may be based upon the prior year, subject to amendment when all income information is complete.

(d) Declaration of Estimated Tax -

(1) Individuals, citizens or residents of the Northern Mariana Islands having gross income from without the Northern Mariana Islands who expect to have a tax liability for the taxable year in excess of $100, not covered by Territorial withholding tax, are required to file an estimated tax return with the Director of Finance.

(2) The payment of estimated tax is due in four equal quarterly installments. The tax liability is based upon an allocable percentage of gross income from without the Northern Mariana Islands to total income. The gross income from within the Northern Mariana Islands, rebatable at 100%, is considered in the computation of total income. The estimated tax liability for the current year may be based on the prior years tax liability without the exclusion of foreign earned income.

Example - For the taxable year ending December 31, 1980, the following are the installment payment dates.

April 15, 1980
June 15, 1980
September 15, 1980
January 15, 1981

Since the Northern Mariana Islands is considered part of the United States in 1979 for income tax purposes, no foreign earned income exclusion or deduction for excess cost of living will be allowable under Internal Revenue Code Sections 911 or 913.

Example - Husband and wife, under 65 and in good health, no children, filed a joint return in 1978 reporting U.S. interest income of $2,000, wages and salaries from NMI of $18,025. The tax liability without the foreign earned income exclusion from IRC Tax Table B is $2,911.

Computation of Estimated Tax:

	Gross Income	Percentage to Total Income
Income from without NMI	$2,000	.10
Income from within NMI	18,025	.90
Total Income	20,025	100%

The percentage of income from without NMI is 10%; therefore, 10% X the 1978 tax liability of $2,911 is $291.10. The 1979 NMI Declaration of Estimated Tax should show $291.10 which would be payable in the three remaining installments as follows:

June 15, 1979	-	$97.04
September 15, 1979	-	97.03
January 15, 1980	-	97.03
		$291.10

(3) Residents of the Northern Mariana Islands - No Territorial Income Tax return was required for taxable years prior to January 1, 1979. Therefore, a Declaration of Estimated Tax may be based upon income from without the Northern Mariana Islands received in the taxable year 1978 as shown in the example. There is no tax liability on income from within the Northern Mariana Islands pursuant to Public Law No. 1-30.

(4) Where to File Your Declaration - You should file your Declaration of Estimated Tax with the jurisdiction (United States or the Northern Mariana Islands) with which you would file your income tax return if your tax year were to end on the date your estimated tax return is first due. All subsequent payments should be filed where your original estimated tax return was filed. For further information, see Publication 570, which is available at the Division of Revenue and Taxation in Chalan Piao, Saipan, CM 96950.

(e) Nonresident Aliens -

(1) All aliens are considered nonresident aliens unless they acquire residence in the Northern Mariana Islands. The essential quality of a nonresident alien's stay in the Northern Mariana Islands is that of presence as a transient or sojourner, in other words, merely a visitor for a short time. Ordinarily, an alien whose stay in the Northern Marianas is limited to a definite period by the immigration laws is a nonresident alien. However, an alien with a limited visa may be considered a resident alien under certain circumstances. The alien must be able to obtain from immigration authorities the necessary visa extension, or extensions to lengthen his stay into an extended period.

(2) The precise length of an extended period is not set by law. If the alien has resided in the Northern Mariana Islands for as much as one year, there is a presumption that he is a resident, and will be treated as a resident alien for tax purposes.

(3) A nonresident alien of the Northern Mariana Islands is subject to territorial income tax in the same manner as a nonresident alien of the United States and is subject to Territorial Withholding Tax and required to file an income tax return on Form 1040NR pursuant to the provisions of the Internal Revenue Code.

EFFECTIVE DATE. These regulations shall be effective retroactive to January 1, 1979.

10/25/79
Date

S. A. Newman
Saul A. Newman
Director of Finance

MEMORANDUM

TO : Attorney General's Office

DATE: 12 February 1980

FROM : Program Coordinator, CRM

SUBJECT: Executive Order, Proposed Regulations

Coastal Resources Management (CRM) is transmitting the attached Executive Order No. 15, and proposed regulations. These are to be published in the February 15, 1980 Commonwealth Register.

Ivan Groom

Attachment(s)

PUBLIC NOTICE

Proposed Coastal Resources Management Regulations

The Directors of the Departments of Natural Resources, Commerce and Labor, Public Health and Environmental Services (Division of Environmental Quality), Public Works, and the Office of the Attorney General, in accordance with Public Law 1-08, the Exeuctive Branch Organization Act and Executive Order No. 15, are proposing to promulgate regulations which will implement the Commonwealth's Coastal Resources Management Program.

The proposed regulations are promulgated pursuant to the following specific authorties of Public Law 1-08:

Office of the Attorney General, Chapter 3.
Section 3(f), 3(g), 3(h)

Department of Commerce and Labor, Chapter 9.
Section 3(a), 3(c), 3(d), 3(e), 3(f)
Section 6

Department of Public Health and Environmental Services (Division of Environmental Quality), Chapter 12.
Section 3(e), 3(g),(1,3,4,5,9,11,13,15,16,17,21, and 24)

Department of Natural Resources, Chapter 13.
Section 3(a through i)
Section 4
Section 5

Department of Public Works, Chapter 15.
Section 3(a), 3(b)
Section 4

The proposed regulations cover the following subjects in the Coastal Resources Management Program:

1) Authorities and Coverage of Chapter
2) Public Participation and Information
3) Program Management
4) Standards and Priorities for consideration of Coastal Permits
5) Areas of Particular Concern, Standards and Priorities
6) The Coast Permit Process
7) Compliance and Enforcement
8) Penalties
9) Definitions
10) Effective Date
11) Internal Procedural Regulations

Copies of the proposed regulations may be obtained at the Commonwealth Coastal Resources Management Office, Saipan, CM 96950.

The directors of the named departments are soliciting views and opinions of the general public concerning the proposed regulations.

Anyone interested in commenting on these proposed regulations may do so by submitting in writing to the Coastal Resources Management Office, Saipan, CM 96950 within thirty (30) days from the date this notice is published in the Commonwealth Register.

I. AUTHORITIES

The authority for these regulations is contained in Chapters 3, 9, 12, 13, and 15 of Public Law 1-8, and in Executive Order No. 15.

II. COVERAGE OF CHAPTER

(a) This chapter contains standards to be used by Program agencies in carrying out their responsibilities under the Coastal Resource Management Program. (CRMP)
(b) Nothing in this program displaces or diminishes the authority of any agency of the Commonwealth Government with respect to resources of the Commonwealth. Uses and activities conducted by agencies in the Commonwealth must be consistent with the program and the standards contained in this chapter. In authorizing coastal permits for proposed projects pursuant to their authority, each agency shall grant a coastal permit if, in addition to finding that the proposed project complies with the agency's statutes and regulations, the agency finds that the proposed project is consistent with the CRMP and the standards and priorities contained in this chapter.

III. PUBLIC PARTICIPATION AND INFORMATION

(a) The CRM Office will provide adequate, effective, and continuing opportunities for public participation in the coastal management program. The CRM Office will give adequate notice regarding opportunities for public participation.
(b) The CRM Office will make available to the public and the agencies participating in the CRMP information and educational materials concerning the Commonwealth's coastal resources and resources management, in a manner which assists the public and other affected parties in understanding the need for the CRMP and what is required of permit applicants. The CRM Office shall also prepare an annual report for the Governor on the CRMP, this report shall be a public document.
(c) At public meetings concerning the CRMP when requested and reasonably necessary, translation into the appropriate vernacular shall be provided.

IV. PROGRAM MANAGEMENT - GENERAL

(a) The following Areas of Particular Concern (APC) are hereby created. The following agencies are the designated lead and participating agencies for each APC as hereafter listed. The APC's herein created are established as mapped upon the CRM Program Maps which are on file in the CRM Office and open to public inspection.

(1) Lagoon and Reef APC

A) The Department of Natural Resources (DNR), is the lead agency for this APC.
B) The Department of Public Health and Environmental Services, (Division of Environmental Quality DEQ), is the participating agency for this APC.

(2) Wetlands and Mangrove APC

(A) DNR is the lead agency for this APC
(B) DEQ is the participating agency for this APC.

(3) Shoreline Zone APC

A) The Department of Commerce and Labor (DCL) is the lead agency for this APC.
B) DNR and DEQ are the participating agencies for this APC.

(4) Port and Industrial APC

A) DCL is the lead agency for this APC.
B) The Department of Public Works (DPW) and DEQ are the participating agencies for this APC.

(b) Major sitings outside APC's shall have the DEQ as their lead agency and require the same permit procedure as is required for any developments in an APC. The CRM Office shall determine on a case by case basis which other agencies, if any, should act as participating agencies in major siting permit decisions.
(c) Major sitings anywhere in the CM shall require a valid coastal permit.
(d) Upon the written request of any person, the program agencies with advice of the CRM Office and the Coastal Advisory Council shall consider further designations of APC's or the change in any APC boundaries. A written decision on any request shall be issued within ninety (90) days through the CRM Office by the program agencies.

V. STANDARDS AND PRIORITIES FOR CONSIDERATION OF COASTAL PERMITS.

(a) In an APC or for any proposed project which has been determined to be a major siting.

(1) The lead agency with the assistance of any participating or advisory agency shall, prior to any decision on any coastal permit, determine the impacts of existing uses and activities on coastal waters and shall determine whether the added impact of a proposed project would result in a significant and permanent degradation of coastal waters.
(2) The lead and any participating agency shall not grant a coastal permit for any proposed project which creates a significant degredation in the quality of coastal waters.
(3) The proponent of the proposed project shall demonstrate that no feasible and prudent alternative location is available for the proposed project prior to the issuance of the coastal permit.
(4) Proposed projects shall be to the maximum extent practicable compatible with adjacent shoreland uses and designated land uses.

VI. AREAS OF PARTICULAR CONCERN - STANDARD AND PRIORITIES

The lead and any participating agency shall require one coastal permit for any proposed project within any APC. Prior to issuance of the coastal permit for any APC the lead and any participating agency shall evaluate the proposed project in terms of its compatability with the following policies and priorities. If there is more than one proposed project for a particular location in any APC and if all of those proposed projects would be eligible for a coastal permit, the one proposed project which is determined by the lead and any participating agency as the most compatable with the following priorities and policies for each APC shall be awarded the coastal permit. After this evaluation the lead and participating agencies shall grant, deny or condition the permit for the proposal.

(a) STANDARDS AND PRIORITIES FOR THE LAGOON AND REEF APC

(1) The Commonwealth shall:

A. Manage the development of the reef fishery and mariculture within productive renewable marine resource areas.
B. Balance economic development with the conservation and management of living and non-living resources of the Lagoon and Reef APC.
C. Where appropriate, designate underwater preservation areas for non-extractive recreation purposes in areas representing the richness and diversity of the reef community.
D. Prevent significant adverse impacts to reefs and corals.
E. Investigate the historical and habitat values of war relics in the lagoon and cause the removal of relics which are considered hazardous debris rather than valuable habitat or historic property.
F. Use as a basis in its decisions the effects of proposed projects on the subsistence fishery.

(b) USE PRIORITIES

1) The use priority categories for the Lagoons of Saipan, Tinian, and Rota shall be as follows:

A) Highest

(i) Conservation of open space, high water quality, historic and cultural resources.
(ii) Public recreation uses, including structures enhancing access.
(iii) Water dependent projects which are compatable with adjacent uses.
(iv) Preservation of fish and wildlife habitat.
(v) Sport and small scale taking of edible marine resources within sustainable levels.
(vi) Activities related to the prevention of beach erosion.
(vii) Piers and docks which are constructed with floating materials.

(B) Moderate

(i) Commercial taking of edible marine resources within sustainable levels.

(C) Lowest

(i) Point source discharge of drainage water which will not result in a significant permanent degredation in the water quality of the lagoon.

(ii) Dredge and fill activity designed to prevent or mitigate adverse impacts for the purposes of constructing piers, launching facilities, infrastructures and boat harbors.

(D) Unacceptable

(i) Discharge of untreated sewage, petroleum or other hazardous materials.
(ii) Taking of aggregate materials not associated with permitted activities and uses.
(iii) Destruction of coralline reef matter not associated with permitted activities and uses.
(iv) Dumping of trash, litter, garbage or other refuse into the lagoon or at a

(v) Placement of fill not associated with permitted construction of piers, launching facilities, infrastructure and boat harbors.

2) Use Priority Categories for Managaha Island - Saipan shall be as follows:

(A) Highest

(i) The maintenance of the island as an unihabited place used only for cultural and recreational purposes.
(ii) Improvements for the purpose of sanitation and navigation.

(B) Lowest

(i) - Commercial activity situated on the island unrelated to cultural and passive recreation pursuits.

(C) Unacceptable

(i) - Development, uses or activities which preclude or deter or are unrelated to the use of the island by residents of the Commonwealth for cultural or recreational purposes.

(3) Use Priority Categories for Anjota Island - Rota shall be as follows:

(A) Highest

(i) - Continued maintenance of that part of the island known as Anjota Wildlife Preserve as a wildlife sanctuary.

(B) Unacceptable

(i) - Expansion of the Port and Industrial section of Anjota Island which would encroach upon or have significant adverse impact upon the wildlife preserve.

(4) The Use Priority Categories for the Coral Reefs of Saipan, Tinian, and Rota shall be as follows:

(A) Highest

(i) Maintenance of highest levels of primary productivity.
(ii) Creation of underwater preserves in pristine areas.

(B) Moderate

(i) Dredging of moderately productive corals and reefs associated with permitted uses and activities.

(D) Unacceptable

(i) Destruction of reef and corals not associated with permitted projects.
(ii) Taking of corals for commercial fishery below su stainable levels.

(b) Standards for permit issuance for the Wetland and Mangrove APC.

(1) The Commonwealth shall:

A. Manage wetlands and mangrove areas so as to assure adequate water flow, nutrients, and oxygen levels and avoid adverse effects on natural drainage patterns, the destruction of important habitat, and the discharge of toxic substances;
B. To the maximum extent practicable, preserve the integrity of the mangrove community through strict management, including vigorous enforcement of legal sanctions, of any activity or development which threatens the ecological process of the mangrove community.
C. Identify and maintain critical wetland habitat so as to increase the potential for survival of known rare and endangered flora and fauna.
D. Manage development and infrastructure in such a way as to preclude significant adverse impacts to the normal hydrological process' of wetlands and mangroves.
E. To the maximum extent practicable, increase and maintain public land-holdings in and adjacent to the APC.
F. Attempt to utilize wetland resources for appropriate agriculture, compatible recreation, public open space and similar uses which are managed so as not to result in decreased productivity of the natural resources.
G. Evaluate the capability of wetlands to withstand the impacts of development.

(b) USE PRIORITIES

(1) The use priority categories for the Wetlands and Mangrove APC shall be as follows:

A) Highest

(i) Preservation and enhancement of mangrove and wetlands area.
(ii) Preservation of wildlife, primary productivity, conservation areas, historical properties in both mangrove and wetland areas.

B) Moderate

(i) Agriculture benefited by inundation and low density grazing in non-mangrove areas.
(ii) Infrastructure corridors which are designed to result in no direct significant impact to the normal hydrological processes of wetland and mangrove areas.

C) Lowest

(i) Development which is floodproof and designed to cause the least adverse environmental impacts to wetland regimes.

D) Unacceptable

(i) Land fills and dumping not associated with flood control and utility corridors and other permitted activities and uses.
(ii) Development which would result in extensive sedimentation of wetland, mangrove areas, and coastal waters.

(i) Public recreational uses of beach areas, including structures enhancing access, and the creation of public shoreline parks.
(ii) Compatible water dependent development which cannot be reasonably accommodated in other locations.
(iii) Traditional cultural and historic practices.
(iv) Preservation of fish and wildlife habitat.
(v) Preservation of natural open areas of high scenic beauty.
(vi) Activities related to the prevention of beach erosion.

B) Moderate

(i) Agriculture (including aquaculture) of a scale enhanced by or which requires conditions inherent in this APC.

C) Lowest

(i) Projects which result in growth or improvements to existing commercial, non-recreational public and multi-unit residential uses.
(ii) Uses in an area where existing historical land use has irreversibly committed the area to uses compatible with the proposed use.
(iii) Mining or other taking of sand, gravel, or other aggregate, and extraction of minerals, oil and gas, and other extractive uses.

D) Unacceptable

(i) New commerical, industrial, non-recreational public, and residential structures which are not water dependent.
(ii) Disposal of wastes, garbage, litter, refuse.

(d) Standards for permit issuance for the Port and Industrial APC.

(1) The Commonwealth shall:

A. Use the Port and Industrial APC efficiently, and with the recognition that economic and social development of the Commonwealth is dependent on suitable port facilities.
B. Plan for the wise use and re-development of the limited geographical area comprising the Port and Industrial APC.
C. Assure that development in the Port and Industrical APC is done with respect for the Commonwealth's inherent natural beauty and the people's constitutionally protected right to a clean and healthy environment.
D. Plan and implement improvements to infrastructure in the Port and Industrial APC.
E. Direct its policies to provide for adequate resources for water dependent port and industrial uses.
F. Not permit port and industrial projects which would result in significant adverse impacts, including cumulative, on coastal resources outside the Port and Industrial APC.
G. Study the possible conflicts between the need for water resources for industrial projects and the limited availability of coastal locations.
H. Request early identification of military land water use plans in the Commonwealth and plan for the potential exercise of Military Retention Area options affecting port resources.
I. Plan for and locate, to the maximum extent practicable, petroleum based coastal energy facility siting within the Port and Industrial APC.

(iii) Significant changes (ie grading) to natural land forms in areas adjacent to Wetlands and mangroves which would result in hydrological/sedimentational damages.

(c) Standards for permit issuance for the Shoreline APC

(1) The Commonwealth shall:

A. Recognize and use as a basis in its shoreline development decisions the impact of onshore activities upon the productivity of and natural processes of coastal resources.
B. Continue its planning process to reduce beach erosion.
C. Strictly regulate the taking of beach sands, gravel, other aggregates, minerals, etc., for any purpose.
D. Cause the removal of hazardous debris and litter from beaches and coastal areas.
E. Increase and maintain public land holdings along the shore for the purpose of access and hazard mitigation through land trades with Marianas Public Land Corporation (MPLC), land purchases, creation of easements and where no practicable alternative exists, through the constitutional authority of eminent domain.
F. Attempt to alleviate the adverse effects on private property owners as a result of government policies by negotiating on behalf of the affected private property owner free title land exchanges with MPLC.
G. In addition to the consistency of the proposed project with the standards set out above, the lead and participating agencies shall consider the following project specific criteria in its review of an application for a coastal permit:

(i) Whether the proposed project is water dependent in nature.
(ii) Whether the proposed project is predominately to facilitate or enhance coastal recreational, subsistence or cultural opportunities, (i.e., docking, fishing, swimming, picnicking, uhts, navigation devices, etc.).
(iii) Whether the existing land use including the existence of roadways has irreversibly committed the area to uses compatible to the proposed project, provided that the proposed project would be constructed in a way to cause minimal adverse impact.
(iv) Whether the proposed project is a single family dwelling in an existing residential area and would occur on private property owned by the same owner as of the effective date of the program, of which all or a significant portion of which is located in the Shoreline Zone APC, and provided no reasonable alternative is open to the property owner to trade land, relocate or sell to the government, if these conditions are met the proposed project may be permitted.
(v) Whether the proposed project would be safely located on a rocky shoreline and would not cause significant adverse impacts to wildlife or marine or scenic resources.
(vi) Whether the proposed project is designed to eliminate or mitigate shoreline erosion.

(b) USE PRIORITIES

(1) Use Priority Categories for the Shoreline APCs of Saipan, Tinian and Rota are as follows:

(A) Highest

J. Develop regular communication with Federal agencies and monitor federal port related opportunities and constraints which are applicable to the Commonwealth.
K. Investigate the concept of creating duty free zones, customs-free zones and a port authority, etc., to enhance economic development.

(d) USE PRIORITIES

(1) Use Priority Categories for the Port and Industrial APC's in Saipan, Tinian and Rota are as follows:

A) Highest

(i) Water dependent Port and Industrial activities and uses.
(ii) Conservation of coastal locations for water dependent uses.
(iii) Industrial uses which are not water dependent but which would cause adverse impacts if situated outside the Port and Industrial APC, but which would not be sited directly on the shoreline of the APC, and would not preclude the opportunity for water dependent activities and uses.
(iv) Development and maintenance of infrastructure to facilitate industrial and water dependent opportunities for Port and Industrial growth.
(v) Redevelopment, Historic Preservation, and Restoration.

B) Moderate

(i) Aquaculture and mariculture which is compatible with Port and Industrial environmental constraints.

C) Lowest

(i) Recreational boating.
(ii) Clearing, grading, blasting which does not have long terms adverse effects on environmental quality, drainage patterns, or adjacent APC's.
(iii) Industries and services which support water dependent industry and labor.

D) Unacceptable

(i) Long-term storage of in transit hazardous materials in the Port and Industrial APC.
(ii) Activities and uses which would place excessive pressure on existing facilities to the detriment of Commonwealth interests, plans and policies.
(iii) Uses or activities which are acceptable in other APC's and which do not enhance or are not reasonably necessary to permissable uses, activities and priorities in the Port and Industrial APC.
(iv) Non-Port and Industrial activities and uses which if permitted would result in conversion to other uses at the expense of Port and Industrial related growth, or would induce Port and Industrial related growth into other APC's or areas.
(v) Uses and activities which would cause adverse affect on other APCs, American Memorial Park, Anjota Preserve, and historic properties, and other significant coastal resources.

(e) Standards for the consideration and creation of additional APCs.

1) If any area meets the standards delineated in (e)(2) below, the program agencies may designate such an area as an APC, and promulgate standards and priorities for that area.

2) The program agencies shall consider whether the following represent areas requiring special management are:

(A) Areas of unique, scarce, fragile or vulnerable natural habitat; unique or fragile, physical, figuration (as, for example, Saipan Lagoon); historical significance, cultural value or scenic importance (including resources on or determined to be eligible for the National Register of Historic Places.);
(B) Areas of high natural productivity or essential habitat for living resources, including fish, wildlife, and endangered species and the various trophic levels in the food web critical to their well-being;
(C) Areas of substantial recreational value and/or opportunity;
(D) Areas where developments and facilities are dependent upon the utilization of, or access to, coastal waters;
(E) Areas of unique hydrologic, geologic or topographic significance for industrial or commercial development or for dredge spoil disposal;
(F) Areas or urban concentration where shoreline utilization and water uses are highly competitive;
(G) Areas where, if development were permitted, it might be subject to significant hazard due to storms, slides, floods, erosion, settlement, and salt water intrusion;
(H) Areas needed to protect, maintain or replenish coastal lands or resources including coastal flood plains, aquifers and their recharge areas, estuaries, sand dunes, coral and other reefs, beaches, offshore sand depostis and mangrove stands;
(I) Areas needed for the preservation or restoration of coastal resources due to the value of those resources for conservation, recreational, ecological or aesthetic values.

