**Rules of Criminal Procedure 2007**

# MARSHALL ISLANDS

# RULES OF CRIMINAL PROCEDURE

ORIGINALLY EFFECTIVE MAY 1, 2005
AMENDED AS OF JULY 25, 2007

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## TITLE I. APPLICABILITY

### Rule 1. Scope; Definitions; Interpretation

**(a) Scope.**

**(1) In General.** These rules govern the procedure in all criminal proceedings in the Republic of the Marshall Islands.

**(2) Community Courts.** Community Courts need only follow such parts of these rules that specifically mention them, and, in other matters may follow generally recognized local customs or their own best judgment as to procedure, provided such custom or judgment is not inconsistent with law and does not militate against a just determination of the issues. Provided, further, that a Community Court may follow any other parts of these rules which are not expressly limited to some other court or courts.

**(3) Excluded Proceedings.** Proceedings not governed by these rules include:

**(A)** the extradition and rendition of a fugitive;

**(B)** a civil property forfeiture for violating a statute;

**(C)** the collection of a fine or penalty;

**(D)** a proceeding under a statute governing juvenile delinquency to the extent the procedure is inconsistent with the statute and applicable rules; and

**(E)** a proceeding against a witness in a foreign country.

**(b) Definitions.** The following definitions apply to these rules:

**(1)** "Court" means a judge performing functions authorized by law.

**(2)** "Government" means the Government of the Republic or a local government as appropriate.

**(3)** "Government prosecutor" means a person admitted to the practice of law before the courts of the Republic who is either:
**(A)** the Attorney-General or an authorized deputy or assistant;

**(B)** with respect to cases arising under a local government ordinance, a local government prosecutor authorized by the Attorney-General; or

**(C)** any other attorney or person authorized by the Attorney-General to conduct proceedings under these rules as a prosecutor.

**(4)** "Judge" means a judge of the Republic's Supreme Court, High Court, District Court or a Community Court.

**(5)** "Oath" includes an affirmation.

**(6)** "Organization" means a legal entity other than a natural person.

**(7)** "Police officer" means a member of the Republic's Department of Public Safety or a local government police force authorized to act as a police officer.

**(8)** "Republic" means the Republic of the Marshall Islands.

**(9)** "Rules of Civil Procedure" mean the Marshall Islands Rules of Civil Procedure.

**(10)** “Rules of Evidence”or “Rule of Evidence” means the Marshall Islands Rules of Evidence.

**(c) Interpretation.** These rules are to be interpreted to provide for the just determination of every criminal proceeding, to secure simplicity in procedure and fairness in administration, and to eliminate unjustifiable expense and delay.

**Rule 2. Courts**

**(a) Jurisdiction**. Before proceeding with an arraignment or trial, the court, including a Community Court, must satisfy itself that it is authorized to try the defendant and the offense with which the defendant is charged; provided, however, a court that does not have jurisdiction to try a case may conduct the first appearance and the preliminary hearing under these rules.

**(b) Court Officials**. Official reporters or interpreters must before assuming their duties take an oath to perform such duties to the best of their ability. Other court personnel are not required to take such an oath.

**TITLE II. PRELIMINARY PROCEEDINGS**

**Rule 3. Statement of Charges**

**(a) Charging Documents**. The prosecution of an offense (other than criminal contempt) must be initiated by an information, complaint, or citation. A felony must be arraigned and tried on an information. A misdemeanor may be tried on an information or a complaint. A misdemeanor, tried in the first instance in the District Court or a Community Court, may be tried on a citation.

**(b) Information**. The information is a plain, concise, and definite written statement of the essential facts constituting the offense charged signed by a government prosecutor. When an information is filed in any case, it constitutes the formal statement upon which the defendant is to be tried and any variance between the information and the complaint or citation is immaterial. An information need not contain a formal introduction or conclusion. A count may incorporate by reference an allegation made in another count. A count may allege that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. For each count, the information must give the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated. Unless the defendant was misled and thereby prejudiced, neither an error in a citation nor a citation's omission is a ground to dismiss the information or to reverse a conviction. Upon the defendant's motion, the court may strike surplusage from the information.

**(c) Complaint.** The complaint is a statement of the essential facts constituting the criminal offense by one or more persons named or described therein. It must be made under oath by a police officer before a judge or clerk of the courts. It may be either written or oral, but whenever the judge or clerk of the courts deems practicable it must be reduced to writing, signed by the complainant, and bear a record of the oath signed by the person who administered it. For each count, the complaint must give the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated. Unless the defendant was misled and thereby prejudiced, neither an error in a citation nor a citation's omission is a ground to dismiss the complaint or to reverse a conviction. Upon the defendant's motion, the court may strike surplusage from the complaint.

**(d) Citation**. The citation is a written order signed by a police officer to appear before a court at a time and place named therein to answer a criminal charge briefly described in the citation. A citation must contain a warning that failure to obey it will render the defendant liable to be charged under an information or complaint upon which a warrant of arrest may be issued. The court may accept a fixed-sum payment in lieu of the defendant's appearance on a citation and end the case, but the sum may not exceed the maximum fine allowed by law.

**(e) Amendments**. Unless a substantial right of the defendant is prejudiced, the court may permit the government to amend an information, complaint, or citation at any time before the verdict or finding.

**(f) Bill of Particulars**. The court may direct the government to file a bill of particulars. The defendant may move for a bill of particulars before or within 10 days after arraignment or at a later time if the court permits. The government may amend a bill of particulars subject to such conditions as justice requires.

**Rule 4. Arrest Warrant or Summons on an Information or Complaint; Oral Orders**

**(a) Issuance**. If a complaint or one or more affidavits filed with a complaint or an information establishes probable cause to believe that an offense has been committed and that the defendant committed it, the judge must issue an arrest warrant to an officer authorized to execute it. At the request of a government prosecutor, the judge must issue a summons, instead of a warrant, to a person authorized to serve it. A judge may issue more than one warrant or summons on the same information or complaint. If a defendant fails to appear in response to a summons, a judge may, and upon request of a government prosecutor must, issue a warrant.

**(b) Form.**

**(1) Warrant**. A warrant must:

**(A)** contain the defendant's name or, if it is unknown, a name or description by which the defendant can be identified with reasonable certainty;

**(B)** describe the offense charged in the information or complaint or attach a copy of the information or complaint;

**(C)** command that the defendant be arrested and brought without unnecessary delay before a judge; and

**(D)** be signed by a judge.

**(2) Summons**. A summons must be in the same form as a warrant except that it must require the defendant to appear before a judge at a stated time and place. It also must contain a warning that failure to obey will render the defendant liable to arrest upon a warrant.

**(c) Execution or Service, and Return**.

**(1) By Whom**. Only a police officer or other authorized person may execute a warrant or serve

a summons.

**(2) Location**. A warrant may be executed, or a summons served, within the jurisdiction of the Republic or anywhere else a statute authorizes an arrest.

**