(f) Standards for Determing Major Sitings.

- A Major Siting may be similar to and include:

(1) Any project which requires a federal license, permit or other authorization from any regulatory agency of the U.S. Government.
(2) Energy related facilities, wastewater treatment facilities, transportation facilities, pipelines, surface water control projects, harbor structures.
(3) Sanitary land fills, dredge disposal sites, mining activities, quarries, basalt extraction.
(4) Dredging and filling in marine fresh waters; discharge of wastewater, sewerage, silt, dredged materials; shoreline modification, ocean dumping, artifical reefs.
(5) Those proposed projects with potential for significant adverse affects on: Submerged lands; groundwater recharge areas; historic, archaeological sites and properties; important cultural areas; designated conservation and pristine areas, or uninhabited islands; sparsely populated islands; mangroves, reefs, wetlands, beaches, and lakes. Areas of scientific interest; recreational areas; limestone, volcanic and cocos forest.
(6) Major recreational developments; major urban developments.
(7) Government buildings, highways, infrastructure development.
(8) Those proposed projects which, in the opinion of the program agencies, have the potential for causing a direct and significant impact on coastal waters.

The CRMP creates a permit process to manage any proposed projects which may directly and significantly affect the coastal resources of the Commonwealth. The regulations in this section contain the requirements and procedures for the granting, denial or, conditioning of coastal permits.

a) Permit Process

(1) A coastal permit is required prior to beginning any work on any proposed project to be located:

(A) Wholly or partially or intermittanly in an APC, or
(B) Anywhere in the Commonwealth outside any APC if, it is determined by the CRM Office, or by any lead or participating agency, that the project constitutes a major siting.

(2) Section VII(a)(1) above is inapplicable, if the proposed project is specifically exempted by Section VII(c) or is to be located on federally excluded lands.

(3) If a proposed project will be located in more than one APC, a coastal permit shall be required for each segment of the proposed project in each APC. At the written request of the proponent of the proposed project the lead agencies for each APC in which the proposed project is to be located may consolidate the coastal permit applications into one permit application for decision making purposes. Provided however, that any consolidation of permit applications shall not exempt any portion of a proposed project, which is located in its respective APC, from the applicable standards and priorities for each individual APC. Provided further, that any proposed project, which is located in more than one APC and extends into areas which are not APC's, may be determined by the program agencies to constitute a major siting.

(c) Exemptions from Coastal Permit Requirements:

(1) The following types of projects may not have direct or significant impacts on coastal waters; hence, a coastal permit may not be required, except as set forth in subsection VII(c)(2) and (3). Any relief from coastal permit requirements does not exempt a project from any other Commonwealth regulatory authority.

A. A proposed project situated completely outside of any APC and which does not constitute a major siting.
B. Agricultural activities on lands which have been used for such activities.
C. Hunting, fishing, and trapping.
D. The preservation of scenic, historic, and scientific areas including wildlife preserves which do not require any development.
E. Construction of single family dwellings, out buildings, and small neighborhood business outside of an APC.
F. Any proposed project which, as determined by the CRM Office after consultation with the relevant program agencies, does not appear to have a direct and significant impact on coastal waters.

2. If any proposed project exempted by Subsection VII(C)(1), above, will result in discharge into coastal waters, or significantly change existing water flow into coastal waters, then the project proponent shall notify the CRM Office and provide such information regarding the proposed projects as may be required by the CRM Office in deciding whether the proposed project requires a coastal permit.
3. Should it be found that a particular proposed project exempted by Subsection VII(c)(1) above has or may have direct and significant impact on coastal waters, the CRM Office or any lead agency may conduct such investigation(s) as may be appropriate to ascertain the facts and may require the person(s) conducting such proposed project to provide all of the necessary information regarding the proposed project in order that a determination may be made as to whether the proposed project requires a coastal permit.

(d) Permit Application Procedures and Requirements

(1) A Standardized Coastal Permit Application form shall be available at the Division of Land Management Office in Saipan, Tinian and Rota and at the CRM Office and each lead, participating, or advisory agency's office. The application shall require the necessary information to evaluate any proposed project in accordance with these regulations.
(2) The CRM Office may establish a fee schedule on behalf of program agencies, in order to cover the costs of processing coastal permit applications. Any assigned fee must be paid prior to any certification for a completed application.
(3) A performance bond or undertaking may be required by the lead agency for any proposed project as a condition to receiving an approved coastal permit. The amount of the bond shall be one hundred and ten percent (110%) of the infrastructure costs of the project. The entire bond or any undertaking or any portion thereof shall be forfeited as determined by the lead agency for failure to comply with any applicable regulation except as permitted by a variance or other legal exception. The entire bond or any portion thereof shall be forfeited in the amount required to complete the site preparation and infrastructure features or restore the project site should these tasks not be completed by the developer.
(4) The lead and any participating agency shall together either approve, including any approval condition, or deny in whole or in part the application for the proposed project.
(5) Any expansion or alteration of a proposed project, for which a coastal permit has been granted, which substantially changes the proposed project, shall require an amended coastal permit. Such amendment must be the subject of a new permit application.
(6) If a proposed project requiring or having a coastal permit is not completed or operations totally cease within the time period which may be prescribed on the permit, the coastal permit holder shall be required to restore the natural appearance and biological character of the land to its condition prior to the initiation of the proposed project.
(7) Variances to such procedures and standards as outlined in these regulations may be jointly granted by the lead and any participating agency, after review by any program agency and the CRM Office, but only upon written findings that the applicant satisfies any of the criteria for which variances are granted.

(8) If any project which requires a federal license or permit also requires a coastal permit, then, applications for both should be filed simultaneously. A certification of consistency with the CRMP shall be filed with both applications. Some of the federal licenses and permits which the CRM Office will review for consistency with the CRMP are attached as an appendix to these regulations.
(9) Any application submitted to the Planning and Budget Affairs Office for any federal assistance program listed in the Catalog of Federal Domestic Assistance shall include a certification of consistency with the CRMP. If a coastal permit is required for a product of federal assistance, then, both applications should be made simultaneously.
(10) A certification of consistency with the CRMP shall accompany any fiscal or budgetary submittal made to the Planning and Budget Affairs Office by any entity of the Commonwealth Government for the purpose of including the submittal in the Commonwealth Budget.

(e) Agency Review and Permit Decision:

(1) Review Criteria. After an application for a coastal permit is certified as complete including a completed certification of consistency with the CRMP if required, the lead agency and any participating agency, and the CRM Office shall review the application. The CRM Office shall ultimately be responsible for the consistency of any proposed project with the CRMP and for compliance with all of the requirements of the federal consistency regulations. The lead agency and any participating agency shall also review the proposed project for its consistency with the CRMP and consult with the Coastal Advisory Council where such advice may be of assistance. All of the advice of the Coastal Advisory Council shall be summarized in writing and attached as part of the permit application record. The lead agency shall with the assistance of the CRM Office try to resolve adverse comments by program agencies prior to a decision on the permit application by the lead and any participating agency. If there is no resolution of any dispute the lead shall utilize the procedure set out in Section VII(g) herein.

The lead and any participating agency shall be the agencies to make the initial decision on the coastal permit application within their jurisdiction provided that any initial decision shall be transmitted to and officially issued by the CRM Office or its designee.

(2) Review Period.

(A) An applicant shall file its application for a coastal permit to the CRM Office or its designee. With ten (10) working days the CRM Office shall transmit to the applicant an officially dated notice of receipt. Within forty five (45) days of the date of the official notice of receipt the CRM Office after consultation with the lead and any participating agency shall certify whether the application is complete. If the application is not certified complete the applicant shall be promptly notified of any deficiency by the CRM Office and any review period cannot begin until receipt of the required information. The CRM Office shall aid the applicant in understanding any deficiencies and the steps necessary to complete the application. The date on which any application is certified as complete is the date from which the permit approval periods of subsection 2(B) herein shall run and the date by which the CRM Office shall transmit the certified complete coastal permit application to the relevant lead, participating and advisory agencies.

(B) The lead and any participating agency shall transmit their joint written initial decision on the certified complete coastal permit application to the CRM Office so that a decision may be officially issued within ninety (90) days of certification and within one hundred and eighty (180) days of certification of any coastal permit application which involves any federal consistency certification by the CRM Office. If an initial decision does not issue within the prescribed time periods the coastal permit shall be deemed granted. Provided however, that either the ninety (90) or the one hundred eighty (180) day review period may be set aside by the lead agency or the CRM Office if the public interest would be harmed if no set aside occured; Provided further; that the reasons for such a set aside must be in writing and made a part of the record for the permit and that the decision to set aside may be appealed by the applicant as hereinafter provided.
(C) Notwithstanding the length of the review periods in VII(e) (2)(A) and (B) above the program agencies shall promptly process any application for a coastal permit.

(3) Public Notice.

(A) Within fifteen days of the transmission of the officially dated notice of receipt to the applicant, the CRM Office shall publish public notice of the application for a coastal permit in a local newspaper serving the community. The notice shall provide information on the nature of the proposed project including its size, location, and type. All notices shall provide information as to the procedure pursuant to which any person, including program agencies, may request a public hearing. If such a public hearing is requested, the CRM Office shall publish notice of the hearing no less than fifteen days prior to the hearing in a local newspaper serving the community to be affected. The CRM Office shall not certify any coastal permit application as complete for which a public hearing has been requested until a hearing has been held. The CRM Office Coordinator or his designee shall be the hearing officer. All oral or written testimony and evidence received shall be recorded, transcribed and made a part of the permit application record, and shall be considered in any decision upon a coastal permit application.
(B) The CRM Office shall regularly publish in the Commonwealth Register the status of the permit applications that are under consideration by the CRMP.

(4) Denials. If it is decided by the lead and any participating agency, to deny a coastal permit, the official decision of the CRM Office must set out the specific reason(s) for the denial. If the decision to deny a proposed project, which is the subject of an application for a federal license or permit or of a federal assistance project, is due to the proposed project's inconsistency with the CRMP, the official decision must set out the reason(s) why it is inconsistent.

(5) Conditional Approvals. If the decision is to conditionally approve the coastal permit, the official decision must set out the condition(s) and the specific reason(s) for each condition. However;

A) Any coastal permit may be conditioned by the lead agency and any participating agency, jointly or singularly by the CRM Office to require that the permit applicant obtain any necessary Commonwealth permit, entitlement or license prior to the permit becoming effective, and

B) Any coastal permit may be conditioned by the lead agency to require a time certain for beginning and or completing the proposed project subject to the permit.

(6) Variances. If an application for a coastal permit is denied or if the proponent of a project elects to request a variance from the requirements of a coastal permit, the application for the variance must contain the reasons why a variance is sought and any data, information or documentation necessary to meet the standards for variances as contained in subsection VII(h). The written advice of program agencies and the advice of the Coastal Advisory Council shall be sought with respect to all variance applications. The advice of the Council shall be summarized in writing and attached to the variance application record. Any application for a variance shall be subject to the same procedural terms and conditions as is required for any application for a coastal permit.

(f) Appeals.

(1) Appeal to the Governor: Any person aggrieved by an official decision to grant deny or conditionally approve a coastal permit or to grant or deny a variance from a coastal permit may appeal directly to the Governor. A notice of appeal must be filed in writing and delivered to the Office of the Governor and the CRM Office within 30 days of the date of the decision to deny the permit. Such an appeal period maybe waived by the Governor for cause. The Governor may seek the advice of the Coastal Advisory Council, the CRM Office, the lead, or any participating agencies or the Office of the Attorney General. Any advice shall be summarized in writing and attached as part of the record of the case. Any person or program agency may seek an audience with the Governor for the hearing of the appeal. Following submission of all evidence the Governor shall either issue the final administrative decision of the Commonwealth Government, or remand the appeal to the lead and/or particpating agency specifying issues in writing for further consideration.
(2) Judicial Review: Any decision of the Governor regarding a coastal permit may be appealed to any court of competent jurisdiction.

(g) Agency Disagreement over Variance or Permit Decision:

If the CRM Office and the lead agency or any other agency of the Government of the Commonwealth participating in the permit application review process are unable to agree as to whether a coastal permit should issue, or whether a variance from the requirements of consistency with the CRMP should be granted, the agencies unable to reach an agreement shall meet with the Coastal Advisory Council. The Council shall consider the subject of the disagreement and shall attempt to mediate the issue. The Council may offer any advice it deems appropriate. Any advice offered by the Council shall be summarized in writing and shall be attached as part of the coastal permit application record. If, after meeting with the Coastal Advisory Council, the agencies remain deadlocked the matter will be presented to the Governor by the heads of the deadlocked agencies or their designated representative. The applicant may also petition to appear before the Governor, or may appear at the Governor's request to present his arguments for approval of the coastal permit or the variance. The decision of the Governor shall serve as the final administrative decision of the Commonwealth Government. Judicial review of the decision of the Governor is available

to an aggrieved person as set out in subsection VII(f), above. Any dispute subject to this subsection shall constitute an adequate issue in the public interest to suspend any procedural time table specified herein until resolution of the dispute.

(h) Standards for Granting Variances from the Requirements of a Coastal Permit.

(1) If a proposed project can be demonstrated to have a paramount concern in terms of the public, regional, or national interest.
(2) If there is a need to provide emergency repairs as a result of catostrophic events.
(3) If program agencies promulgate additional regulations in order to provide for further variances.
(4) If any proposed project initiated pursuant to a variance would to the satisfaction of all program agencies mitigate any direct and significant impact on coastal waters.

VIII. Compliance and Enforcement

(a) General

1. The provisions of this Chapter shall be cumulative and not exclusive and shall be in addition to any other remedies available at law or in equity.

(b) Enforcement

1. Any person may maintain an action for declaratory or for other equitable relief to restrain any violation of these regulations. On a prima facie showing of a violation of these regulations, preliminary equitable relief shall be issued to restrain any further violation. No bond shall be required for an action under this subsection.
2. Any person may maintain an action to compel the performance of the duties specifically imposed upon the CRM Office, or the lead agency, or any program agency by these regulations; provided, however, that no such action shall be brought prior to thirty days after written notice has been given to the CRM Office, the lead agency, or such program agency by the complainant specifying the duties which the complainant alleges have not been performed. No bond shall be required for an action under this subsection.
3. The CRM Office and the lead agency shall regularly monitor a permittee's compliance with the terms and conditions of its coastal permit.
4. Any program agency shall have the power to enter at reasonable times upon any lands or waters of the Commonwealth which are subject to an application or have received a coastal permit. The permit applicant or permitee shall permit such entry for the purpose of evaluating the coastal resources subject to a permit application or for inspecting and ascertaining compliance with the terms and conditions of an issued coastal permit, and allow access to such records as the CRM Office and the lead agency may require the permittee to maintain, pursuant to these regulations. Such records may be examined and copies shall be submitted to the CRM Office or lead agency upon request.
5. Violation of any term or condition of any coastal permit issued or approved pursuant to these regulations shall be grounds for the revocation or the suspension of a coastal permit.

6. When the CRM Office or lead agency has reason to believe that any person has undertaken, or is threatening to undertake, any activity that may require a coastal permit, or that may be inconsistent with any coastal permit previously issued, the CRM Office or lead agency may issue a written order directing such person to cease and desist. The cease and desist order shall state the reasons for the CRM Office's or lead agency's decision and may be subject to such terms and conditions as the CRM Office or lead agency deems necessary to insure compliance with the provisions of these regulations, including without limitation, immediate removal of any fill or other material, suspension of the coastal permit, or setting of a schedule within which steps must be taken to obtain a coastal permit pursuant to these regulations. This order shall be served by certified mail or hand delivery upon the person being charged with the actual or threatened violation of these regulations. The decision to issue such an order may be appealed to the Governor pursuant to subsection VII (f) of these regulations and shall thereafter be subject to judicial review pursuant to subsection VII (f) of these regulation if the petitioner is aggrieved by the decision of the Governor.

7. In addition to any other remedy provided herein or at law or in equity, the Attorney General, the CRM Office or the lead agency may institute a civil action in the Court of the appropriate jurisdiction. Such an action may include revocation of the permit issued hereunder, or an order to prevent any person from violating the provisions of these regulations, including an action to enforce any cease and desist order or any of these regulations.

IX. Penalties

(a) Any person who violates any provision of these regulations, or any order issued hereunder, shall be subject to a civil fine not to exceed ten thousand ($10,000) dollars.

(b) In addition to any other penalties provided by law, any person who intentionally and knowingly initiates a project in violation of these regulations shall be subject to a civil fine of not less than twenty five dollars nor more than ten thousand dollars per day for each day during which such a violation occurs.

(c) In addition to the foregoing and in order to deter further violations of the provisions of these regulations, of any permit or permit condition or of any cease and desist order, the Attorney General, the CRM Office, or the lead agency may maintain an action for exemplary damages, the amount of which is left to the discretion of the Court, against any person who has intentionally and knowingly violates any provisions of these regulations.

(d) All civil penalties permitted herein shall be assessed by the appropriate court; provided, however, that the program agencies may promulgate rules and regulations establishing an alternative procedure for the administrative assessment of civil penalties.

(e) Any person who knowly makes a false statement, representation, or certification in any application for a coastal permit, or in any record, plan, or other document filed or required to be maintained under these regulations, or by any permit or order issued pursuant to these regulations; or who falsifies, tampers with or knowingly renders inaccurate any monetary device or method required to be maintained pursuant to these regulations or any permit or order issued pursuant to these regulations shall be subject to permit revocation or suspension or subject to a civil fine of not less than twenty five dollars or more than ten thousand dollars for each violation.

(f) All fines and fees collected under the provisions of this subsection (c) shall be deposited into the treasury of the Commonwealth.

X. DEFINITIONS

a. Advisory Agency: is any regulatory agency which may provide information and consultation on any coastal permit application.
b. Aquaculture or Mariculture Facility: a facility for the culture or commercial production of aquatic plants or animals for research or food production, sales or distribution.
c. Areas of Particular Concern (APC): any delineated geographic area within the coastal zone which may be subject to special management within the criteria, as established in subsection VI(e)(2) herein. APC's may include any area to be designated for restoration or preservation.
d. Beach: an accumulation of unconsolidated deposits along the shore with their seaward boundary being at the low-tide or reef flat platform level and extending in a landward direction to the strand vegetation or first change in physiographic relief to topographic shoreline.
e. Coastal Lands: All lands and the resources thereon and herein located within the boundaries of the Coastal Resources Management Program.
f. Coastal Resources: all coastal lands and waters and the resources thereon and herein located within the boundaries of the Coastal Resources Management Program.
g. Coastal Waters: all waters and the submerged lands under and the marine resources located within the boundaries of the Coastal Resources Management Program.
h. Coastal Resources Management Program Boundaries: the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influence by each other and in proximity to the shoreline and further including islands, transition, and intertidal areas, salt marshes, wetlands and beaches, which boundaries tends seaward to the extent of the territorial waters of the Commonwealth, as defined in 19 TTC 101(3) until termination of the Trusteeship, or to a maximum of the outer limits of the U.S. territorial sea. The Coastal Resources Management boundaries extended inland from the shorelines to include the total land area of the Commonwealth in order to control any project which has a direct and significant impact on coastal waters.
i. Coral: means the calcareous skeletons secreted in or by the tissues of various marine coelenterates, including all varieties of coral, corraline structures, and precious type corals.
j. Coral reef: means a reef formed by the gradual deposition of coral skeletons.
k. Development: means the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials, change in the density or intensity of use of land, including, but not limited to, subdivision of land and any other division of land including lot parcelling; change in the intensity of use of water, ecology related thereto, or of access thereto; construction or reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal government or utility, and the removal of significant vegetation.
l. Direct and Significant Impact: means that impact which is causally related or derives as a consequence of a proposed project, use, development, activity or structure in the coastal zone of the Commonwealth which contributes to a material change of alteration in the natural or social characteristics of any part of the Commonwealth's coastal zone.

m. Endangered or Threatened Wildlife: Species of plants and animals: 1) determined to be of such limited numbers as to be in immediate danger of extinction or reduction to a critically low population level in and around the Commonwealth of the Northern Mariana Islands, if faced with continued taking or reduction, or alteration of habitat; or 2) so designated by the U.S. Department of Interior's Fish and Wildlife Service on the latest list of "Endangered and Threatened Wildlife and Plants" (50 CFR Part 17).

n. Feasible: means capable of being done, executed, or affected.

o. Federally Excluded Lands: those federal lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal government, its officers or agents.

p. Hazardous Material: means a material or combination of materials which because of its quantity, concentration, physio-chemical or infectious nature may: a) cause or contribute to an increase in mortality or an increase in serious illness; b) pose a potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

q. Impact: is any modification in an element of the environment, including modifications as to quality, quantity, aesthetics, or human or natural use thereof.

r. Infrastructure: means those structures, support systems, and appurtenances necessary to provide the public with such utilities as are required for economic development, including but not limited to systems providing water, sewerage, transportation, and energy.

s. Lead Agency: is the agency with the primary regulatory authority to issue a coastal permit in a specifically designated geographical area of the coastal zone.

t. Licensing: includes the agency process respecting the grant, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification or conditioning of a license.

u. Major Siting: those projects which have the potential to directly and significantly impact in any adverse manner the coastal waters of the Commonwealth.

v. Management Program: includes but is not limited to a comprehensive statement in words, maps, illustrations, or other media or communication, prepared and adopted by the Commonwealth, setting forth objectives, policies, priorities, and standards to guide public and private uses of land and water in the coastal zone.

w. Marine Resources: those resources found in the coastal waters of the Commonwealth such as fish, dissolved minerals, all aquatic biota and other resources.

x. Participating Agency: is any agency having supplemental authority with regard to the issuance coastal permits in specifically designated geographical areas of the coastal zone.

y. Person: means the government of the United States of America or any if its agencies, departments thereof or the government of the Commonwealth or any agency, department or institution or any municipality; a public or private institution; a public or private corporation, partnership, joint venture, association, trust, firm, or any company organized or existing under the laws of the Commonwealth or any state or country; or any lessee or other occupant of property, or individual, acting singly or as a group.

z. Practicable: means that which may be done, practiced, or accomplished; that which is performable, and legally possible.

(aa) Program Agency: is the CRM Office or any one of the several regulatory agencies which have promulgated the Coastal Resources Management Program regulations and shall be from time to time a lead or participating agency, as designated by the regulations and when not so designated shall be considered an advisory agency.
(bb) Project: means any structure, use, development, or any other activity within the boundaries of the Commonwealth Coastal Resources Management Program.
(cc) Prudent: means that which is wise or judicious, or well thought out or being possible or that which has been well considered.
(dd) Resources: means any natural advantages or products including, but not limited to all biota, mineral, scenic, aesthetic, cultural and historical resources located within the Commonwealth of the Northern Mariana Islands.
(ee) Water-dependent Use: waterfront location is necessary for its physical function -- such as handling goods and services for transporation on water (i.e., port facilities).
(ff) Water-related Use: requiring water or water itself as a resource, but does not require a waterfront location. Includes most industries requiring cooling water, or industries that received raw material via navigable waters for manufacture or processing.
(gg) Water-oriented Use: facing the shoreline or water, but not requiring a location on the waterfront or shoreline (i.e., restaurants, hotels, condominiums, apartments). There must be adequate setbacks.
(ee) Wetland: those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances would support a prevalence of vegetative or aquatic life that requires saturated or season saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, mangroves, lakes, natural ponds, surface springs, streams, estuaries, and similar such areas.

XI. Effective Date

The regulations are effective thirty (30) days from their publication in the Commonwealth Register, provided however, that the requirement for a coastal permit for any proposed project may be waived by the lead and any participating agency for a period of time not to extend beyond October 1, 1980.

XII. Internal Procedural Regulations

The CRM Office in order to aid in the coordination of the requirements of these regulations may promulgate internal procedural regulations to govern any administrative processing and handling of any consistency certification action or coastal permit or variance application action.

Among the Federal licenses and permits that CRM Office will review for consistency with the CRMP are as follows:

Federal Agency	Permit Description	Citation
DEPARTMENT OF COMMERCE		
National Marine Fisheries Service	taking of marine mammals	Marine Mammal Protection Act; 16 U.S.C. 1361-1407
	Endangered Species permit for marine species.	Endangered Species Act 16 USC 153 Sets
DEPT. OF DEFENSE		
U.S. Army Corps of Engineers	construction of dams or ditches across navigable waters	River and Harbor Act of 1899: Section 9, 33 U.S.C. 401
	obstruction or alteration of navigable waters	Id. Section 10, 33 U.S.C. 403
	establishment of harbor lines	Id. Section 11, 33 U.S.C. 404, 405
	temporary occupation of sea wall, bulkhead, jetty, dike, level, wharf, pier or other work built by the U.S.	Id. Section 14, 33 U.S.C. 408
	discharge of dredged spoil into waters of the U.S.	Federal Water Pollution Control Act of 1972: Section 404, 33 U.S.C. 1344
	approval of plans for improvements made under Corps supervision at private expense	River and Harbor Act of 1902: 33 U.S.C. 565
	transportation of dredged spoil for the purpose of dumping it is ocean waters	Marine Protection, Research, and Sanctuaries Act of 1972 Section 103, 33 U.S.C. 1413
DEPT. OF ENERGY	prohibition and construction orders.	Energy Supply and Environmental Coordination Act

Federal Agency	Permit Description	Citation
DEPT. OF THE INTERIOR		
Fish and Wildlife Service	endangered species permits	Endangered Species Act 16 U.S.C. 1538 etseq.
National Park Service	construction of visitor centers on National Park Service land	16 U.S.C. 3
	construction of electric and communication lines across National Park Service	16 U.S.C. 5
U.S. DEPT. OF TRANSPORTATION		
U.S. Coast Guard	permits for private aids to navigation	14 U.S.C. 83
	permits for construction or modification of bridges or causeways in navigable waters	33 U.S.C. 401, 491, 525
	authorization for handling of flammable or combustable liquids by bulk in U.S. ports	46 U.S.C. 391(a)
	deepwater port permits	Deepwater Ports Act of 1974 33 U.S.C. 1501
Federal Aviation Administration	approval of airport development project applications	49 U.S.C. 1716
ENVIRONMENTAL PROTECTION AGENCY	permits for underground injection	Safe Drinking Water Act Section 1421(c)(1), 42 U.S.C. 300h
	permit to operate underground injection wells in designated areas	Resources Recovery and Conservation Act of 1976 42 U.S.C. 300h-3
	permits for handling and disposal of hazardous substances	Resources Recovery and Conservation Act of 1976 42 U.S.C. 3257

Federal Agency	Permit Description	[redacted]
	approvals under prevention of significant deterioration (PSD) regulations	Clean Air Act of 1976 Section 110, 42 U.S.C. 1857c-5
	new source construction/ operations permits	Id. Section 111, 42 U.S.C. 1857-6
	approvals under National Emission Standards for Hazardous Air Pollutants (NESHAPS) Regulations	Id. Section 112, 42 U.S.C. 1857c-7
	NPDES permits for federal installations	Federal Water Pollution Control Act of 1972, Sections 401, 402, 33 U.S.C. 1341, 1342
	NPDES permits for discharges into the contigous zone and and ocean waters	Id. Section 402, 403 33 U.S.C. 1342, 1343
	sludge runoff permits	Id. Section 405, 33 U.S.C. 1342, 1343

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

OFFICE OF THE GOVERNOR
Saipan, Northern Mariana Islands 96950

MEMORANDUM

TO : The Governor

DATE: FEB. 01 1980

FROM : Planning & Budget Affairs Officer

SUBJECT: Coastal Resources Management Program

I have read the attached Executive Order, Goals & Policies, and Attorney General's opinion. I fully concur with these and recommend you take immediate action on this matter.

Manuel A. Sablan

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

OFFICE OF THE GOVERNOR
Saipan, Northern Mariana Islands 96950

MEMORANDUM

TO : Governor Carlos S. Camacho

DATE: 1 February 1980

FROM : Coordinator, Coastal Resources Management Program

SUBJECT: CRM Program

It is my opinion that the attached executive order, goals and policies not only set-in-motion the implementation of an approvable, effective management program, but fairly represent as well the consensus of the Coastal Resources Management (CRM) Task Force.

Ivan Groom

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

OFFICE OF THE GOVERNOR
Saipan, Northern Mariana Islands 96950

MEMORANDUM

TO : Governor Carlos S. Camacho

DATE: 31 January 1980

FROM : Acting Attorney General

SUBJECT: Executive Order No. 15

I have reviewed the enclosed Executive Order No. 15 and I find it to be in order. Article III, Section 1 of the Constitution vests all executive power of the Commonwealth government in the Governor. The executive power is the general authority to implement and enforce laws passed by the legislature. This includes the power to promulgate executive orders, rules and regulations, or bring legal action against those who violate laws or other regulations.

Article III, Section 15 of the Commonwealth Constitution provides that any executive order which initiates administrative reorganization and changes existing law shall be transmitted to the Commonwealth Legislature for its approval or disapproval. After reviewing the attached Executive Order No. 15 , I have determined that it does not change existing law, since the authority for the regulatory acts directed by the Governor is contained in Public Law 1-8 and the authority to direct such acts is contained in Article III Section 1 of the Constitution.

Consequently, upon execution by the Governor, Executive Order No. 15 becomes immediately effective.

Please return the original of the attached Executive Order to the Attorney General's Office for inclusion in the next Commonwealth Register.

Glenn David Price

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
EXECUTIVE ORDER OF THE GOVERNOR

EXECUTIVE ORDER # 15

WHEREAS, there exists within the Commonwealth growing pressure and demands on our limited, sensitive and precious coastal resources;

WHEREAS, the Commonwealth's major economic and social stability lies in the areas of cultural integrity, tourism, fisheries, shipping, construction and agriculture, and there is a need to resolve conflicting demands on the coastal resources which must be shared equitably and managed for the benefit of all, including future generations;

WHEREAS, there is a clear need to establish an efficient government mechanism to coordinate and wisely manage uses of the land and water resources of the coasts;

WHEREAS, this year of 1980 has been proclaimed the National Year of the Coast;

WHEREAS, there is a need to provide uniform coordination of federal activities affecting the coastal zone and to ensure that such activities are consistent with a Commonwealth Coastal Zone Management (CZM) program;

WHEREAS, there is a legitimate need to base governmental decision-making on scientific principles and data;

WHEREAS, the Coastal Zone Management (CZM) planning grant award was the first Federal program accepted under my administration;

WHEREAS, the Coastal Zone Management program development has been administered by the Commonwealth Coastal Resources Management (CRM) Office within the Office of the Governor;

WHEREAS, the policies which are transmitted to me have been formulated with the widest opportunities for legislative executive and private sector input;

WHEREAS, the Coastal Resources Management (CRM) Task Force has met continually since July, 1979 to develop the Commonwealth policies for coastal resources;

WHEREAS, there is funding and approval time limits in the Coastal Zone Management Act (CZMA), as amended, which presently do not allow for the timely enactment of legislative authority to implement the CRM program;

WHEREAS, the authority to wisely regulate the development and use of Commonwealth resources has been established in the departmental duties and responsibilities of Public Law 1-8; and therefore, this executive order does not constitute any change in existing law;

WHEREAS, the authority to issue Executive Orders assuring the enforcement and implementation of laws passed by the legislature is established pursuant to Article III, Section 1 of the Commonwealth Constitution;

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and the Statutes of the Commonwealth of the Northern Mariana Islands, it is hereby ordered that the CZM program for the Commonwealth be known as the "Coastal

Resources Management Program" (CRM) and is hereby implemented subject to the following:

1) The appended goals and policies shall be the goals and policies of the Commonwealth for the management and development of the Commonwealth's coastal land and water resources. All departments, agencies, offices, and instrumentalities of the Commonwealth government shall take action to incorporate these goals and policies into their programs and to conduct their activities in a manner consistent with these goals and policies. This specifically refers to any fiscal, budgetary or other economic activity of, any regulatory activity of, and any provision of services by the Commonwealth government. These goals and policies shall hereafter be known as the "Commonwealth Policies" for coastal resource management.

2) The CRM Office will coordinate the implementation of the CRM Policies by the Commonwealth government and shall continually review and monitor Commonwealth government activities for their consistency with the CRM Policies and shall regularly report to my office on its findings.

After the CRM goals and policies become effective, any activity of the Commonwealth government which violates or threatens to violate the purpose of CRM goals and policies will be reviewed by the Governor's Office. Any necessary steps to assure compliance with the CRM policies will be

taken as deemed appropriate.

3) Upon the approval of the CRM Program by the United States Department of Commerce (USDOC), the CRM Office shall serve as the reviewing authority of the Commonwealth to ensure the coordination and consistency of Federal activities affecting the coastal resources of the Commonwealth with the CRM Policies.

The CRM Office will provide the consistency decision for any proposed activity which requires such review pursuant to Section 307 of the CZMA. The CRM Office shall establish the procedures for public notice and hearing, as required by Section 307 of the CZMA.

The CRM Office shall be the single Commonwealth agency to administer all programs and receive all funding provided by the CZMA.

4) The boundaries of the CRM Program shall extend seaward to the extent of the "territorial waters" of the Commonwealth, as defined in 19 TTC 101(3) until termination of the Trusteeship, or to a maximum of the outer limits of the United States territorial sea, and shall further extend to all land areas of the Commonwealth, except for any excluded lands as defined by Section 304(1) of the CZMA.

5) The Departments of Natural Resources, Commerce and Labor, Public Works, and the Division of Environmental Quality on behalf of the Department of Public Health and

Environmental Services (DPHES), and the Office of Attorney General are hereby designated as the CRM regulatory agencies and are directed to promulgate and adopt regulations (under the existing authority of Public Law 1-8) which will establish the following Areas of Particular Concern (APC):

1. Port and Industrial APC
2. Lagoon and Reef APC
3. Shoreline Zone APC
4. Wetland and Mangrove APC

and will further provide for the standards and priorities of uses within the named APC's, and will further provide for joint coastal permits and permit procedures, as well as standards for the creation of additional APCs. These regulations should also provide for standards and a permit system under which major sitings within boundaries of the CRM Program can be identified and regulated so as to avoid direct and significant adverse impacts on coastal waters.

It is further directed that the above departments include procedures and criteria within the regulations to be promulgated which will provide for the possibility of variances from CRM Program standards.

6) A Coastal Advisory Council (CAC) is hereby established. It shall include the Directors of the Departments of Natural Resources, Commerce and Labor, and Public Works, the Attorney General, the Historic Preservation Officer

of the Department of Community and Cultural Affairs, the Administrator of the Division of Environmental Quality of the Department of Public Health and Environmental Services, the Mayors of Saipan, Tinian, Rota, and the Northern Islands, the Planning and Budget Affairs Officer, the Marianas Public Land Corporation, representatives of the Commonwealth Legislature House and Senate Committees for Resources and Development, a representative of the Commonwealth Chamber of Commerce, a representative of the Marianas Visitors Bureau, and the Coordinator of the Office of Coastal Resources Management. The Coordinator of the CRM Program shall be the Chairperson of the Coastal Advisory Council (CAC). The agencies and Mayors may provide for a designated representative to the CAC. If the CAC determines that additional membership is required, it shall transmit its recommendations to the Governor for review and appointment, if the Governor deems necessary. The CAC should meet at least once a month, and more often as necessary. The meetings shall be open to the public and the opportunity for public participation shall be provided for.

The CAC is established as an advisory body to the Departments and agencies which will implement the CRM program and shall have no regulatory authority of its own. The CAC may provide for internal regulations which will govern its meetings. The CAC may advise on any change to the CRM program or its policies or upon the regulations promulgated

to implement the CRM Program. The CAC may advise both on questions of competing uses which may hereafter be regulated by the CRM program, as well as advise on what may be identified as a major siting which may have a direct and significant adverse impact on coastal waters. The CAC may further advise the CRM regulatory agencies upon variances which the CAC believes should be considered.

In the event of any dispute among the CRM regulatory agencies, the CAC may give an advisory written opinion, however, if the dispute among the CRM regulatory agencies remains unresolved, the Governor shall make a final decision to resolve the dispute.

7) The implementation of this program shall be funded predominantly by the Federal funding which will be available to the CRM office after USDOC approval. All government entities are directed to initiate preparations for the implementation of their CRM program responsibilities. The CRM Office is directed to prepare a concise program document, clarifying the program, its functions and participants' responsibilities, incorporating all policies, authorities, interpretations and resource inventories, etc., which will be the guidelines for the CRM Program.

CARLOS S. CAMACHO
Governor

2/1/80
DATE

APPENDIX

Goals and Policies

accompanying Executive Order # 15

I) Goals - It shall be the Commonwealth goals to

1) Provide for the orderly use and development of coastal resources of the Northern Marianas.

2) Protect, maintain and replenish the coastal resources of the Northern Marianas.

3) Provide for governmental coordination in order to implement the Coastal Resources Management program in a manner which is direct and effective.

4) Promote social and economic development and growth while recognizing the need to balance the limited coastal resources.

5) Manage the impacts of human activity on the use and development of renewable and non-renewable resources so as to maintain and enhance the long-term productivity of the coastal environment.

6) Protect, maintain, preserve, and restore, to the extent practicable, the overall quality of the coastal resources, the natural and man-made resources therein, and the scenic and historic resources for the benefit of residents and visitors to the Commonwealth.

II) Policies Commonwealth-wide

A. Government Processes

The Commonwealth shall:

1. encourage land-use master planning, floodplain management and the development of zoning and building code legislation.

2. promote through a program of public education the concepts of balanced resources management.

3. promote public participation in conservation and wise development of coastal resources.

4. promote more efficient resources management through

   a. coordination and development of resources management laws and regulations into a readily identifiable program;

   b. the revision of existing unclear laws and regulations;

   c. improved coordination among Commonwealth of the Northern Mariana Islands agencies;

   d. improved coordination between Commonwealth and Federal Agencies;

   e. Educational and training programs for Commonwealth government personnel, and refinement of supporting technical data.

B. Development Policies

The Commonwealth shall:

1. plan for and manage any use or activity with the potential for causing a direct and significant impact on coastal waters. Significant adverse impacts shall be mitigated to the extent practicable.

2. Give priority for water-dependent development and shall consider the need for water-related and water-oriented locations in its siting decisions.

3. provide for adequate consideration of the national interest, including that involved in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect, the Commonwealth's coastal zone) which are necessary to meet requirements which are other than local in nature.

4. Not permit to the extent practicable, development of identified hazardous lands including floodplains, erosion-prone areas, storm wave inundation areas, air installation crash and sound zones and major fault lines unless it can be demonstrated that such development does not pose unreasonable risks to the health, safety or welfare of the people of the Commonwealth, and complies with applicable laws.

5. While developing an efficient and safe transportation system including waterborne, mitigate to the extent practicable adverse environmental impacts, including those on aquifers, beaches, estuaries and other coastal resources.

6. Require any development to strictly comply with erosion, sedimentation, and related land-use districting guidelines, as well as other related land and water use policies for such areas.

7. Maintain or increase coastal water quality through control of erosion, sedimentation, runoff, siltation and sewage and other discharges.

8. Recognize and respect locations and properties of historical significance throughout the Commonwealth, and shall ensure

that development which would disrupt, alter, or destroy these shall be subject to Commonwealth and any applicable federal laws and regulations.

9. Recognize areas of cultural significance. Development which would disrupt the cultural practices associated with such areas shall be subject to a consultation process with concerned ethnic groups and any applicable laws and regulations.

C. Resource Policies

The Commonwealth shall:

1. require compliance with all local air and water quality laws and regulations and any federal air and water quality standards.
2. Not permit, to the extent practicable, development with the potential for causing significant adverse impact in fragile areas such as designated and potential historic and archaeological sites, critical wildlife habitats, beaches, designated and potential pristine marine and terrestrial communities, limestone and volcanic forests, designated and potential mangrove stands and other wetlands.
3. Manage ecologically significant resource areas for their contribution to marine productivity and value as wildlife habitats, and preserve the functions and integrity of reefs, marine meadows, salt ponds, mangroves and other significant natural areas.
4. Manage the development of the local subsistence, sport and commercial fisheries, consistent with other policies

5. Protect all resources within the coastal waters, particularly sand, corals, fish and habitat from any taking beyond sustainable levels and in the case of marine mammals and any species on the Commonwealth and Federal Endangered Species list, from any taking whatsoever.
6. Encourage preservation and enhancement of, and respect for the Commonwealth's scenic resources through the development of, increased enforcement of, and compliance with sign, litter, zoning, building codes, and related land-use laws.
7. Discourage to the maximum extent practicable visually objectionable uses so as not to significantly degrade scenic views.
8. Encourage the development of recreation facilities which are compatible with the surrounding environment and land-uses
9. Encourage the preservation of traditional rights of public access to and along the shorelines consistent with the rights of private property owners.
10. Pursue agreements for the acquisition and/or use of any lands where necessary to guarantee traditional public access to and along the shorelines.
11. Encourage agricultural development and the preservation and maintenance of critical agricultural lands for agricultural uses.

CARLOS S. CAMACHO
Governor

2/1/80
DATE

PUBLIC NOTICE

Proposed Rules of Practice and Admission of the Commonwealth Trial Court

The Chief Judge of the Commonwealth Trial Court pursuant to Public Law 1-5, Chapter 4, Sections 2 and 3 and Chapter 5, Section 3 and the Office of the Attorney General pursuant to Public Law 1-8, Chapter 3, Section 3(f) hereby promulgate the Proposed Rules of Practice and Admission of the Commonwealth Trial Court which were submitted to the Legislature for approval pursuant to Public Law 1-5, Chapter 4, Section 3 on January 31, 1980.

The Proposed Rules are promulgated pursuant to the following authority:

Commonwealth Constitution, Article IV, Section 8

Public Law 1-5, Chapter 4, Sections 2 and 3

Public Law 1-5, Chapter 5, Section 3

Public Law 1-8, Chapter 3, Section 3(f)

The Proposed Rules cover the following subjects:

1. Rules of Civil Procedure
2. Rules of Criminal Procedure
3. Rules of Evidence
4. Rules of Juvenile Delinquency Procedure
5. Rules of Probate Procedure
6. Rules of Admission for Attorneys to Practice in the Commonwealth Trial Court
7. Disciplinary Rules and Procedures for Attorneys Practicing in the Commonwealth Trial Court

Copies of the Proposed Rules of Practice and Admission of the Commonwealth Trial Court may be obtained or inspected at the Commonwealth Trial Court, Civic Center, Susupe, Saipan CM 96950 or at the Office of the Attorney General, Registrar of Corporations, Nauru Building-Fifth Floor, Susupe, Saipan CM 96950.

Anyone interested in commenting on these Proposed Regulations may do so by submitting their comments in writing to the Committee on Judiciary and Governmental Operations of the House of Representatives and to the Judiciary, Government and Law Committee of the Senate of the Second Northern Marianas Commonwealth Legislature.

It is intended that the effective date of the Proposed Rules of Practice and Admission shall be April 1, 1980 unless they are disapproved by the Legislature pursuant to Public Law 1-5 Chapter 4 Section 3.

RULES OF CRIMINAL PROCEDURE

Contents

I. Scope, Purpose and Construction

Rule 1. Scope

These rules govern the procedure in all criminal proceedings in the Commonwealth Trial Court.

Rule 2. Purpose and Construction

These rules shall be construed to secure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay.

II. Preliminary Proceedings

Rule 3. Seized Property

a. Retention. Any property seized in connection with an alleged offense (unless the property is perishable) will be retained pending trial in accordance with the orders of the court or the official before whom a search warrant is returned. Such property will be produced in court, if practicable.

b. Disposition. At the termination of the trial the court may order that the property, or the funds resulting from the sale of the property, be restored to the owner or may make such other proper order as may be required which will be incorporated in the record of the case.

Rule 4. Statement of Charges

a. Information. All felonies must be prosecuted by a written information signed by the Attorney General, or by a person designated by him. Any other offense not a felony may also be prosecuted by an information. When an information is filed in any case, it supersedes any complaint, citation, or other statement of charges, and constitutes the formal statement upon which the accused is to be tried, and any variance between the information and the complaint, citation or other statement of charges is immaterial.

b. Complaint. All misdemeanors may be prosecuted by a complaint.

c. Citation. Traffic offenses should be prosecuted by a citation.

d. Service. A copy of any information shall be delivered to the accused, or his counsel, and shall be translated to him if he is unable to understand it as soon as practicable after the information is filed.

e. Contents. Each count of any information and each charge in any complaint shall specify one offense only and shall be particularized sufficiently to identify the place, the time, and the subject matter of the alleged offense. It shall also refer to that portion of the Code, Municipal Ordinance, or other provision of law under which the offense is charged, but any error in this reference or its omission

may be corrected by leave of court at any time prior to sentence and shall not be ground for reversal of a conviction if the error or omission did not mislead the accused to his prejudice. Any other form of statement of charges shall indicate separately each offense charged.

f. Joinder of offenses. Two or more offenses may be charged in the same information, complaint or other statement of the charges in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

g. Joinder of defendants. Two or more defendants may be charged in the same information, complaint or other statement of the charges if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more courts together or separately and all of the defendants need not be charged in each count.

h. Bill of particulars. The court for cause may direct the filing of a bill of particulars. A motion for a bill of particulars may be made only within ten (10) days after arraignment or at such other time before or after as

may be prescribed by order of the court. A bill of particulars may be amended at any time subject to such conditions as the court may direct.

i. Amendment. A court may permit a charge (whether contained in an information, complaint, citation, or other statement) to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced. The court may at the same time grant an adjournment or other appropriate relief as justice requires.

III. Arraignment and Preparation for Trial

Rule 5. Procedure Preliminary to Arraignment

When a court has satisfied itself that it has jurisdiction of the person brought before it for trial and of the offense, the court shall require the accused to identify himself by giving his name, age, sex, and residence. The court shall then ask the accused if he has counsel. If he has no counsel, the court shall ask him if he desires counsel. If he so desires, he shall be allowed opportunity to procure counsel. The court shall then inquire whether both the prosecution and defense are ready for arraignment. If either side is not ready for arraignment, the court shall grant such continuance, if any, as it deems justice requires.

Rule 6. Arraignment and Pleading

a. Arraignment. When both sides are ready for arraignment, or when the court determines both sides have had adequate opportunity to prepare for arraignment, the court, will read the charges to the accused, will explain them, if necessary, and will ask the accused after the reading or stating of each charge or count how he pleads. If necessary the court will explain the pleas available and their meaning to the accused. If the accused has not already been given a copy of the charges he shall be given a copy of the charges, before he is called upon to plead. The arraignment shall be conducted in open court and the court will enter in the record of the case the plea made to each charge.

b. Pleas. A defendant may plead not guilty, guilty or, with the consent of the court, nolo contendere. The court may refuse to accept a plea of guilty, and shall not accept such plea or a plea of nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. If a defendant refuses to plead or if the court refuses to accept a plea of guilty or if a defendant corporation fails to appear, the court shall enter a plea of not guilty. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.

c. Change of Plea. The accused may at any stage of the trial with the consent of the court, change a plea of not guilty to one of guilty. The court may then proceed as though the accused had originally pleaded guilty. To correct manifest injustice the court, after sentence, may set aside the judgment of conviction and permit the accused to change his plea.

Rule 7. Motions Before Trial - Defenses and Objections

(a) Pretrial motions. Any defense, objection or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following must be raised prior to trial:

(1) Defenses and objections based on defects in the institution of the prosecution; or

(2) Defenses and objections based on defects in the complaint or information (other than that it fails to show jurisdiction in the court or to charge an offense) which objections shall be noticed by the court at any time during the pendency of the proceeding; or

(3) Motions to suppress evidence; or

(4) Requests for discovery under Rule 8; or

(5) Bill of Particulars.

(b) Motion Date. The court may, at the time of the arraignment or as soon thereafter as practicable, set a time for the making of pretrial motions or requests and, if required, a later date of hearing.

(c) Notice by the Government of the Intention to use Evidence.

(1). At the discretion of the Government. At the arraignment or as soon thereafter as is practicable, the government may give notice to the defendant of its intention to use specified evidence at the trial in order to afford the defendant an opportunity to raise objections to such evidence prior to trial under subdivision (a)(3) of this rule.

(2) At the request of the Defendant. At the arraignment or as soon thereafter as is practicable the defendant may in order to afford an opportunity to move to suppress evidence under subdivision (a)(3) of this rule, request notice of the government's intention to use (in its evidence in chief at trial) any evidence which the defendant may be entitled to discover under Rule 8 subject to any relevant limitations prescribed in Rule 8.

(d) Ruling on Motion. A motion made before trial shall be determined before trial unless the court, for good cause, orders that it be deferred for determination at the trial of the general issue or until after verdict, but no such determination shall be deferred if a party's right to appeal is adversely affected. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

(e) Effect of failure to raise defenses or objections. Failure by a party to raise defenses or objections or to make requests which must be made prior to trial, at the time set by the court pursuant to subdivision (b), or prior to any extension thereof made by the court, shall constitute a waiver thereof, but the court for cause shown may grant relief from the waiver.

(f) Records. A verbatim record shall be made of all proceedings at the hearing, including such findings of fact and conclusions of law as are made orally.

(g) Effect of Determination. If the court grants a motion based on a defect in the institution of the prosecution or in the complaint or information, it may also order that the defendant be continued in custody or that his bail be continued for a specified time pending the filing of a new complaint or information.

Rule 8 - Discovery Procedures

a. Discovery and Inspection. Upon motion of the accused at any time after the filing of the information, complaint, copy of citation, or other statement of charges, the court shall may order the prosecutor to permit the accused to inspect and copy or photograph designated books, papers, documents, or tangible objects obtained from or belonging to the accused, or obtained from others by seizure or by process, and all statements of any witness the prosecutor intends to call during trial or pre-trial or pre-trial proceeding, upon a showing that the items sought may be material to the preparation of his defense and that the request is reasonable. The order shall specify the time, place, and manner of making the inspection and of taking the copies or photographs and may prescribe such terms and conditions as are just.

(b) In Camera Inspection. If the Government claims that any statement or other material ordered to be produced under this section contains matter which does not relate to the subject matter of the pending trial or proceeding, the court shall order the Government to deliver such statement or other material for the inspection of the court and counsel in camera. Upon such delivery the court shall excise the portions of such statement or other material which do not relate to the subject matter of the pending trial or proceeding. With such portions excised, the court shall then direct

delivery of such statement or other material to the defendant for his use. If, pursuant to such procedure, any portion of such statement or other material is withheld from the defendant and the defendant objects to such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of such statement or other material shall be preserved by the Government and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge.

(c) Sanctions. If the Government elects not to comply with an order of the court to deliver to the defendant any witness statement, or such portion thereof as the court may direct, the court shall not allow that witness to testify, and the trial shall proceed unless the court in its discretion shall determine that the interests of justice require that a mistrial be declared.

(d) Definition. The term "statement", as used in this rule means --

(1) a written statement made by said witness and signed or otherwise adopted or approved by him;

(2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is substantially verbatim recital of an oral statement made by said witness to an agent of the Government and recorded contemporaneously with the making of such oral statement.

(3) Any oral statement not recorded in any manner but within the knowledge of the prosecutor or an agent of the Government. Such statement shall be reduced to writing for discovery purposes.

Rule 9 - Depositions

a. When taken. If it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing, that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court at any time after the filing of an information may upon motion of a defendant and notice to the parties order that his testimony be taken by deposition and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken. After the deposition has been subscribed the court may discharge the witness.

b. Notice of taking. The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whomthe notice is served, the court for cause shown may extend or shorten the time.

c. Defendant's counsel and payment of expenses. If a defendant is without counsel, the court shall advise him of

his right and assign counsel to represent him unless the defendant elects to proceed without counsel or is able to obtain counsel. If it appears that a defendant at whose instance a deposition is to be taken cannot bear the expense thereof, the court may direct that the expenses of travel and subsistence of the defendant's attorney for attendance at the examination shall be paid by the Government.

d. How taken. A deposition shall be taken in the manner provided in civil actions. The court at the request of a defendant may direct that a deposition be taken on written interrogatories in the manner provided in civil actions.

e. Use. At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears: That the witness is dead; or that the witness is out of the Commonwealth, unless it appears that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify because of sickness or infirmity; or that the party offering the deposition has been unable to procure the attendance of the witness by subpoena. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

f. Objections to admissibility. Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

IV. Trial

Rule 10. Procedure on Plea of Guilty

a. Statements and evidence by prosecution and defense. If the court accepts a plea of guilty to any charge or charges in accordance with Rule 6, it shall make a finding of guilty on each such charge, unless it finds the charge is merged in that of a more serious offense of which the accused is found guilty and in which the less serious is necessarily included. Prior to the imposition of sentence, the court shall hear such statements for the prosecution and the defense and such evidence, if any, as it requires to enable it to determine the sentence to be imposed. The accused or his counsel may make any reasonable statement he wishes in mitigation and may introduce evidence in mitigation or of previous good character. The prosecution may introduce evidence in aggravation or of bad character. Witnesses, if any, shall be examined in the manner provided in Rule 12.

b. Imposition of sentence. The court will then proceed to impose such lawful sentence or sentences as it deems proper in accordance with Rule 13.

Rule 11. Procedure on Plea of Not Guilty

a. Joinder of charges for trial. All charges to which an accused pleads not guilty may be tried together, and on application of the accused, the court may grant leave for any of the charges to be tried separately.

b. Joinder of accused for trial.

(1) Two or more persons may be tried together when the charge or charges are alleged to have arisen out of the same set of circumstances.

(2) The court may either before or during the trial direct that one or more of the accused persons or of the charges be tried separately, if the court is satisfied that otherwise such accused person or persons or the prosecution would be seriously prejudiced in the trial.

Rule 12. Trial Procedure

The following shall be the usual trial procedure, which may be modified by the court to fit the circumstances of a particular case.

a. Opening statement by prosecution and defense. The court will call upon the prosecution to make such statement as it deems necessary, if any, outlining the facts prepared to be proved by the witnesses for prosecution. After the opening statement by the prosecution is given or waived, the court will give the accused or his counsel opportunity to make an opening statement. The defense, at its election, may reserve its opening statement until after the case for the prosecution is deemed closed.

b. Calling witnesses. After opportunity for opening statements has been provided, the prosecution will call its witnesses in such order as to permit the facts to be presented to the court in as clear and logical sequence as possible.

c. Administering oath. An oath or affirmation shall be administered by the presiding judge or by the Clerk or Assistant Clerk of Courts to each witness before he or she testifies.

(1) Any procedure which appeals to the conscience of the person to whom the oath or affirmation is administered and which binds him to speak the truth or to perform his duties truthfully is sufficient.

(2) Persons who have peculiar forms which they recognize as obligatory and believers in other than the Christian religion may be sworn in their own manner, or in accordance to the peculiar ceremonies of the religion which they profess and declare to be binding.

d. Direct examination. Each witness called on behalf of the prosecution will first be examined by the prosecutor.

e. Cross-examination. After each witness has given his evidence, the accused or his counsel may cross-examine the witness upon any matters relevant to the case and the credibility of the witness.

f. Re-direct examination. The prosecution may re-examine any of its witnesses upon any matter appearing in the cross-examination or, with the court's consent, upon any other matter.

g. Prosecution closes. After all of the witnesses for the prosecution have been called and examined, the case for the prosecution will be deemed closed.

h. Consideration of prosecution's evidence. After the close of the case for the prosecution, the court will consider whether the evidence introduced by the prosecution is sufficient to support the charge. The accused, or his counsel, may submit and present arguments that, in respect of all or any of the charges, there is not sufficient evidence to support the same and that the accused should not be required to answer them.

(1) If as a result of such submission or otherwise, the court is satisfied that there is not sufficient evidence to support the charge or charges, the court may acquit the accused on such charges and shall enter any such acquittal in the record of the case.

(2) The court may also direct that new or additional charges be prepared against the accused if the evidence introduced by the prosecution tends to support new or additional charges. In such case the court may grant any necessary adjournment for that purpose and to enable the accused to prepare his defense to such new or additional charges, and shall take care to see that the accused has adequate time to do this.

i. Opening statement for defense.

(1) After the consideration of the prosecution's evidence and any action taken thereon as provided in paragraph h above, the court will call upon the accused or his counsel to present his defense in respect to those charges which the accused is required to answer.

(2) If the defense has reserved making its opening statement, the accused or his counsel may make an opening statement at this stage of the trial. The accused or his counsel may then call and examine witnesses for the defense in the same manner as is provided for the prosecution by paragraph d and f of this Rule. These witnesses shall be subject to cross-examination by the prosecution in the manner provided by paragraph e of this Rule.

j. Defense closes. After all of the witnesses for the defense have been called and examined, the case for the defense will be deemed closed.

k. Rebuttal. With leave of the court, the prosecution may call or recall any witness for the purpose of rebutting any material statement made by a witness for the defense, or for the purpose of giving testimony on any new matter raised by the defense. Similarly, with leave of court, the accused may be permitted to call or recall any witness for the purpose of rebutting any material statement made in court for the first time by a witness for the prosecution during the rebuttal, or for the purpose of giving testimony on any new matter raised

during the rebuttal. Such leave to call or recall witnesses in rebuttal should be freely granted whenever new matter of substantial consequence has been introduced by the opposing party. The court should take care to see that each party has an actual opportunity to present all the material admissible evidence available to him.

l. Summation. After all of the witnesses have testified, the prosecution and the accused or his counsel may make statements summing up the facts of the case and dealing with any matters of law which require argument. The prosecution shall sum up first, and the defense shall sum up second. Only one statement may be made on behalf of each accused.

The prosecution shall be allowed a rebuttal argument.

m. Examination of witnesses by court. The court may at any stage of the trial question any witness and may call or recall any witness at any time before finding, if it considers it necessary in the interests of justice.

Rule 13. Judgment and Sentence

a. Lesser included offense. The accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense. If this is done, a statement of the offense of which the accused is found guilty shall be entered in the record of the case.

b. Finding. The court shall announce to the accused the finding on each charge on which the accused has been tried. The finding may be guilty, or not guilty, or guilty of a lesser included offense (naming that lesser offense), or that a charge is merged in that of a more serious offense of which the accused is found guilty and in which the less serious is necessarily included. If the accused is found not guilty on all of the charges or for any other reason is entitled to be discharged, he shall be acquitted and released. If the accused is found guilty on any or all of the charges or of a lesser included offense, he shall be sentenced.

c. Judgment. A judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If defendant is found not guilty or for any reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the Judge and entered by the Clerk.

d. Sentence. Sentence shall be imposed without unreasonable delay. Pending sentence the court may commit the defendant or continue or alter bail.

(1) Statements and evidence bearing upon sentence. Before imposing sentence the court shall afford the accused or his counsel an opportunity to make a statement in his own behalf, to present any information in mitigation of punishment, and to present evidence of good character, shall afford the prosecution an opportunity to make a statement and to present

evidence of bad character, and may hear such other statement and evidence as it requires to enable it to determine the sentence to be imposed.

(2) Imposition of sentence. The court shall impose and announce to the accused a separate sentence for each distinct offense of which the accused is found guilty. If, however, two or more charges on which the accused is found guilty cover the same offense in different words, the court may impose only one sentence on all these charges combined, and the sentence shall not exceed the maximum which may lawfully be imposed on the one of these charges authorizing the heaviest penalty. The court may use its discretion in determining whether sentences are to run concurrently or successively and should announce its determination at the time of sentencing. If a charge is minor and the circumstances are such that the court believes no more substantial punishment is required, it may release the accused on that charge with a warning.

(3) Notice of the right of appeal. If the accused is not represented by counsel upon concluding the imposition of sentence, the court, must inform the accused that he has the right of appeal, and if the accused so requests, the Clerk shall prepare and file forthwith a notice of appeal in his behalf. Even though the accused has pleaded guilty, he may still appeal.

(4) Date of commencement. Every sentence of imprisonment should state the date of commencement thereof, which, if the accused was previously in custody, may make allowance for the period of custody. If no date of commencement is stated, the sentence shall commence on the date it is imposed.

Rule 14. New Trial; Correction or Reduction of Sentence

a. New Trial. The court may grant a new trial to an accused if required in the interest of justice. If trial was by the court without a jury, the court may vacate the judgment if entered, take additional testimony and direct entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only before or within two years after final judgment, but if an appeal is pending, the court may grant the motion only on remand of the case. A motion for new trial based on any other grounds shall be made within five (5) days after verdict or finding of guilty or within such further time as the court may fix during the five (5) day period.

b. Correction or reduction of sentence. The court may correct an illegal sentence at any time. The court may reduce a sentence within sixty (60) days after the sentence is imposed, or within sixty (60) days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal.

Rule 15. Record of Proceedings

a. Type of Record. A record of every case (other than uncontested traffic matters) will be taken down in longhand, shorthand, electronic or mechanicial means, except that only so much, if any, of oral arguments or oral statements of counsel need be included as the court may direct. This record shall include the substance of all material testimony of every witness (which may be recorded in narrative or question and answer form). These original longhand or shorthand notes, or other original records, or rough transcript thereof, in any case may be destroyed on order of the Commonwealth after two years from the final disposition of the case.

b. Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

c. Lost records. If before the conclusion of any case or before review or appeal, the record of such case is lost or destroyed, a certificate of the substance of the proceedings in the case shall be accepted in place of the record. A sufficient certificate shall be one signed by any member of the court embodying to the satisfaction of the reviewing authority or the court hearing the case on appeal, the

charges, findings, and sentences, and the substance of the material testimony, if required to be included in the record, and of any orders in connection with the disposition of the case.

V. General Provisions

Rule 16. Adjournment

A court has power at any time to adjourn the proceedings either without date or to a fixed time and place, and to grant an adjournment at the request of the prosecutor or the accused, or as the justice of the case may require.

Rule 17. Presence of Defendant

The defendant must be present at the arraignment, at every stage of the trial (including impaneling of Jury, if any) and at the imposition of sentence, except as otherwise provided by these rules. The defendant's voluntary absence after trial has been commenced in his presence shall not prevent continuing the trial to and including the finding or return of verdict. A corporation may appear by counsel for all purposes. In prosecution for offenses punishable by fine or imprisonment for not more than one year or both, the court, with the written consent of the defendant may permit arraignment, plea, trial and imposition of sentence in the

defendant's absence. The defendant's presence is not required at a reduction of sentence under Rule 14.

Rule 18. Motions and Arguments

a. Motions. An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. When a motion is based on facts not appearing of record, the court may hear the matter on written statement under oath, or the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

b. Arguments. Arguments on any motion or other matter shall be allowed in the discretion of the court and when authorized shall be as brief as is consistent with a fair representation of the matter under consideration.

Rule 19. Witnesses

a. Witness summons. A witness summons may be issued by the clerk or any judge of the court and shall bear the seal of the court. It shall state the name of the court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk or judge

shall issue a witness summons signed and sealed but with the name of the person addressed and the time and place of appearance left blank, and shall deliver it to a party requesting it, who shall fill in the blanks before it is served.

b. Production of documents and objects. A summons may also command the person to whom it is directed to produce the books, papers, documents, or other objects designated therein. The court on motion made promptly may quash or modify the witness summons, if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents, or objects designated in the witness summons be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence, and may, upon their production, permit the books, papers, documents, or objects designated in the witness summons be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence, and may, upon their production, permit the books, papers, documents, or objects or portions thereof, to be inspected by the parties and their counsel.

c. Place of service. A witness summons may be served as a matter of course at any place within the Commonwealth.

d. Method of service. A witness summons may be served by a policeman or by any other person who is not a party and who is not less than eighteen (18) years of age. Service of a witness summons shall be made by delivering a copy thereof

to the person named, and orally explaining the substance thereof to him in a language generally understood in the locality and, if practicable, in one understood by the person named. At or before the time stated for appearance in a witness summons, the person to whom such a summons is delivered for service shall endorse thereon and sign a report of his action thereon and have it delivered to the court. If he has served the summons, his report shall show the date, place, and method of service.

e. Contempt. Failure by any person without adequate excuse to obey a witness summons served upon him may be deemed a contempt of court from which the witness summons or oral order issued.

f. Attendance of child as witness. When the testimony of a child under fourteen years of age is desired, the parent or guardian may be summoned to bring the child to attend as a witness.

g. Exclusion. The court in its discretion, with or without the request of the prosecution or the accused or his counsel, may direct that any or all witnesses be excluded from the court until they have given evidence, and may direct that they shall remain in court thereafter during the proceeding unless released.

Rule 20. Contempt Proceedings

a. Summary disposition. Contempt may be punished summarily without hearing evidence or according the offender assistance of counsel if the court certifies that it saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be entered in the record.

b. Other disposition. In the case of any contempt other than those provided for in paragraph (a) of this Rule, the offender shall be entitled to notice of the alleged facts constituting the contempt charged to a reasonable time for preparation of his defense, to be admitted to bail, to have the assistance of counsel, and to introduce evidence either in defense or in explanation and mitigation of the penalty to be imposed. If the contempt charged involves disrespect to or criticism of a judge, that judge shall be disqualified from participating as a member of the court in the trial or hearing.

c. Review and Appeal. Contempt proceedings, whether summary or otherwise, shall be subject to review and appeal to the same extent as other cases in the court, and the record shall be forwarded in the same manner.

Rule 21. Impounding

A court may in its discretion impound, by an order directing any person to be charged with the care thereof, any money or

other objects relative to proceedings before it, whether or not they have been received in evidence.

Rule 22. Disposition of Funds

Receipts shall be given for all fines and property forfeited. Property forfeited to the Northern Mariana Islands Commonwealth shall be disposed of as the court shall direct, or in accordance with such procedure as may be prescribed by applicable accounting or other instructions with respect thereto. All fines collected and proceeds of property forfeited to the Commonwealth under the order of the court, shall be treated and accounted for in accordance with financial accounting instructions.

Rule 23. Time

a. Computation. Except as otherwise provided by law for particular purpose, in computing any period of time other than one stated expressly in hours or more exactly than that, the day of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or a holiday. When a period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as

other days and not as a holiday.

b. Enlargement. When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if application therefor is made before the expiration of the period originally prescribed or as extended by a previous order or, (2) upon motion permit the act to be done after the expiration of the specified period if the failure to act was the result of excusable neglect but any extension of time for appeal matters shall be subject to the limitations in the Appellate Rules.

c. For motions - affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five (5) days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown such an order may be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not less than one (1) day before the hearing unless the court permits them to be served at a later date.

d. Additional time after service by mail. Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon him and the notice or other paper is served upon

him by mail, three (3) days shall be added to the prescribed period.

Rule 24. Bail

a. Granting and exoneration. Bail will be granted and exonerated in accordance with the provisions of the Code.

b. Forfeiture.

(1) Declaration. If there is a breach of a condition of a bond or deposit, the court in which the case is pending, shall declare a forfeiture of whole or part of the bail as it appears justice requires.

(2) Setting aside. The court may direct that a forfeiture be set aside, upon such conditions as the court may impose if it appears justice does not require the enforcement of the forfeiture.

c. Enforcement. By entering into a bond the obligor and the sureties submit to the jurisdiction of the court and irrevocably appoint the Clerk of Court as their agent upon whom only papers affecting their liability may be served. Their liability may be enforced on motion without necessity of independent action. The motion and such notice of the motion as the court prescribes may be served on the Clerk of Court who shall forthwith mail copies to the obligor and sureties at their last known addresses.

Rule 25. Service and Filing of Papers

a. Service. When required. Written motions other than those which are heard ex parte and written notices, and similar papers shall be served on adverse parties.

b. Service. How made. Whenever, under these rules or by an order of the court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney shall be made in the manner provided in civil actions.

c. Notice of Orders. Immediately upon the entry of an order made or a written motion subsequent to arraignment the clerk shall mail to each party affected thereby a notice thereof and shall make a note in the docket of the mailing.

d. Filing. Papers required to be served shall be filed in the manner provided in civil actions.

Rule 26. Duties of Clerk of Courts

The Clerk of Courts shall keep such dockets, indexes, and records in addition to those herein required, as the Chief Judge may from time to time prescribe. In addition to the functions prescribed by law and these Rules, he shall perform such duties as the Chief Judge may direct.

Rule 27. Records Open to Public

All court records in the custody of the Clerk of Courts shall be open to inspection by any person who handles the records carefully at any time the Clerk's office is open, unless otherwise expressly provided by law, except that the court may for cause shown order that any information or complaint and the proceedings thereon shall be disclosed only to those required to take action in connection therewith until after the arrest of the accused, or until his arraignment if he is arraigned without arrest, and any such order shall be complied with. No charge shall be made for permitting examination of records, nor shall any explanation be required as to why a person wishes to see a record.

Rule 28. Court Officers as Sureties

No judge, clerk, assistant clerk, lawyer practicing in the Commonwealth Court, or trial assistant shall be accepted as surety in any case or proceeding pending in the Commonwealth Court.

Rule 29. Procedure not Otherwise Specified

Where no procedure has been directed in any matter which arises, a court may proceed in any manner, not inconsistent with law or with these Rules, which the court deems will promote justice.

Rule 30. Effective Date

These Rules shall become effective sixty (60) days following submission to the President of the Senate and Speaker of the House unless disapproved by a majority of the members of either house of the Legislature. If approved by the above procedure, the exact effective date shall be endorsed hereon. In such event, these Rules will govern all proceedings thereafter commenced and so far as just and practicable all proceedings then pending.

COMMONWEALTH TRIAL COURT

RULES OF EVIDENCE

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Rule 101 - Scope

These rules govern proceedings in the Commonwealth Court.

Rule 102 - Purpose and Construction

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Rule 103 - Rulings on Evidence

(a) Effect of erroneous ruling. --Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Objection. --In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) Offer of proof. --In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

(b) Record of offer and ruling. --The Court may add any other or further statement which shows the character of

the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) Hearing of jury. --In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(d) Plain error. --Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

Rule 104 - Preliminary Questions

(a) Questions of admissibility generally. --Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.

(b) Relevancy conditioned on fact. --When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) Hearing of jury. --Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require or, when an accused is a witness, if he so requests.

(d) Testimony by accused. --The accused does not, by testifying upon a preliminary matter, subject himself to cross-examination as to other issues in the case.

(e) Weight and credibility. --This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

Rule 105 - Limited Admissibility

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

Rule 106 - Remainder of or Related Writings or Recorded Statements

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

ARTICLE II - JUDICIAL NOTICE

Rule 201 - Judicial Notice of Adjudicative Facts

(a) Scope of rule. --This rule governs only judicial notice of adjudicative facts.

(b) Kinds of facts. --A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When discretionary. --A court may take judicial notice, whether requested or not.

(d) When mandatory. --A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to be heard. --A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of taking notice. --Judicial notice may be taken at any stage of the proceeding.

(g) Instructing jury. --In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required, to accept as conclusive any fact judicially noticed.

ARTICLE III - PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

Rule 301 - Presumptions in General Civil Actions and Proceedings

In all civil actions and proceedings not otherwise provided for by law or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.

ARTICLE IV - RELEVANCY AND ITS LIMITS

Rule 401 - Definition of "Relevant Evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402 - Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as otherwise provide by law or by these rules. Evidence which is not relevant is not admissible.

Rule 403 - Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 404 - Character Evidence not Admissible to Prove Conduct; Exceptions; Other Crimes

(a) Character evidence generally. --Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

(1) Character of accused. --Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same;

(2) Character of victim. --Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) Character of witness. --Evidence of the character of a witness, as provided in Rules 607, 608, and 609.

(b) Other crimes, wrongs, or acts. --Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Rule 405 - Methods of Proving Character

(a) Reputation or opinion. --In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) Specific instances of conduct. --In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his conduct.

Rule 406 - Habit; Routine Practice

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to

prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

Rule 407 - Subsequent Remedial Measures

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not requre the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Rule 408 - Compromise and Offers to Compromise

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rules also does not require exclusion when the evidence

is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Rule 409 - Payment of Medical and Similar Expenses

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

Rule 410 Inadmissibility of Pleas, Offers of Pleas, and Related Statements

Except as otherwise provided in this rule, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with and relevant to any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer.

However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of nolo contendere, or an offer to plead guilty or nolo contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

This rule shall be superseded by any amendment to the Rules of Criminal Procedure which is inconsistent with this rule and which takes effect after the effective date of these Rules of Evidence.

Rule 411 - Liability Insurance

Evidence that a person was or was not insured against liability is not admissible upon the issue whether he acted negligently or otherwise wrongfully. This rules does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership or control, or bias or prejudice of a witness. .

Rule 412 - Rape Cases; Relevance of Victim's Past Behavior

(a) Notwithstanding any other provision of law, in a criminal case in which a person is accused of rape or of assault with intent to commit rape, reputation or opinion evidence of the past sexual behavior of an alleged victim of such rape or assault is not admissible.

(b) Notwithstanding any other provision of law, in a criminal case in which a person is accused of rape or of assault with intent to commit rape, evidence of a victim's past sexual behavior other than reputation or opinion evidence is also not admissible, unless such evidence other than reputation or opinion evidence is --

(1) admitted in accordance with subdivisions (c)(1) and (c)(2) and is constitutionally required to be admitted; or

(2) admitted in accordance with subdivision (c) and is evidence of --

(A) past sexual behavior with persons other than the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or injury; or

(B) past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior with respect to which rape or assault is alleged.

(c)(1) If the person accused of committing rape or assault with intent to commit rape intends to offer under subdivision (b) evidence of specific instances of the alleged victim's past sexual behavior, the accused shall make a written motion to offer such evidence not later than fifteen days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and on the alleged victim.

(2) The motion described in paragraph (1) shall be accompanied by a written offer of proof. If the court determines that the offer of proof contains evidence described in subdivision (b), the court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing the parties may call witnesses, including the alleged victim, and offer relevant evidence. Notwithstanding subdivision (b) of rule 104, if the relevancy of the evidence which the accused seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.

(3) If the court determines on the basis of the hearing described in paragraph (2) that the evidence which the accused seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the court specifies evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined.

(d) For purposes of this rule, the term "past sexual behavior" means sexual behavior other than the sexual behavior with respect to which rape or assault with intent to commit rape is alleged.

ARTICLE V - PRIVILEGE

Rule 501 - General Rule

Except as otherwise required by law or the rules of the Commonwealth Court, the privilege of a witness, person, government or political subdivision thereof shall be governed by the principle of the common law as they may be interpreted by the courts of the United States and of the Commonwealth in the light of reason and experience.

ARTICLE VI - WITNESSES

Rule 601 - General Rule of Competency

Every person is competent to be a witness except as otherwise provided in these rules.

Rule 602 - Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness himself. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

Rule 603 - Oath or Affirmation

Before testifying, every witness shall be required to declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so.

Rule 604 - Interpreters

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation that he will make a true translation.

Notwithstanding the provisions of the previous sentence, the Clerk of Courts or his assistant shall not be required to qualify as an expert, and need not be administered an oath or affirmation that he will make a true translation.

Rule 605 - Competency of Judge as Witness

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

Rule 606 - Competency of Juror as Witness

(a) At the trial. --A member of the jury may not testify as a witness before that jury in the trial of the case in which he is sitting as a juror. If he is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry into validity of verdict. --Upon an inquiry into the validity of a verdict, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or concerning his mental processes in connection therewith, except that a juror may testify on the question whether

extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes.

Rule 607 - Who May Impeach

The credibility of a witness may be attacked by any party, including the party calling him.

Rule 608 - Evidence of Character and Conduct of Witness

(a) Opinion and reputation evidence of character. -The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific instances of conduct. -- Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the

court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning his character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of his privilege against self-incrimination when examined with respect to matters which relate only to credibility.

Rule 609 - Impeachment by Evidence of Conviction of Crime

(a) General rule. --For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime shall be admitted if elicited from him or established by public record during cross-examination but only if the crime (1) was punishable by death or imprisonment in excess of one year under the law under which he was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the defendant, or (2) involved dishonesty or false statement, regardless of the punishment.

(b) Time limit. --Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the

release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) Effect of pardon, annulment, or certificate of rehabilitation. --Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) Juvenile adjudications. --Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack

the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) Pendency of appeal. --The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

Rule 610 - Religious Beliefs or Opinions

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature his credibility is impaired or enhanced.

Rule 611 - Mode and Order of Interrogation and Presentation

(a) Control by court. --The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of cross-examination. --Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The Court may, in the exercise of discretion, permit inquiry into additional matters as if on direct-examination.

(c) Leading questions. --Leading questions should not be used on the direct-examination of a witness, except as may be necessary to develop his testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

Rule 612 - Writing Used to Refresh Memory

If a witness uses a writing to refresh his memory for the purpose of testifying, either -

(1) while testifying, or

(2) before testifying, if the Court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony the Court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the Court shall make any order

justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the Court in its discretion determines that the interests of justice so require, declaring a mistrial.

Rule 613 - Prior Statements of Witnesses

(a) Examining witness concerning prior statement. --In examining a witness concerning a prior statement made by him, whether written or not, the statement need not be shown nor its contents disclosed to him at that time, but on request the same shall be shown or disclosed to opposing counsel.

(b) Extrinsic evidence of prior inconsistent statement of witness. --Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate him thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).

Rule 614 - Calling and Interrogation of Witnesses by Court

(a) Calling by court. The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) Interrogation by court. --The court may interrogate witnesses, whether called by itself or by a party.

(c) Objections.--Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

Rule 615 - Exclusion of Witnesses

At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of his cause.

ARTICLE VII - OPINIONS AND EXPERT TESTIMONY

Rule 701 - Opinion Testimony by Lay Witnesses

If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue.

Rule 702 - Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 703 - Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Rule 704 - Opinion on Ultimate Issue

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

Rule 705 - Disclosure of Facts or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give his reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise.

The expert may in any event be required to disclose the underlying facts or data on cross-examination.

Rule 706 - Court Appointed Experts

(a) Appointment.—The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless he consents to act. A witness so appointed shall be informed of his duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness appointed shall advise the parties of his findings, if any; his deposition may be taken by any party; and he may be called to testify by the court or any party. He shall be subject to cross-examination by each party, including a party calling him as a witness.

(b) Compensation.---Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. In civil actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as othe

costs. In criminal actions, before an appointment is made, the court shall determine if government funds are available and if so shall direct payment pursuant to governmental procedures.

(c) Disclosure of appointment. --In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

(d) Parties' experts of own selection. --Nothing in this rule limits the parties in calling expert witnesses of their own selection.

ARTICLE VIII - HEARSAY

Rule 801 - Definitions

The following definitions apply under this article:

(a) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by him as an assertion.

(b) Declarant. A "declarant" is a person who makes a statement.

(c) Hearsay. "Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements which are not hearsay. A statement is not hearsay if --

(1) Prior statement by witness. --The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (a) inconsistent with his testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (b) consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive, or (c) one of identification of a person made after perceiving him; or

(2) Admission by party-opponent. --The statement is offered against a party and is (a) his own statement, in either his individual or a representative capacity or (b) a statement of which he has manifested his adoption or belief in its truth, or (c) a statement by a person authorized by him to make a statement concerning the subject, or (d) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship, or (e) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

Rule 802 - Hearsay Rule

Hearsay is not admissible except as provided by these rules or by law.

Rule 803 - Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present sense impression. --A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited utterance. --A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then existing mental, emotional, or physical condition. --A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements for purpose of medical diagnosis or treatment. --Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) Recorded recollection. --A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) Records of regularly conducted activity. --A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) Absence of entry in records kept in accordance with the provisions of paragraph (6). --Evidence that a matter is not included in the memoranda reports, records, or

data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate the lack of trustworthiness.

(8) Public records and reports. --Records, reports, statements or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings and against the government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

(9) Records of vital statistics. --Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages if the report thereof was made to a public office pursuant to requirements of law.

(10) Absence of public record or entry. --To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a

matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) Records of religious organizations. --Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, baptismal, and similar certificates. --Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Family records. --Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engraving on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) Records of documents affecting an interest in property. --The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) Statements in documents affecting an interest in property. --A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) Statements in ancient documents. --Statements in a document in existence twenty years or more the authenticity of which is established.

(17) Market reports, commercial publications. --Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) Learned treatises. --To the extent called to the attention of an expert witness upon cross-examination or relied upon by him in direct examination, statements contained

in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) Reputation concerning personal or family history. --Reputation among members of his family by blood, adoption, or marriage, or among his associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of his personal or family history.

(20) Reputation concerning boundaries or general history. --Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community and reputation as to events of general history important to the community or State or nation in which located.

(21) Reputation as to character. --Reputation of a person's character among his associates or in the community.

(22) Judgment of previous conviction. --Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain

the judgment, but not including, when offered by the government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) Judgment as to personal, family, or general history, or boundaries. --Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(24) Other exceptions. --A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

Rule 804 - Hearsay Exceptions; Declarant Unavailable

(a) Definition of unavailability. --"Unavailability as a witness" includes situations in which the declarant --

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of his statement; or

(2) persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so; or

(3) testifies to a lack of memory of the subject matter of his statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of his statement has been unable to procure his attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), his attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay exceptions. --The following are not excluded by the hearsay rule if the declarant is unavailable as a witness.

(1) Former testimony. --Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement under belief of impending death. -- In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that his death was imminent, concerning the cause or circumstances of what he believed to be his impending death.

(3) Statement against interest. --A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability, or to render invalid a claim by him against another, that a reasonable man in his position would not have made the statement unless he believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of personal or family history. —(A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) Other exceptions. —A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity

to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

Rule 805 - Hearsay Within Hearsay

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

Rule 806 - Attacking and Supporting Credibility of Declarant

When a hearsay statement, or a statement defined in Rule 801 (d)(2), (C), (D), or (E) has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testifed as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with his hearsay statement, is not subject to any requirement that he may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine him on the statement as if under cross-examination.

ARTICLE IX - AUTHENTICATION AND IDENTIFICATION

Rule 901 - Requirement of Authentication or Identification

(a) General provision. --The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) Illustrations. --By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) Testimony of witness with knowledge. --Testimony that a matter is what it is claimed to be.

(2) Nonexpert opinion on handwriting. --Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) Comparison by trier or expert witness. --Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) Distinctive characteristics and the like. --Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) Voice identification. --Identification of a voice, whether heard first-hand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) Telephone conversation. --Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) Public records or reports. --Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) Ancient documents or data compilation. --Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 20 years or more at the time it is offered.

(9) Process or system. --Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) Methods provided by statute or rule. --Any method of authentication or identification provided by law or by other rules of this Court.

Rule 902 - Self-authentication

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) Public documents under seal. --A document bearing a seal purporting to be that of the Northern Marianas Commonwealth, Trust Territory of the Pacific Islands, or of the United States, or of any State, district, Commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) Public documents not under seal. --A document purporting to bear the signature in his official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) Foreign public documents. --A document purporting to be executed or attested in his official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person,

or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the Court, may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) -Certified copies of public records. --A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraphs (1), (2), or (3) of this rule or complying with any law or rule of this court.

(5) Official publications. --Books, pamphlets, or other publications purporting to be issued by public authority.

(6) Newspapers and periodicals. --Printed materials purporting to be newspapers or periodicals.

(7) Trade inscriptions and the like. --Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) Acknowledged documents. --Documents accompanied by a certificate of acknowledgement executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgements.

(9) Commercial paper and related documents. --Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) Presumptions under Secretarial Order or Acts of the Commonwealth Legislature. --Any signature, document, or other matter declared by Secretarial Order or an Act of the Commonwealth Legislature to be presumptively or prima facie genuine or authentic.

Rule 903 - Subscribing Witness' Testimony Unnecessary

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

ARTICLE X - CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

Rule 1001 - Definitions

For purposes of this article the following definitions are applicable:

(1) Writings and recordings. --"Writings" and "recordings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(2) Photographs. --"Photographs" include still photographs, X-ray films, video tapes, and motion pictures.

(3) Original. --An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original".

(4) Duplicate. --A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures or by mechanical or electronic re-recording,

or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original.

Rule 1002 - Requirement of Original

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by law.

Rule 1003 - Admissibility of Duplicates

A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

Rule 1004 - Admissibility of Other Evidence of Contents

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if --

(1) Originals lost or destroyed. --All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

(2) Original not obtainable. --No original can be obtained by any available judicial process or procedure; or

(3) Original in possession of opponent. --At a time when an original was under the control of the party against whom offered, he was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and he does not produce the original at the hearing; or

(4) Collateral matters.--The writing, recording, or photograph is not closely related to a controlling issue.

Rule 1005 - Public Records

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

Rule 1006 - Summaries

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for

examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.

Rule 1007 - Testimony or Written Admission of Party

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by his written admission, without accounting for the nonproduction of the original.

Rule 1008 - Functions of Court and Jury

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of rule 104. However, when an issue is raised (a) whether the asserted writing ever existed, or (b) whether another writing, recording or photograph produced at the trial is the original, or (c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

ARTICLE XI - MISCELLANEOUS RULES

Rule 1101 - Applicability of Rules

(a) Proceedings generally. --These rules apply generally to civil actions and proceedings, to criminal cases and proceedings, and to contempt proceedings except those in which the court may act summarily.

(b) Rule of privilege. --The rule with respect to privileges applies at all stages of all actions, cases, and proceedings.

(c) Rules inapplicable. --The rules (other than with respect to privileges) do not apply in the following situations:

(1) Preliminary questions of fact. --The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under rule 104.

(2) Miscellaneous proceedings. --Proceedings for extradition or rendition; preliminary examinations in criminal cases; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise.

Rule 1102 - Amendments

Amendments to these Rules of Evidence may be made according to the Constitution for the Northern Mariana Islands and applicable law.

Rule 1103 - Title

These rules may be known and cited as The Commonwealth Rules of Evidence.

Rule 1104 - Effective Date

These rules shall become effective sixty (60) days following submission to the President of the Senate and Speaker of the House unless disapproved by a majority of the members of either House of the Legislature. If approved by the above procedure, the exact effective date shall be endorsed hereon. In such event, these rules will govern all proceedings thereafter commenced and so far as just and practicable, all proceedings then pending.

COMMONWEALTH TRIAL COURT

Rules of Juvenile Delinquency Procedure

CONTENTS

Rules of Juvenile Delinquency Procedure

Rule 1 - Nature and Purpose

Juvenile delinquency proceedings are unique. Although they are similar to criminal proceedings in some ways, they are a special type of civil proceeding in which it is not intended that there be any adversaries. The ultimate aim of all concerned should be to assist the child to become a wholesome member of the community. No fees are to be charged in connection with such proceedings, however, except to the extent authorized for criminal cases. All procedure in connection with juvenile delinquency proceedings not expressly covered by law or rule of procedure shall be governed by the principles of civil procedure. The proceedings are not to be conducted in the manner of a prosecution, but rather as an inquiry into three things:

(1) Whether the child is a delinquent as defined in the Code,

(2) The cause of the delinquency, if any,

(3) What had best be done to help make the child a good member of society.

Rule 2 - Construction

These rules shall be read with and subject to all applicable provisions of the Code and other legislative enactments and shall apply only to juvenile delinquency proceedings.

Rule 3 - Commencement of Proceedings

(1) Juvenile delinquency proceedings shall ordinarily be commenced by a sworn complaint by someone having personal knowledge of at least some of the essential facts involved. They may also be commenced by an information of delinquency signed by the Attorney General or someone authorized by him. The complainant, or person bringing the information, shall present it personally to a judge of the court. If the judge, after conferring with this person, deems that court action is in the public interest and the facts alleged in the complaint or information would constitute a crime if committed by an adult of sound mind, the judge may issue a summons to the child and to one or both of his parents or any person having custody of the child, to appear and answer the complaint or information. If the judge deems that an informal conference with the parents or other person having custody of the child will be in the public interest before deciding on any court action, he may refer the matter to the police or any probation officer, school authority, representative of a church the child is connected with, or other suitable person, for investigation and report to the court before deciding whether or not to issue any process.

(2) If a summons to answer a complaint or information in such proceedings is used and either the child or the person summoned as the parent or person having custody

fails to comply herewith, without good cause known to the court, the court may either issue an order to show cause why either or both of them should not be adjudged in contempt, or may order that a policeman or other person designated to serve the order shall take physicial custody of the child and bring him as directly as possible before the court at a time and place designated in the order or as soon thereafter as practicable.

(3) If all the essential parties appear voluntarily before the court in response to any form of notice, the court may proceed without the issuance of any process.

(4) The complaint or information may be amended at any time before adjudication in the same manner as in criminal case.

Rule 4 - Parties

(1) The essential parties to any proceedings under these Rules are the child and a representative of the Government. The persons who ordinarily represent the Government in criminal cases before the Court shall represent the Government, but if such persons are not available, the court may permit the complainant or his counsel to act for the Government. The child must be personally present to the same extent that he would be required if he were an adult accused in a criminal case.

(2) At least one parent, or person having custody of the child, shall also be present at the hearing unless the court determines that this is not practical owing to the circumstances of a particular case. The court may join and order summons issued to any persons alleged to have contributed to the delinquency of the child and may admit as parties any persons expressing interest in assisting in rehabilitating the child if the court believes their participation may be helpful.

(3) The court may permit or invite any person to act as friend of the court whom it believes will be helpful in the same manner as in civil actions.

Rule 5 - Counsel

(1) The child shall have the same right to representation by counsel that he would have in a criminal case and he shall be advised of that right by the court if he appears without counsel. The services of the Public Defender or his representative shall be requested by the court as a routine matter if the child so desires in all situations where such services are regularly available to adults accused in criminal cases.

(2) All other parties may be represented by counsel in the same manner as in civil actions.

Rule 6 - Hearings

(1) Hearings shall be held informally in closed session with only those concerned with the case present, which may include any victim or victims of the alleged delinquency, and such other persons as the court may admit for special cause.

(2) When the necessary parties are before the court, the court shall read or explain the complaint or information to all the parties present, shall inform the child of his right to counsel if he appears without counsel, and grant any reasonabl continuance necessary to enable the child to obtain counsel if he so desires.

(3) After the child has either obtained counsel or clearly indicated that he desires to proceed without counsel and the court deems it fair to so proceed, the court shall ask each of the parties present whether they raise any questions as to any of the facts alleged in the complaint or information. If neither the child nor his parent or persons having custody of him, questions any of the facts alleged, they and the child's counsel, if any, shall then be asked if they consent to the child's being adjudged a delinquent child. If they consent, the judge may then adjudge the child a delinquent child, provide

the facts alleged would constitute a crime if the child were of full age and sound mind, or clearly or otherwise indicate that he is a delinquent child as defined in the Code.

(4) If either the child, his counsel, or his parent or person having custody of him does not so consent, or if any party brings matters to the attention of the court that would indicate any serious doubt as to the truth of any of the essential facts alleged against the child, the court shall proceed to take evidence on the disputed facts in the same manner that it would in the trial of a civil action, witnesses being sworn and all parties allowed to present evidence and examine and cross-examine witnesses as at a civil trial, but all in closed session. The court shall then make an adjudication, either that the child is, or is not, a delinquent child because of the facts alleged in the complaint or information. If the court makes this latter adjudication, that will end the proceedings. Before making an adjudication that the child is a delinquent child, other than by consent as provided in paragraph (3) of this Rule, the court must be satisfied that all facts that are necessary to constitute a ground of delinquency under the Code, have either been admitted or proved beyond a reasonable doubt.

(5) After the child has been adjudged a delinquent child, the court may, and usually should, proceed very

very informally as at a conference to consider the causes of the delinquency and the recommendations of all concerned as to the best disposition of the child within the limits of the law, particularly with regard to the custody, supervision, and schooling or training of the child, including consideration of anything available in the nature of a probation officer's report on the child and his history. Ordinarily the disposition of the case after adjudication can satisfactorily be made without the taking of any further testimony or formal evidence. If any serious dispute arises, however, as to any important facts involved, or the court for any other reason deems it advisable, the court should permit or request the parties to present evidence on the facts in dispute, witnesses being sworn and examined as in a civil action, but still in closed session.

(6) Every effort should be made to secure, if possible, the cooperation and agreement of the child and the parent or person having custody of the child. The court shall, however, make such lawful order as it deems best as to the child, after considering any objections raised.

(7) The court may also make such order as it deems best against any other party in accordance with the authority granted by the provisions of these Rules, but before making such an order it shall give the party or parties against whom the order is proposed an opportunity to show cause why such order should not be issued and, if such party disputes

any important fact on the basis of which the order is requested or proposed, all parties shall be given an opportunity to present evidence thereon as at a civil trial, but still in closed session, before any such order is issued.

(8) Ordinarily there should be little occasion for argument by counsel, but the court should exercise its discretion to permit whatever argument it believes will be honestly helpful to a clear understanding of any legal questions arising and must be scrupulously fair in allowing equal opportunity for argument on either side of any question arising.

Rule 7 - Court's Discretion

In all situations not governed by the provisions of these Rules or otherwise by law or rules of procedure duly promulgated by the Court, the court may adopt the procedure it deems best suited to enable it to dispose of the case promptly, justly, and in the best interests of the child and the public, taking care to see the child is not prejudiced by his immaturity or inability to adequately protect his own interests. If the court deems it necessary to a just determination of the matter, it may appoint a suitable person to represent the child, even over the objection of the child.

Rule 8 - Amendment of Orders

All orders issued in juvenile delinquency proceedings shall be subject to amendment, modification, and recission by the court which issued them at any time that the court deems the best interests of either the child or the public so require.

Rule 9 - Effective Date

These Rules shall become effective sixty (60) days following submission to the President of the Senate and Speaker of the House unless disapproved by a majority of the members of either House of the Legislature. If approved by the above procedure, the exact effective date shall be endorsed hereon. In such event, these Rules will govern all proceedings thereafter commenced and so far as just and practicable all proceedings then pending.

COMMONWEALTH TRIAL COURT

RULES OF PROBATE PROCEDURES

CONTENTS

COMMONWEALTH TRIAL COURT

Rules of Probate Procedures

I. General Provisions

Rule 1. Scope

These Rules are to be used in conjunction with the Code and are designed to provide a procedure for the efficient probate of an estate with notice to all interested persons so that upon closing of the estate a fair and proper distribution according to law is affected.

Rule 2. Construction

These Rules are to be construed with existing and any future legislative enactments regarding the succession of property whether testate or intestate.

Article II. Procedure for Probate of Wills

Rule 3. Filing will with the Clerk

The custodian of a will within thirty days after being informed that the maker thereof is dead, shall deliver the same to the Clerk of the Commonwealth Court, or to the executor named therein. The Court may order the production of a will upon the filing of a petition.

Rule 4. Who may petition for probate

Any executor, devises or legatees named in the will, or any other person interested in the estate may, at any time after the death of the testator, petition the Court to have the will proved, whether the same be in writing or nuncupative, or customary, in his possession or not, lost or destroyed, or beyond the jurisdiction of the Commonwealth.

Rule 5. Allegations in petition

A petition for probate of a will must state:

a. The name and date and place of death of the decedent and the residency at the death of the decedent;

b. Whether the person named as executor consents to act or renounces his right to letters testamentary;

c. The names, ages, and residences of the heirs, devisees, and legatees of the decedent, so far as known to the petitioner;

d. The character and estimated value of the property of the estate;

e. The name of the person for whom letters testamentary are prayed;

f. A statement of the contents of the will if it is a customary, nuncupative, lost, or destroyed will.

g. Such other information available which will enable the probate to be expedited.

Rule 6. Notice of hearing on petition

When the petition is filed, the clerk of the court shall set the same for hearing by the Court upon some day not less then ten days thereafter. The petitioner shall:

1. Prepare the notice of hearing;

2. Cause the notice of hearing to be served personally upon or mailed to the heirs of the testator and the devisees and legatees named in the will at least ten days before the hearing; but in the case of any such person known to be residing neither in the Northern Mariana Islands nor Guam, said notice shall be given at least 25 days before the hearing;

3. Cause the notice of hearing to be published in a newspaper published in the Commonwealth at least once said publication to be at least five days before the hearing;

4. File with the Court before the hearing affidavits proving compliance with this Rule 6.

Rule 7. Procedure at hearing

At the hearing, proof of the will shall be submitted or if contested any testimony or documents may be submitted to the court to disprove the will or to prove any other will of the decedent. The Court shall make such orders as it finds are applicable under the circumstances.

Rule 8. Appointment of Executor

If a will is proven to the satisfaction of the Court and pursuant to law, the Court shall appoint an executor, set bond if the Court deems this necessary and issue letters testamentary to the executor.

Rule 9. Filing of Inventory of Estate

The executor shall, within 60 days of his appointment, file an inventory of the estate which shall include the character, location, and known or estimated value of the items. If real property, the inventory shall include a property description.

Rule 10. Other Duties of Executor

The executor must take into his possession all the estate of the decedent and collect all debts due the decedent or to the estate. If the decedent was in business the executor shall petition the Court for instructions. The executor shall pay debts of the decedent or the estate only after obtaining the Court's consent. No sale or other disposition of estate property will be done without Court order. The executor shall safeguard the assetsof the estate and deposit all cash in an interest bearing account if feasible.

The executor shall do such other acts as are necessary to carry out his fiduciary duties subject to such instructions and orders as the Court may issue.

Rule 11. Credit Claims

The notice required to be published pursuant to Rule 6(3) shall include a notice to creditors of the decedent or his estate that they must file their claims with the Clerk of Courts within 60 days of the first publication of said notice. The executor may approve or disapprove the claim and the

Court may set such hearing on the claim or claims as it deems necessary and set such priority of payment as is consistent with justice and the efficient and expeditious closing of the estate.

Rule 12. Final Distribution

When 70 days have elapsed after the appointment of the executor and the estate is ready to be closed, the executor shall petition the Court for a decree of final distribution. The petition shall include:

a. Statement as to the condition and status of the estate;

b. An accounting of assets received, expenditures made and receipts during administration;

c. List of assets on hand for distribution;

d. Proposed distribution;

e. Any claims for fees, attorney fees or costs;

f. Such other information that will assist the Court in determining if distribution should be made.

The petition will be set down for hearing at which time the Court shall make such orders as are necessary to close the state or to prepare the estate further so that it can be closed. Notice of said hearing and a copy of the petition shall be given at least five days prior to the hearing to any person who has filed a request therefor.

Rule 13. [redacted]

Upon the satisfactory compliance with the Court orders and after final distribution and filing of receipts for same, the executor may be discharged and any bond exonerated.

Article III. Procedure for Intestate Estates

Rule 14. Who may petition for Letters of Administration

Any person who is a resident of the Commonwealth and over 18 years of age may petition for Letters of Administration.

Rule 15. Allegations in Petition

A petition for Letters of Administration must state:

a. The name and date and place of death of the decedent and the residence at death of the decedent; and that petitioner knows of no will left by decedent;

b. The relationship, if any, of the petitioner to the decedent;

c. The interest, if any, of the petitioner in the estate of the decedent;

d. The names, ages, and residence of the heirs of the decedent so far as known to the petitioner;

e. The character and estimated value of the property of the estate;

f. The name of the person for whom letters of administration are prayed;

g. Such other information available which will enable the probate to be expedited.

Rule 16. Notice of Hearing on Petition

When the petition is filed, the Clerk of the Court shall set the same for hearing by the Court upon some day not less than ten days thereafter.

The petitioner shall:

1. Prepare the Notice of Hearing;

2. Cause the Notice of Hearing to be personally served upon or mailed to the heirs of the decedent at least ten days before the hearing; but in the case of any such person known to be residing neither in the Northern Mariana Islands nor Guam, said notice shall be given at least 25 days before the hearing;

3. Cause the Notice of Hearing to be published in a newspaper published in the Commonwealth at least once said publication to be at least five days before the hearing;

4. File with the Court before the hearing, affidavits proving compliance with this Rule 16.

Rule 17. Procedure at Hearing

At the hearing, the Court will hear from the petitioner and any heirs or other interested parties as to facilitate the appointment of an administrator and to determine the heirs of the decedent. The Court shall make such orders as it finds are applicable under the circumstances.

Rule 18. Appointment of Administrator

The Court shall appoint an administrator for the estate who under the circumstances will best be able to administer the estate. Letters of administration shall be issued and bond may be required by the Court.

Rule 19. Filing of Inventory of Estate

The administrator shall file an inventory the same as is required of an executor in Rule 9 of these rules.

Rule 20. Other duties of Administrator

The administrator shall comply with the requirements and directions encompassed in Rule 10 of these Rules.

Rule 21. Creditor Claims

Creditor claims shall be handled and processed in the same manner as is prescribed in Rule 11 of these Rules.

Rule 22. Final Distribution

When 70 days have elapsed after the appointment of the administrator and the estate is ready to be closed, the administrator shall petition the Court for a decree of final distribution. The petition shall include all of that information required in Rule 12 of these Rules and shall be set down for hearing at which time the Court shall make such orders as are necessary to close the estate or to prepare the estate further so that it can be closed. Notice of said hearing and a copy of the petition shall be given at least five days prior to the hearing to any person who has filed a request therefore.

Rule 23. Discharge

Upon the satisfactory compliance with the Court orders and after final distribution and filing of receipts for same, the administrator may be discharged and any bond exonerated.

Article IV. Summary Administration

Rule 24. Filing Petition

Any estate subject to the provision of law for settlement of estates of limited value shall be processed according to such law.

Article V. Miscellaneous Rules

Rule 25. Citation

These rules may be known and cited as The Commonwealth Rules of Probate Procedures. (Com. R. Pro.)

Rule 26. Effective Date

These rules shall become effective sixty (60) days following submission to the President of the Senate and Speaker of the House unless disapproved by a majority of the members of either House of the Legislature. If approved by the above procedure, the exact effective date shall be endorsed hereon. In such event, these rules will govern all procedures thereafter commenced and so far as just and practicable, all proceedings then pending.

RULES OF ADMISSION FOR ATTORNEYS TO PRACTICE IN THE COMMONWEATLH TRIAL COURT

1. Any person who is admitted to practice law before the High Court of the Trust Territory as of January 9, 1978, shall be entitled to receive a certificate of admission to practice law before the Commonwealth Trial Court.

2. Any person who is not admitted to practice law pursuant to Paragraph 1 above, shall be certified for admission to practice before the Commonwealth Trial Court if he or she satisfies the following requirements:

(a) Must be of good moral character;

(b) Shall not have been convicted of a felony or if so convicted, received a full pardon by competent authority;

(c) Shall have graduated from a law school; and

(d) Shall have taken and passed a final bar examination administered by the judges of the Commonwealth Trial Court or their authorized designee. The examination details are set forth in Paragraph 5 of these rules.

3. An attorney not admitted to practice before the Commonwealth Trial Court may be admitted on motion by a judge of the Commonwealth Trial Court for the special purpose of handling a particular case; PROVIDED, however, that such attorney shall be required to associate with an attorney

admitted to practice before the Commonwealth Trial Court who maintains an office in the Commonwealth.

4. An attorney admitted to practice before the Commonwealth Trial Court who does not maintain an office in the Commonwealth may be required by a judge of the Commonwealth Trial Court to associate with an attorney admitted to practice before the Commonwealth Trial Court who maintains an office in the Commonwealth.

5. A bar examination shall be given twice a year commencing on the last Wednesday in February and the last Wednesday in July. The examination shall be for two and one half days. One day shall consist of essay type questions designed to test the proficiency of the applicant in writing, reasoning, and legal knowledge including knowledge of laws applicable in the Northern Mariana Islands. The second day shall consist of the Multistate Bar Examination (MBE) developed by the National Conference of Bar Examiners. Provided, that if an applicant is admitted to practice law in any state of the United States and part of the examination was the MBE, he or she need only to take and pass the essay if the applicant proves to the satisfaction of the court that he or she received a passing grade on the MBE. A Professional Responsibility examination will be given on the half day.

6. In order to apply to take the Bar Examination, an applicant must submit to the Court an application form prescribed by the Commonwealth Trial Court along with an

application fee to be established by the Commonwealth Trial Court to cover costs incurred in administering a Bar Examination and verifying the contents of an application for admission to the Bar of the Commonwealth Trial Court. The admission fee shall be paid at least 45 days before the commencing date of the next bar examination.

7. If an applicant meets the requirements set forth in Paragraph 2 of these rules, he shall be notified by the Court along with a date to appear before the Court to be sworn in to the Bar. To cover the costs of printing and issuing a certificate of admission, the applicant shall pay $10.00 to the Clerk of Court before being sworn in.

8. These rules shall become effective sixty (60) days following submission to the President of the Senate and Speaker of the House unless disapproved by a majority of the members of either House of the Legislature. If approved by the above procedure, the exact effective date shall be endorsed herein.

INSTRUCTIONS TO APPLICANT

This application form must be submitted to the Commonwealth Trial Court at least 45 days before the next bar examination. The application must be submitted in duplicate, typewritten, and accompanied by an application fee of $15.00.

IN THE NORTHERN MARIANA ISLANDS
COMMONWEALTH TRIAL COURT

In The Matter of the
Application of

APPLICATION

For Admission to the Bar
of the Commonwealth Trial Court

To the Chief Judge and Associate Judges of the Commonwealth Trial Court.

I hereby make application for admission to the Bar of the Northern Mariana Islands Commonwealth Trial Court and in connection therewith, to take the Bar Examination of the Commonwealth of the Northern Mariana Islands on .

In support of this Application, I submit the following information in accordance with the Rules of Admission of this Court:

1. (a) Full name .

(b) I am now a resident of .

I am presently residing at
Street

City State or Territory zip code

My residence telephone number is .

My business address is
Street City

State or Territory zip code

My business telephone is .

(c) I have or have not used or been known by another name: and such other name or names and the circumstances and reasons for same are as follows:

(d) I have or have not changed my name. The former name and the reasons for the change in name are as follows:

2. All employments, businesses or occupations for the last 5 years are as follows:

Name of Employer Business or Occupation	Address	Position	Dates	Reason for terminati

3. Date and place of Birth:

I am a citizen of:

4. The following constitutes every residence where I have lived during the last 5 years:

Street & Number	City, State & Zip Code	Dates

5. (a) High School:

Graduated?
Yes or No

Name & Location	From Mo.	From Yr.	To Mo.	To Yr.

(b) College or Universities:

Yes or No

Name And Location	Attended From Mo.	Attended From Yr.	Attended To Mo.	Attended To Yr.	Degree Obtained

(c) Law Study:

Yes or No

Name & Location	Attended From Mo.	Yr.	To Mo.	Yr.	Date Graduated	Degree

6. I have or have never been dropped, suspended, placed on probation, expelled, or requested to resign from any college, university, or law school, or requested or advised by any such institution to discontinue studies therein, except as follows:

(Give circumstances and date of each such occurrence)

7. (a) There are or are no unsatisfied judgments against me.

(b) During the last 5 years, there have or have not been any judgments entered against me. (If so, furnish copies)

8. The following is a complete list of all suits, civil or criminal, to which I have been a party during the last five years.

Date	Court	Nature of Proceedings	Plaintiff	Defendant	Disposition

9. I have or have not been addicted to the use of narcotics, drugs or intoxicating liquors. (If so, state the details)

10. I have or have not within the past five years undergone treatment for or consulted any doctor about the use of drugs, narcotics, or intoxicating liguor. (If so, state the details, circumstances and names and addresses of the doctors so consulted)

11. I submit names and addresses of three persons with whom I am personally acquainted and who can provide information as to my moral character, (and if in the practice of law as to my legal ability).

12. I have or have not made application for admission to the bar in another state or jurisdiction. (If so, state when, where, and the disposition made of such application.)

13. I have or have not actively practiced law. (If so, state the jurisdiction, the dates of practice and whether you have ever been disbarred, suspended from practice, reprimanded, censured, or otherwise disciplined.)

14. I understand that this application is of a continuing nature and must give correctly and fully the information herein sought as of the date of my appearance to be sworn in as an attorney. I will, therefore, before such appearance, notify the Commonwealth Trial Court by filing written notification as to any change in respect to any matter regarding which information is herein sought, as to any facts hereafter developed and as to any subsequent incident which may have bearing upon any information herein sought.

Signature of Applicant

State/Territory)
County of)SS

I hereby certify that on this day of 19___, before me, the subscriber, a Notary Public of the above described jurisdiction, personally appeared and made oath in due form of law that the matters and facts stated in the foregoing application are true.

Witness my hand and seal this day of , 19___.

Notary Public

(My commission expires)

Addendum to Application for
Admission to the Commonwealth Trial Court Bar

1. I hereby certify that I have not discussed with anyone the contents or questions or answers of the essay portion of the Bar Examination given to applicants in August, 1979.

2. I further certify between now and after the examination, I will not disclose the examination contents with anyone and if any part of the August Examination is divulged to me, I shall report same immediately to the Court.

Date Signature

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
COMMONWEALTH TRIAL COURT

DISCIPLINARY RULES AND PROCEDURES FOR ATTORNEYS PRACTICING IN THE COMMONWEALTH TRIAL COURT

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DISCIPLINARY RULES AND PROCEDURES FOR ATTORNEYS PRACTICING IN THE COMMONWEALTH TRIAL COURT

Rule 1. JURISDICTION

Any attorney or trial assistant or any other person who practices law in the Commonwealth of the Northern Mariana Islands is subject to the disciplinary jurisdiction of the Commonwealth Trial Court.

Nothing herein contained shall be construed to deny any Court of the Commonwealth such powers as are necessary for that Court to maintain control over proceedings conducted before it, such as the power of contempt.

For the sake of brevity, the term "attorney," as used in these disciplinary rules, shall mean lawyers and trial assistants or any other persons specially admitted to practice before the Commonwealth Trial Court.

Rule 2. GROUNDS FOR DISCIPLINE

An attorney may be subject to disciplinary action as set forth in these rules for any of the following causes occurring within or outside the Commonwealth:

(a) The commission of any act involving moral turpitude, dishonesty, or corruption whether the same be committed in the course of his or her conduct as an attorney, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action.

Upon such conviction, however, the judgment and sentence shall be conclusive evidence at a disciplinary hearing of his or her violation of the statute upon which it is based. A disciplinary hearing, as provided in Rule 14 of these rules, shall be had to determine; (1) whether moral turpitude dishonesty or corruption was in fact an element of the crime committed by the respondent attorney; and (2) the disciplinary action recommended to result therefrom.

(b) Willful disobedience or violation of a court order directing him or her to do or cease doing an act which he or she ought in good faith do or forbear.

(c) Violation of his or her oath or duties as an attorney.

(d) Willfully appearing without authority as an attorney for a party to an action or proceeding.

(e) Misrepresentation or concealment of a material fact made in his or her application for admission to the bar or reinstatement or in support thereof.

(f) Suspension, disbarment, or other disciplinary sanction by competent authority in any state, federal or foreign jurisdiction

(g) Practicing law with or in cooperation with a disbarred or suspended attorney, or maintaining an office for the practice of law in a room or office occupied or used in whole or in part by a disbarred or suspended attorney, or permitting a disbarred or suspended attorney to use his or her name for the practice of law, or practicing law for or on behalf of a disbarred or suspended attorney, or practicing law under any arrangement or understanding for division of fees or compensation of any kind with a disbarred or suspended attorney, or with any person not authorized to practice law.

(h) Any act or omission by an attorney which violates the Code of Professional Responsibility of the profession as adopted by the American Bar Association in effect at the effective date of these Rules together with any amendments of or additions to such Code, unless such amendments or additions are specifically disapproved by the Court.

Rule 3. TYPES OF DISCIPLINE

Discipline may consist of:

(a) Disbarment by the Commonwealth Trial Court; or

(b) Suspension by the Commonwealth Trial Court for a period not exceeding five (5) years; or

(c) Public censure by the Commonwealth Trial Court; or

(d) Private reprimand by the Commonwealth Trial Court.

Rule 4. COMPLAINTS

All complaints concerning violations of these rules shall be filed with the Disciplinary Committee of the Northern Marianas Bar Association and a copy of same will be provided the Chief Judge.

Rule 5. INVESTIGATION PROCEDURE

(a) The Disciplinary Committee of the Northern Marianas Bar Association shall conduct such investigation as warranted by the circumstances and shall submit a report to the Chief Judge concerning the merits of the complaint.

(b) The report of the investigation shall include copies of statements of witnesses, all documentary evidence relative to the complaint and a summary of the findings of the investigation, and shall include recommended disciplinary action. A recommendation is not binding upon the Court nor admissible in subsequent proceedings, if any.

(c) No report shall be submitted until the respondent attorney has had an opportunity to submit any evidence or statements relevant to the complaint, and such evidence or statements shall be attached to the investigation report.

(d) In the event the Disciplinary Committee fails to submit a report to the Chief Judge within 45 days after receipt of the complaint, the Chief Judge may order the court's own investigation or convene a disciplinary panel pursuant to Rules 6 and 7.

Rule 6. INVESTIGATION REPORT DISPOSITION

(a) If after review of the report of the investigation conducted in accordance with Rule 5 (which includes no recommendations of formal disciplinary action) the Chief Judge determines the complaint is unfounded or of a trivial nature, he may make such disposition of the complaint as warranted by the circumstances.

(b) If the report of investigation conducted in accordance with Rule 5 recommends formal disciplinary action, the Chief Judge shall designate a disciplinary panel of judges to review the complaint, investigation report and take such further action as warranted by the circumstances.

Rule 7. DISCIPLINARY PANEL

(a) Composition: The disciplinary panel shall consist of at least two judges of the Commonwealth Trial Court.

(b) Duties: The disciplinary panel shall review all reports forwarded by the Chief Judge and take such action pursuant to these rules as it deems appropriate.

(c) Formal Hearing: If the disciplinary panel determines a formal hearing is necessary, counsel will be appointed in accordance with Rule 8 and the hearing will be conducted in accordance with Rule 9.

Rule 8. DISCIPLINARY COUNSEL

(a) Appointment: Counsel will be appointed by the disciplinary panel to prosecute allegations of misconduct before the disciplinary panel.

(b) Duties: Upon appointment, counsel will prepare a formal complaint for filing with the Disciplinary Panel, and shall be responsible for the presentation of all evidence relevant to the complaint. He shall also have authority to conduct such further investigation as necessary regarding the alleged misconduct of the respondent attorney.

Rule 9. HEARING

(a) Complaint: Formal disciplinary proceedings before the disciplinary panel shall be instituted by the filing of a disciplinary complaint which shall be sufficiently clear and specific to inform the respondent attorney of the alleged misconduct. A copy of the complaint shall be served upon the respondent.

(b) Answer: The respondent shall serve his answer upon the disciplinary counsel and file the original with the panel within twenty (20) days after service of the complaint, unless such time is extended by the panel. In the event the respondent fails to answer, the charges shall be deemed admitted.

(c) Date of Hearing: The disciplinary panel shall cause notice of the time and place of the hearing to be given to the respondent attorney at least ten (10) days prior thereto. The hearing will be conducted not earlier than thirty (30) days or later than ninety (90) days after service of the complaint, unless delayed for good cause.

(d) Where Held: All disciplinary hearings will be held in the Commonwealth at such place as may be directed by the disciplinary panel.

(e) Public Excluded from Hearing: Unless a public hearing is requested in writing by the respondent attorney at least five (5) days prior to the hearing, the hearing of a disciplinary matter before the panel shall not be public.

(f) Burden: The Disciplinary Counsel shall have the burden of going forward with evidence and establishing the material allegations of the complaint by a preponderance of evidence.

(g) Procedure: At every hearing respondent shall have full opportunity to cross-examine all witnesses presented by the disciplinary counsel, to compel the attendance of witnesses and present witnesses on his own behalf. The hearing panel shall not be bound by the formal Rules of Evidence, but it shall admit only trustworthy evidence.

(h) Findings and Conclusions: Within twenty (20) days after the hearing, the disciplinary panel shall enter its findings and the disciplinary action to be taken.

Rule 10. REFUSAL OF COMPLAINANT TO PROCEED OR COMPROMISE

Neither unwillingness nor neglect of the complainant to sign a complaint or to prosecute a charge, nor settlement, or compromise between the complainant and the respondent attorney or restitution by the respondent attorney, shall, in itself, justify abatement of processing any complaint.

Rule 11. MATTERS INVOLVING RELATED PENDING CIVIL OR CRIMINAL LITIGATION

(a) Processing of complaints shall not be deferred or abated because of substantial similarity to the material allegations of pending criminal or civil litigation, unless authorized by the Chief Judge in his discretion for good cause shown.

(b) The acquittal of an attorney on criminal charges or a verdict or judgment in his favor in civil litigation involving substantially similar material allegations shall not in and of itself justify abatement of a disciplinary action predicated on the same material allegations.

Rule 12. SERVICE

(a) Service upon the respondent of the complaint in any disciplinary proceedings shall be made by personal service by a person authorized by the disciplinary panel, except in the event the respondent cannot be found within the Commonwealth or has departed therefrom, service may be made by registered or certified mail at his address shown in his registration statement filed in his admission papers or other last known address.

(b) Service of any other papers or notices required by these rules shall be made in accordance with the Rules of Civil Procedure of the Commonwealth Trial Court.

Rule 13. SUBPOENA POWER - WITNESSES

(a) The Disciplinary Committee may receive testimony under oath.

(b) Any member of the disciplinary panel or the Chief Judge may issue subpoenaes to compel the attendance of the respondent attorney or of a witness, or the production of books or documents at the taking of a deposition or at a hearing before the Disciplinary Committee or the disciplinary panel. Subpoenaes shall be served in the same manner as in civil cases under the Rules of Civil Procedure.

(c) A respondent may compel by subpoena the attendance of witnesses and the production of books or documents at a hearing or deposition.

(d) There shall be no discovery proceedings except upon the order of the Disciplinary Panel or Chief Judge.

Rule 14. ATTORNEYS CONVICTED OF CRIMES

(a) Upon the filing with the Chief Judge of a certificate of a Clerk of Courts demonstrating that an attorney has been convicted (certificate of conviction) of a crime which is a felony, or if the act had been committed in the Commonwealth would have been a felony or which involves moral turpitude, dishonesty or corruption, pending final disposition of the disciplinary procedure to be commenced upon such conviction, the Chief Judge shall enter an order requiring the attorney to show cause why he should not be immediately restrained from engaging in the practice of law, whether the conviction resulted from a plea of guilty or nolo contendere, or from a verdict after trial or otherwise, regardless of the pendency of an appeal.

(b) Final conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against him based upon the conviction. For the purpose of this rule, a judgment of conviction is deemed final when the availability of appeal has been exhausted.

(c) Upon the receipt of a certificate of conviction of an attorney of a crime described in (a) above, even if the attorney is not restrained from the practicing of law, the Chief Judge shall refer the matter thereafter to a disciplinary panel as provided in Rule 6(b), and the panel shall institute a hearing as provided in Rule 9 in which the sole issue to be determined shall be the extent of the discipline to be imposed, provided the proceedings so instituted shall not be brought to hearing until the judgment of conviction is final, unless the respondent shall request.

(d) Immediately upon the filing with the Chief Judge or disciplinary panel, a certificate demonstrating that the underlying conviction for a crime has been reversed, any order entered under provisions of (a) above, restraining the attorney from the practice of law shall be vacated, any formal proceeding then pending against the attorney founded solely upon such conviction shall be terminated, and any discipline imposed in such formal proceeding shall be vacated, but the reversal of conviction shall not terminate or affect any formal proceeding previously or thereafter instituted founded upon alleged misconduct by the attorney, whether or not involving the same facts alleged to constitute a crime or offense of which the attorney was convicted.

Rule 15. RECIPROCAL DISCIPLINE

(a) All attorneys, subject to the provisions of these rules, shall upon being subjected to professional disciplinary action in another jurisdiction promptly inform the Chief Judge of such action. Upon being informed that an attorney,

subject to the provisions of these rules, has been subjected to discipline in another jurisdiction, the Chief Judge shall obtain a certified copy of such disciplinary order.

(b) Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in the Commonwealth has been disciplined in another jurisdiction, the Chief Judge shall forthwith issue a notice directed to the attorney containing:

(1) A copy of said order from the other jurisdiction; and

(2) An order directing that the attorney inform the Chief Judge within thirty (30) days from service of the notice of any claim by the attorney that the imposition of the identical discipline in the Commonwealth would be unwarranted and the reasons therefor.

(c) Upon the expiration of the thirty (30) days from the service of notice issued, pursuant to the provisions of (b) above, the Chief Judge shall impose the identical discipline, unless the attorney requests a hearing. If a hearing is requested, a disciplinary panel will be designated in accordance with Rule 7. The disciplinary panel shall impose the same discipline, unless the respondent clearly demonstrates:
(1) that the procedure was so lacking in notice or opportunity to be heard as to constitute deprivation of due process; or
(2) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that

the panel could not, consistent with its duties, accept as final the conclusion on that subject; or (3) that the misconduct established warrants substantially different discipline in the Commonwealth. Where the panel determines that any of said elements exist, it shall enter such other order as it deems appropriate.

(d) In all other respects, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct shall establish conclusively the misconduct for the purpose of a disciplinary proceeding in the Commonwealth.

Rule 16. DISBARRED OR SUSPENDED ATTORNEY

(a) A disbarred or suspended attorney shall promptly notify by registered or certified mail, return receipt requested, all clients being represented in pending matters, including litigation or administrative proceedings of his disbarment or suspension and his consequent inability to act as an attorney after the effective date of his disbarment or suspension and shall advise the clients to seek legal assistance elsewhere. With regard to pending litigation or administrative proceedings, such notice to be given to the client shall also advise the client of the desirability of prompt substitution of another attorney or attorneys in his place and notice shall be given to the attorney or attorneys for any adverse party and shall state the place of residence of the client of the disbarred or suspended attorney.

In the event the client does not obtain subsequent counsel before the effective date of the disbarment or suspension, it shall be the responsibility of the disbarred or suspended attorney to move, in Court or agency in which the proceeding is pending, for leave to withdraw.

(c) Orders imposing suspension or disbarment shall be effective thirty (30) days after entry. The disbarred or suspended attorney, after entry of the disbarment or suspension order, shall not accept any new retainers or engage as an attorney for another in any new case or legal matter of any nature. However, during the period from the entry date of the order and its effective date, he may wind up and complete on behalf of any client all matters which were pending on the entry date.

(d) Within ten (10) days after the effective date of the disbarment or suspension order, the disbarred or suspended attorney shall file with this Court an affidavit showing: (1) that he has complied with the provisions of the order and with these rules; and (2) that he has notified all other state, territorial, federal and administrative jurisdictions to which he is admitted to practice of the disciplinary action as may be required by the rules of such jurisdiction(s) Such affidavit shall also set forth the residence or other address of the disbarred or suspended attorney where communications may thereafter be directed to him.

(e) The Chief Judge shall cause a notice of the suspension or disbarment to be published in a newspaper of general circulation in the Commonwealth.

(f) The Chief Judge shall promptly transmit a certified copy of the order of suspension or disbarment to all judges within the Commonwealth and the administrative agencies therein and shall make such further orders as deemed necessary to fully protect the rights of the clients of the suspended or disbarred attorney.

(g) A disbarred or suspended attorney shall keep and maintain records of the various steps taken by him under these rules so that, upon any subsequent proceedings instituted by or against him, proof of compliance with these rules and with disbarment or suspension order will be available. Proof of compliance with these rules shall be a condition precedent to any petition for reinstatement.

Rule 17. REINSTATEMENT

(a) No suspended or disbarred attorney may resume practice until reinstated by order of a disciplinary panel.

(b) Any person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least two (2) years from the effective date of disbarment. Any attorney suspended from practicing may not apply for reinstatement until the expiration of at least one-half of the period of suspension.

(c) Petitions for reinstatement by a disbarred or suspended attorney shall be filed with the Disciplinary Committee of the Northern Marianas Bar Association and a copy with the Chief Judge. The Committee shall conduct a hearing within 45 days and make a recommendation to the Chief Judge. Upon receipt of the Committee's recommendation, or if no recommendation is received in 45 days, the Chief Judge shall designate a disciplinary panel which shall set the matter for hearing. At such hearing, the petitioner shall have the burden of demonstrating that he is qualified to practice law in the Commonwealth and worthy of the Court's trust and confidence. At the conclusion of the hearing, the disciplinary panel shall promptly enter an appropriate order.

(d) This disciplinary panel may direct that the necessary expenses incurred in the investigation and processing of a petition for reinstatement be paid by the petitioner.

Rule 18. CUMULATIVE VIOLATIONS

An attorney disciplined after the effective date of this rule who has a record of:

(a) three or more censures and/or reprimands; or

(b) any combination of a suspension or disbarment, plus one or more censures or reprimands shall be subject to suspension from the practice of law.

Rule 19. UNAUTHORIZED PRACTICE OF LAW

Any attorney or person who practices law in the Commonwealth without being admitted to practice law in the Commonwealth, or any attorney who is disbarred or suspended practices law, shall be held in contempt of court and subject to the sanctions pertaining thereto.

Rule 20. EFFECTIVE DATE

These rules shall become effective sixty (60) days following submission to the President of the Senate and Speaker of the House unless disapproved by a majority of the members of either House of the Legislature. If approved by the above procedure, the exact effective date shall be endorsed hereon. In such event, these rules will govern all procedures thereafter commenced and so far as just and practicable, all proceedings then pending.

[redacted]

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
COMMONWEALTH TRIAL COURT

RULES OF CIVIL PROCEDURE

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RULES OF CIVIL PROCEDURE

FOR THE

COMMONWEALTH TRIAL COURT

I. SCOPE OF RULES--ONE FORM OF ACTION

Rule 1.

SCOPE OF RULES

These Rules govern the procedure in the Commonwealth Trial Court (hereinafter referred to as the Court) in all suits of a civil nature whether cognizable as cases at law or in equity. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

Rule 2.

ONE FORM OF ACTION

There shall be one form of action to be known as "civil action".

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

Rule 3.

COMMENCEMENT OF ACTION

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

Rule 4.

PROCESS

(a) Summons: Issuance. Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver it for service to the Summons Officer or to a person specially appointed to serve it. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

(b) Same: Form. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint.

(c) By Whom Served. Service of all process shall be made by the Summons Officer, or by some person generally or specially appointed by the court for that purpose, except that a subpoena may be served as provided in Rule 45. Any person over the age of eighteen years and not a party to the action shall be deemed to be specially appointed to serve process.

(d) Summons: Personal Service. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) Upon an individual, by delivering a copy of the summons and of the complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(2) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to 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 if required by law, by also mailing a copy to the defendant.

(3) Upon the Government of the Northern Mariana Islands, by delivering a copy of the summons and of the complaint to the Attorney General or to an Assistant Attorney General or clerical employee designated by the Attorney General in a writing filed with the clerk of the court.

(4) Upon an officer or agency of the Government of the Northern Mariana Islands, by serving the Government of the Northern Mariana Islands and by delivering a copy of the summons and of the complaint to such officer or agency.

(5) Upon a governmental organization subject to suit, by delivering a copy of the summons and of the complaint to the chief executive officer.

(e) Same: Service Upon Party Not Found Within the Northern Mariana Islands. Service of a summons, or of a notice, or of an order in lieu of summons upon a party not found within the Northern Mariana Islands may be made under the circumstances and in the manner prescribed by law.

(f) Territorial Limits of Effective Service. All process may be served anywhere within the Northern Mariana Islands, and, when authorized by law, beyond the territorial limits of the Northern Mariana Islands.

(g) Return. The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process. If service is made by a person other than a summons officer, he shall make affidavit thereof. Failure to make proof of service does not affect the validity of the service.

(h) Amendment. At any time, in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

Rule 5.

SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a) Service: When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise

orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) Same: How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(c) Same: Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter.

(e) Filing With the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

Rule 6.

TIME

(a) Computation. In computing any period of time prescribed or allowed by these rules, by order of court, or by an 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, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in Rule 77(c), "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the Northern Mariana Islands.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(b), (d), and (e), and 60(b), except to the extent and under the conditions stated in them.

(c) Reserved

(d) For Motions--Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before

the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. 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 59(c), opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

(e) Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.

III. PLEADINGS AND MOTIONS

Rule 7.

PLEADINGS ALLOWED; FORM OF MOTIONS

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

(b) Motions and Other Papers.

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(c) Demurrers, Pleas, etc., Abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

Rule 8.

GENERAL RULES OF PLEADING

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

(b) Defenses; Form of Denials. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal, equitable, or maritime grounds. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

Rule 9.

PLEADING SPECIAL MATTERS

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.

Rule 10.

FORM OF PLEADINGS

(a) Caption; Names of Parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(b) Paragraphs; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

Rule 11.

SIGNING OF PLEADINGS

Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action many proceed as though the pleading had not been served. For a wilful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

Rule 12.

DEFENSES AND OBJECTIONS--WHEN AND HOW PRESENTED--BY PLEADING OR MOTION--MOTION FOR JUDGMENT ON THE PLEADINGS

(a) When Presented. A defendant shall serve his answer within 20 days after the service of the summons and complaint upon him, except when service is made under Rule 4(e) and a different time is prescribed in the order of court under the statute. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 20 days after the service upon him. The plaintiff shall serve his

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 service of a motion permitted under this rule alters these periods to time as follows, unless a different time is fixed by order of the court: (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 the more definite statement.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary Hearings. The defenses specifically enumerated (1)--(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses. (1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party

indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

Rule 13.

COUNTERCLAIM AND CROSS-CLAIM

(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

(b) Permissive Counterclaims. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

[(d) Reserved]

(e) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(f) Omitted Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of court set up the counterclaim by amendment.

(g) Cross-Claim Against Co-Party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) Joinder of Additional Parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

(i) Separate Trials; Separate Judgments. If the court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b) when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

Rule 14.

THIRD-PARTY PRACTICE

(a) When Defendant May Bring in Third-Party. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. The third-party plaintiff need not obtain leave to make the service if he files the third-party complaint not later than 10 days after he serves his original answer. Otherwise he must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in Rule 12 and his counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any

defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses as provided in Rule 12 and his counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant.

(b) When Plaintiff May Bring in Third-Party. When a counterclaim is asserted against a plaintiff, he may cause a third-party to be brought in under circumstances which under this rule would entitle a defendant to do so.

Rule 15.

AMENDED AND SUPPLEMENTAL PLEADINGS

(a) Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment;

but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admissions of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation Back to Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

The delivery or mailing of process to the Commonwealth Attorney General or an agency or officer who would have been a proper defendant if named, satisfies the requirement of clauses (1) and (2) of this subsection (c) with respect to the Commonwealth or any agency or officer thereof to be brought into the action as a defendant.

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

Rule 16.

PRE-TRIAL PROCEDURE: FORMULATION ISSUES

In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider

(1) The simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(4) The limitation of the number of expert witnesses;

(5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;

(6) Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided.

IV. PARTIES

Rule 17.

PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced

in the name of the real party in interest.

(b) Capacity to Sue or Be Sued. The capacity of an individual, other than one action in a representative capacity, to sue or be sued shall be determined by the law of his domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the Northern Mariana Islands, except that a partnership or other unincorporated association, which has no such capacity by the law, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States or of the Northern Mariana Islands.

(c) Infants or Incompetent Persons. Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

Rule 18.

JOINDER OF CLAIMS AND REMEDIES

(a) Joinder of Claims. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable, as he has against an opposing party.

(b) Joinder of Remedies; Fraudulent Conveyances. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money.

Rule 19.

JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

(a) Persons to be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practice matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subdivision (a) (1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the name, if known to the pleader, of any persons as described in subdivision (a) (1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of Class Action. This rule is subject to the provisions of Rule 23.

Rule 20.

PERMISSIVE JOINDER OF PARTIES

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrence and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

Rule 21.

MISJOINDER AND NON-JOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

Rule 22.

INTERPLEADER

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or

multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

Rule 23.

CLASS ACTIONS

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

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

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

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

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by Order Whether Class Action to be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b) (3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude him from the class if he so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under subdivision (b) (1) or (b) (2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b) (3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c) (2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then

be construed and applied accordingly.

(d) Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

Rule 23.1.

DERIVATIVE ACTIONS BY SHAREHOLDERS

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege (1) that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law, and (2) that the action is not a collusive one to confer jurisdiction on the court which it would not otherwise have. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The

derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interest of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

Rule 23.2.

ACTIONS RELATING TO UNINCORPORATED ASSOCIATIONS

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e)

Rule 24.

INTERVENTION

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the Northern Mariana Islands confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the Northern Mariana Islands confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim

or defense upon any statute or executive order administered by a governmental officer or agency of the Northern Mariana Islands or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the Northern Mariana Islands gives a right to intervene. When the constitutionality of a provision of the Constitution of the Northern Mariana Islands or any law of the Northern Mariana Islands affecting the public interest is drawn in question in any action to which the Government of the Northern Mariana Islands or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the Northern Mariana Islands.

Rule 25.

SUBSTITUTION OF PARTIES

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon

the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against his representative.

(c) Transfer of Interest. In case of any transfer of interest the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

(d) Public Officers; Death or Separation from Office.

(1) When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer sues or is sued in his official capacity, he may be described as a party by his official title rather than by name; but the court may require his name to be added.

V. DEPOSITIONS AND DISCOVERY

Rule 26.

GENERAL PROVISIONS GOVERNING DISCOVERY

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise under subdivision (c) of this

rule, the frequency of use of these methods is not limited.

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General--Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Insurance Agreements.--A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial Preparation: Materials.--Subject to the provisions of subdivision (b) (4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b) (1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously

made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a) (4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts.--Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b) (1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b) (4)(C) of this rule, concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b) (4) (A) (ii) and (b) (4) (B) of this rule; and (ii) with respect to discovery obtained under subdivision (b) (4) (A) (ii) of this rule the court may require, and with respect to discovery obtained under subdivision (b) (4) (B) of this rule the court shall require, the party seeking discovery to pay the other party a fair

portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a) (4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and Timing of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person

expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (A) he knows that the response was incorrect when made, or (B) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

Rule 27.

DEPOSITIONS BEFORE ACTION OR PENDING APPEAL

(a) Before Action.

(1) Petition. A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in the Court may file a verified petition in the Court. The petition shall be entitled in the name of the petitioner and shall show: 1, that the petitioner expects to be a party to an action cognizable in the Court but is presently unable to bring it or cause it to be brought, 2, the subject matter of the expected action and his interest therein, 3, the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it, 4, the names or a description of the persons he expects will be adverse parties and their addresses so far as known, and 5, the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) Notice and Service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served in the manner provided in Rule 4(d) for service of

summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4(d), an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Rule 17(c) apply.

(3) Order and Examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules; and the court may make orders of the character provided for by Rules 34 and 35. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) Use of Deposition. If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in the Court in accordance with the provisions of Rule 32(a).

(b) Pending Appeal. If an appeal has been taken from a judgment of the Court or before the taking of an appeal if the time therefor has not expired, the Court may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the Court. In such case the party who desires to perpetuate the testimony may make a motion in the Court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the Court. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each; (2) the reasons for perpetuating their testimony. If the Court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in

these rules for depositions taken in actions pending in the Court.

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

Rule 28.

PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN

(a) Within the United States and the Northern Mariana Islands. Within the Northern Mariana Islands, the United States, the Trust Territory of the Pacific Islands, or a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the Northern Mariana Islands, the United States, or the place where the examination is held, or before a person appointed by the Court. A person so appointed has power to administer oaths and take testimony.

(b) In Foreign Countries. In a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the laws of the Northern Mariana Islands or of the United States, or (2) before a person commissioned by the Court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [here name the country]." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the Northern Mariana Islands or the United States under these rules.

(c) Disqualification for interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

Rule 29.

STIPULATIONS REGARDING DISCOVERY PROCEDURE

Unless the Court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery, except that stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may be made only with the approval of the court.

Rule 30.

DEPOSITIONS UPON ORAL EXAMINATION

(a) When Depositions May Be Taken. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4(e), except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (b) (2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) Notice of Examination: General Requirements; Special Notice; Non-Stenographic Recording; Production of Documents and Things; Deposition of Organization.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in

writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the Northern Mariana Islands, and will be unavailable for examination unless his deposition is taken before expiration of the 30-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.

If a party shows that when he was served with notice under this subdivision (b) (2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

(3) The Court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The Court may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at his own expense.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe

with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b) (6) does not preclude taking a deposition by any other procedure authorized in these rules.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Motion to Terminate or Limit Examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the Court may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of

Rule 37(a) (4) apply to the award of expenses incurred in relation to the motion.

(e) Submission to Witness; Changes; Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d) (4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification and Filing by Officer; Exhibits; Copies; Notice of Filing. (1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the court in which the action is pending or send it by registered or certified mail to the clerk thereof for filing.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (A) the person producting the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (B) if the person producting the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned

with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

Rule 31.

DEPOSITIONS UPON WRITTEN QUESTIONS

(a) Serving Questions; Notice. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (2) the name or descriptive title and address of the officer before

whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b) (6).

Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The Court may for cause shown enlarge or shorten the time.

(b) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

(c) Notice of Filing. When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

Rule 32.

USE OF DEPOSITIONS IN COURT PROCEEDINGS

(a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or

managing agent, or a person designated under Rule 30(b) (6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (A) that the witness is dead; or (B) that the witness is out of the Northern Mariana Islands, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action in any court of the Northern Mariana Islands, the United States, the Trust Territory of the Pacific Islands, or of any State, territory, or insular possession subject to the dominion of the United States has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

(b) Objections to Admissibility. Subject to the provisions of Rule 28(b) and subdivision (d) (3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

[(c) Reserved]

(d) Effect of Errors and Irregularities in Depositions.

(1) As to Notice.--All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to Disqualification of Officer.--Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to Taking of Deposition.--

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) As to Completion and Return of Deposition.--Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

Rule 33.

(a) Availability; Procedures for Use. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(b) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.

(c) Option to Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it

is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

Rule 34.

PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably useable form), or to inspect and copy, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or

category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

(c) Persons Not Parties. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

Rule 35.

PHYSICAL AND MENTAL EXAMINATION OF PERSONS

(a) Order for Examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of Examining Physician.

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that he is unable to obtain it. The court on

motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician fails or refuses to make a report the court may exclude his testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other rule.

Rule 36.

REQUESTS FOR ADMISSION

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters with the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration

of 45 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The Court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37(a) (4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

Rule 37.

FAILUPE TO MAKE DISCOVERY: SANCTIONS

(a) Motion for Order Compelling Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Application. --An application for an order compelling discovery may be made to the Court.

(2) Motion. --If a deponent fails to answer a question propounded or submitted under Rule 30 and 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) Evasive or Incomplete Answer. --For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of Expenses of Motion. --If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to Comply with Order.

If a deponent fails to be sworn or to answer a question after being directed to do so by the court, the failure may be considered a contempt of court.

If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b) (6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, the court may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring him to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey

the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

VI. TRIALS

Rule 38.

JURY TRIAL OF RIGHT

(a) Right Preserved. The right of trial by jury as given by a statute of the Northern Mariana Islands shall be preserved to the parties inviolate.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be indorsed upon a pleading of the party.

(c) Same: Specification of Issues. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of trial by him. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

Rule 39.

TRIAL BY JURY OR BY THE COURT

(a) By Jury. When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all

of those issues does not exist under the statutes of the Northern Mariana Islands.

(b) By the Court. Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues.

(c) Advisory Jury and Trial by Consent. In all actions not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury or, except in actions against the Northern Mariana Islands when a statute of the Northern Mariana Islands provides for trial without a jury, the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

Rule 40.

ASSIGNMENT OF CASES FOR TRIAL

The court shall provide by rule for the placing of actions upon the trial calendar (1) without request of the parties or (2) upon request of a party and notice to the other parties or (3) in such other manner as the court deems expedient. Precedence shall be given to actions entitled thereto by any statute of the Northern Mariana Islands.

Rule 41.

DISMISSAL OF ACTIONS

(a) Voluntary Dismissal: Effect Thereof.

(1) By Plaintiff; by Stipulation. Subject to the provisions of Rule 23(e), of Rule 66, and of any statute of the Northern Mariana Islands, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation,

the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the Northern Mariana Islands, the United States, the Trust Territory of the Pacific Islands, or of any state, territory, or insular possession under the jurisdiction of the United States an action based on or including the same claim.

(2) By Order of Court. Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary Dismissal: Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

(c) Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) Costs of Previously-Dismissed Action. If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

Rule 42.

CONSOLIDATION: SEPARATE TRIALS

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate Trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as given by a statute of the Northern Mariana Islands.

Rule 43.

TAKING OF TESTIMONY

(a) Form.. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by public law, these rules, or the Rules of Evidence.

[(b) Reserved].

[(c) Reserved].

(d) Affirmation in Lieu of Oath. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) Evidence on Motions. When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or deposition.

(f) Interpreters. The court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

Rule 44.

PROOF OF OFFICIAL RECORD

(a) Authentication.

(1) Domestic. An official record kept within the Northern Mariana Islands, the United States, or any state, district, commonwealth, territory, or insular possession thereof, or within the Panama Canal Zone or the Trust Territory of the Pacific Islands, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office.

(2) Foreign. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation,

consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification.

(b) Lack of Record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a) (1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a) (2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other Proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

Rule 44.1.

DETERMINATION OF FOREIGN LAW

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

Rule 45.

SUBPOENA

(a) For Attendance of Witnesses; Form; Issuance. Every subpoena shall be issued by the clerk under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein

specified. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

(b) For Production of Documentary Evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(c) Service. A subpoena may be served by the Summons Officer, or by any other person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the Northern Mariana Islands or an officer or agency thereof, fees and mileage need not be tendered.

(d) Objections; Place of Examination.

(1) The person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(2) A prospective deponent may be required to attend an examination only on the island wherein he resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of court.

(e) Subpoena for a Hearing or Trial.

At the request of any party subpoena for attendance at a hearing or trial shall be issued by the clerk of the court. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the Northern Mariana Islands; and, when a statute of the Northern Mariana Islands provides therefor, the court upon proper application and cause shown may authorize the service of a subpoena at any other place.

(f) Contempt. Failure by any person without adequate excuse of obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued.

Rule 46.

EXCEPTIONS UNNECESSARY

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

Rule 47.

JURORS

(a) Examination of Jurors. The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties.

(b) Alternate Jurors. The court may direct that not more than two jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider

its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to 1 peremptory challenge in addition to those otherwise allowed by law if alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

Rule 48.

JURIES OR LESS THAN SIX--MAJORITY VERDICT

The parties may stipulate that the jury shall consist of any number less than six or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

Rule 49.

SPECIAL VERDICTS AND INTERROGATORIES

(a) Special Verdicts. The court may require a jury to to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may subject written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of facts raised by the pleadings or by the evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an

issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) General Verdict Accompanied by Answer to Interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to Rule 58. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

Rule 50.

MOTION FOR A DIRECTED VERDICT AND FOR JUDGMENT NOTWITHSTANDING THE VERDICT

(a) Motion for Directed Verdict: When Made; Effect. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. The order of the court granting a motion for a directed verdict is effective without any assent of the jury.

(b) Motion for Judgment Notwithstanding the Verdict. Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted,

the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Not later than 10 days after entry of judgment, a party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party, within 10 days after the jury has been discharged, may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

(c) Same: Conditional Rulings on Grant of Motion.

(1) If the motion for judgment notwithstanding the verdict, provided for in subdivision (b) of this rule, is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may serve a motion for a new trial pursuant to Rule 59 not later than 10 days after entry of the judgment notwithstanding the verdict.

(d) Same: Denial of Motion. If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling him to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment notwithstanding the verdict. If the appellate court reverses the judgment, nothing in this rule precludes

it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

Rule 51.

INSTRUCTIONS TO JURY: OBJECTION

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

Rule 52.

FINDINGS BY THE COURT

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

(b) Amendment. Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the court an objection to such findings or has made a motion to amend them or a motion for judgment.

Rule 53.

MASTERS

(a) Appointment and Compensation. The court in which any action is pending may appoint a special master therein. As used in these rules the word "master" includes a referee, an auditor, an examiner, a commissioner, and an assessor. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) Reference. A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

(c) Powers. The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all

measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Rule 43(c) for a court sitting without a jury.

(d) Proceedings.

(1) Meetings. When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) Witnesses. The parties may procure the attendance of witnesses before the master by the issuance and service of subpoena as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, he may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45.

(3) Statement of Accounts. When matters of accounting are in issue before the master, he may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to proved by oral examination of the accounting parties or upon written interrogatories or

in such other manner as he [redacted]

(e) Report.

(1) Contents and Filing. The master shall prepare a report upon the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, he shall set them forth in the report. He shall file the report with the clerk of the court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

(2) In Non-Jury Actions. In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6(d). The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) In Jury Actions. In an action to be tried by a jury the master shall not be directed to report the evidence. His findings upon the issues submitted to him are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(4) Stipulation as to Findings. The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(5) Draft Report. Before filing his report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

VII. JUDGMENT

Rule 54.

JUDGMENTS; COSTS

(a) Definition; Form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

(d) Costs. Except when express provision therefor is made either in a statute of the Northern Mariana Islands or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the Northern Mariana Islands, 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 5 days thereafter, the action of the clerk may be reviewed by the court.

Rule 55.

DEFAULT

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.

(b) Judgment. Judgment by default may be entered as follows:

(1) By the Clerk. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if he has been defaulted for failure to appear and if he is not an infant or incompetent person.

(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averments by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the Northern Mariana Islands.

(c) Setting Aside Default. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

(d) Plaintiffs, Counterclaimants, Cross-Claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff,

or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(e) Judgment Against the Northern Mariana Islands. No judgment by default shall be entered against the Northern Mariana Islands or an officer or agency thereof unless the claimant establishes his claim or right to relief by evidence satisfactory to the court.

Rule 56.

SUMMARY JUDGMENT

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are

actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Rule 57.

DECLARATORY JUDGMENTS

The procedure for obtaining a declaratory judgment pursuant to law, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39 The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

Rule 58.

ENTRY OF JUDGMENT

Subject to the provisions of Rule 54(b): (1) upon a general verdict of a jury, or upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the court; (2) upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it. Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered as provided in Rule 79(a). Entry of the judgment shall not be delayed for the taxing of costs. Attorneys shall not submit forms of judgment except upon direction of the court, and these directions shall not be given as a matter of course.

Rule 59.

NEW TRIALS; AMENDMENT OF JUDGMENTS

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States;

and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions, and direct the entry of a new judgment.

(b) Time for Motion. A motion for a new trial shall be served not later than 10 days after the entry of the judgment.

(c) Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) On Initiative of Court. Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment.

Rule 60.

RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally or through counsel served with process, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review; are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Rule 61.

HARMLESS ERROR

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

(a) Automatic Stay; Exceptions--Injunctions, Receiverships, and Patent Accountings. Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 30 days after its entry. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) Stay on Motion for New Trial or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

(c) Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considered proper for the security of the rights of the adverse party. If the judgment appealed from is rendered by a district court of three judges specially constituted pursuant to a statute of the United States, no such order shall be made except by such court sitting in open court.

(d) Stay Upon Appeal. When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

(e) Stay in Favor of the Northern Mariana Islands or Agency Thereof. When an appeal is taken by the Government of the Northern Mariana Islands or an officer or agency thereof or by direction of any department of the Goverment of the Northern Mariana Islands and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

[(f) Reserved].

(g) Power of Appellate Court Not Limited. The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(h) Stay of Judgment as to Multiple Claims or Multiple Parties. When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

Rule 63.

DISABILITY OF A JUDGE

If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Rule 64.

SEIZURE OF PERSON OR PROPERTY

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the Northern Mariana Islands existing at the time the remedy is sought.

Rule 65.

INJUNCTIONS

(a) Preliminary Injunctions.

(1) Notice. No preliminary injunction shall be issued without notice to the adverse party.

(2) Consolidation of Hearing With Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a) (2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) Temporary Restraining Order; Notice; Hearing; Duration. A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which

have been made to give the notice and the reasons supporting his claim that notice should not be required. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) Security. No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the Northern Mariana Islands or of an officer or agency thereof.

The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule.

(d) Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice

of the order by personal service or otherwise.

Rule 65.1.

SECURITY: PROCEEDINGS AGAINST SURETIES

Whenever 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 himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribe may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

Rule 66.

RECEIVERS

An action wherein a receiver has been appointed shall not be dismissed except by order of the court. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these rules.

Rule 67.

DEPOSIT IN COURT

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing. Money paid into court under this rule shall be deposited by the clerk and withdrawn only pursuant to an order of the court.

Rule 68.

OFFER OF JUDGMENT

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money for property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

Rule 69.

ENFORCEMENT OF JUDGMENT

Process to enforce a judgment for the payment of money shall be an order in aid of judgment, unless the court directs otherwise. The procedure in proceedings supplementary to and in aid of judgment, and in proceedings on and in aid of execution shall be in accordance with law, as amended. In aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules.

Rule 70.

JUDGMENT FOR SPECIFIC ACTS; VESTING TITLE

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the court shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the Northern Mariana Islands, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the court.

Rule 71.

PROCESS IN BEHALF OF AND AGAINST PERSON NOT PARTIES

When an order is made in favor of a person who is not a party to the action, he may enforce obedience to the order by the same process as if he were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party.

Rule 71A.

CONDEMNATION OF PROPERTY

(a) Applicability of Laws. Every proceedings for the condemnation of property shall be had as a proceeding in eminent domain, in accordance with law, as amended, or as may otherwise be provided by law.

(b) Applicability of Other Rules. These Rules govern the procedure for the condemnation of real and personal property under the power of eminent domain, except as otherwise provided by law.

[IX. RESERVED].

X. COURTS AND CLERKS

Rule 77.

COURTS AND CLERKS

(a) Courts Always Open. The Court shall be deemed always open for the purpose of filing any pleading or other proper paper, or issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules. The Commonwealth Trial Court shall be a court of record.

(b) Trials and Hearings; Orders in Chambers. All trials upon the merits 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, without the attendance of the clerk or other court officials and at any place either within or without the Northern Mariana Islands; but no hearing, other than one ex parte, shall be conducted outside the Northern Mariana Islands without the consent of all parties affected thereby.

(c) Clerk's Office and Orders by Clerk. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but the court may provide by order that the clerk's office shall be open for specified hours on Saturdays or particular legal holidays. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but his action may be suspended or altered or rescinded by the court upon cause shown.

(d) Notice of Orders or Judgments. Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by mail in the manner provided for in Rule 5 upon each party who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these rules; but any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers. Lack of notice of the entry by the clerk 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 applicable rules of appellate procedure.

Rule 78.

MOTION DAY

Every Wednesday (except those Wednesdays which fall on a legal holiday, in which case the Thursday immediately thereafter) is hereby designated as Motion Day, and all motions requiring notice and hearing shall be heard and decided at 9:00 a.m. of the said day. Except as otherwise provided in these rules, at least ten (10) days' notice of motions requiring the giving of notice shall be given by the movant to all opposing parties.

The court, at any time or place and on such notice, if any, as it considers reasonable, may make orders for the advancement, conduct, and hearing of actions.

Rule 79.

BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN

(a) Civil Docket. The clerk shall keep a book known as "civil docket" of such form and style as may be prescribed by the court, and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be entered

chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. When in an action trial by jury has been properly demanded or ordered the clerk shall enter the word "jury" on the folio assigned to that action.

(b) Civil Judgments and Orders. The clerk shall keep, in such form and manner as the court may prescribe, a correct copy of every final judgment or appealable order, or order affecting title to or lien upon real or personal property, and any other order which the court may direct to be kept.

(c) Indices; Calendars. Suitable indices of the civil docket and of every civil judgment and order referred to in subdivision (b) of this rule shall be kept by the clerk under the direction of the court. There shall be prepared under the direction of the court calendars of all actions ready for trial, which shall distinguish "jury actions" from "court actions."

(d) Other Books and Records of the Clerk. The clerk shall also keep such other books and records as may be required from time to time by the court.

Rule 80.

TRANSCRIPT AS EVIDENCE

Whenever the testimony of a witness at a trial or hearing which was electronically recorded or stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported or recorded the testimony.

Rule 81.

APPLICABILITY IN GENERAL

(a) To What Proceedings Applicable. These rules apply in all matters before all courts of the Commonwealth, unless specifically provided otherwise by law or applicable rule of procedure.

(b) Scire Facias and Mandamus. The writs of scire facias and mandamus are abolished. Relief heretofore available by mandamus or scire facias may be obtained by appropriate action or by appropriate motion under the practice prescribed in these rules.

Rule 82.

JURISDICTION AND VENUE UNAFFECTED

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

Rule 83.

SMALL CLAIMS PROCEDURE

(a) Applicability. The Court may consider under this small claims procedure any civil action within its jurisdiction involving a claim for five hundred dollars or less or for property to the value of five hundred dollars or less, exclusive of interest and costs.

(b) Nature and Purpose. This procedure is to enable small claims to be justly decided and fully disposed of with less formality, paperwork, and expenditure of time than is required by the ordinary procedure for larger claims. Parties are to be encouraged to handle small claims personally without counsel, and judges and clerk are expected to aid the parties in doing this. The pleadings, the actions of the court, and any payments received, or reports from a party of payments received by him, shall be noted under the proper date on a small claims docket card for each case. The entries on the docket card shall ordinarily constitute the entire record and no further information need be recorded or kept except as expressly directed for small claims.

(c) Pleadings. The plaintiff (or his counsel) shall state the nature and amount of his claim to the clerk, who shall reduce it to writing very briefly on the docket card under the date the statement is made and have it signed by the plaintiff (or his counsel). This signed statement shall constitute the complaint and no other written pleading shall be required of any party unless the court otherwise orders in a particular case for special cause.

(d) Small Claims Summons; Return Day. Upon the signing of a claim on the small claims docket as provided in paragraph (c) above, the clerk of the court shall issue and deliver to the plaintiff (or his counsel) a small claims summons in duplicate, returnable at a time and place therein stated, which shall be not less than three days after the time the clerk estimates service will be made on the defendant. One of these copies is to be served on the defendant not less than three days before the return day. The other copy is to be returned to the clerk on or before the return day with the return of service endorsed on it (unless the defendant personally, or by counsel, appears before the court at the time the summons is returned). If the plaintiff is acting without counsel, the clerk issuing the summons will instruct the plaintiff how the summons shall be served and return of service made, unless it is clear the plaintiff already understands this, and shall impress upon the plaintiff that he also must appear personally, or by counsel, at the time and place stated in the summons and should bring with him any records or other documents that he believes will support his claim. The summons, with return of service endorsed on it, is to be attached to the docket card and preserved, unless and until the defendant appears before the court personally, or by counsel, after which it may be destroyed.

(e) Trial. A trial shall be held on the return day, unless good cause is shown for delaying it, or the parties agree upon judgment or have settled the claim.

(f) Conduct of Trial. Immediately prior to trial the judge shall ask the defendant or his counsel to state any defense he may have and shall note, or cause the clerk to note, on the docket card the substance of the defendant's position with regard to the claim. The judge shall then proceed to make an earnest effort to help the parties reach settlement without trial, or, failing that, to agree upon as many of the issues as possible as at a pre-trial conference, but no pre-trial order will be required. If the claim, or any counter-claim made, involves a number of items, the

judge may require either party making such claims to present to him and to the opposing party a written list of the items claimed, showing their respective dates and amounts. If no settlement has been reached, the judge shall then proceed with a hearing on the points in dispute, informally in such a manner as to do substantial justice between the parties as promptly as practicable. Witnesses shall be sworn; but the court shall not be bound by the usual rules of procedure or evidence, except those concerning privileged communications and the right against self incrimination. It is expected that most of the questioning will be done by the judge.

(g) Defaults. If a defendant who has been served three days or more before the return day fails to appear personally, or by counsel, judgment may be entered by default where the claim is for a clearly determined amount of money, or on proof by the plaintiff of the amount due if the claim is for damages or any amount that is not clearly determined. If the plaintiff fails to appear personally, or by counsel, the action may be dismissed for want of prosecution, or the defendant may proceed to trial on the merits, or the action may be continued, as the court may direct. If both parties fail to appear, the judge may order the action dismissed for want of prosecution; or make any other disposition thereof that justice may require.

(h) Orders in Aid of Judgment. As soon as the amount due has been determined, judgment shall be entered on the docket card, and the judge shall, as a matter of course, inquire how soon the amount due can be paid, and whether either party desires an order in aid of judgment. If either party requests an order in aid of judgment, and the opposite party (or his counsel) is present, the judge shall notify the parties that he will hold a hearing on the application immediately, unless good cause is shown for delaying the hearing. He shall then proceed as upon any application for an order in aid of judgment. If neither the opposite party nor his counsel is present, the judge shall set a time and place for hearing on the application for enough in advance to give the opposite party a reasonable opportunity to attend, shall direct such notice to the opposite party as the judge deems best, and proceed at that time and place as above provided.

(i) New Trial. Either party to a small claims judgment may have a new trial in the same court according to the usual trial procedure for larger claims by filing a request for new trial within thirty (30) days after the small claims judgment.

(j) Other Procedure. All matters in small claims proceedings which are not covered by this rule shall be governed by the ordinary rules of civil procedure.

Rule 84.

FORMS

The court may adopt, from time to time, forms intended to simplify and expedite proceedings under these rules. Use of said forms will not be mandatory but strongly recommended for use.

Rule 85.

TITLE

These rules may be known and cited as the Commonwealth Rules of Civil Procedure (Com. R. Civ. P.).

Rule 86.

EFFECTIVE DATE

These rules shall become effective sixty (60) days following submission to the President of the Senate and Speaker of the House unless disapproved by a majority of the members of either house of the Legislature. If approved by the above procedure, the exact effective date shall be endorsed hereon. In such event, these rules will govern all proceedings thereafter commenced and so far as just and practicable all proceedings then pending.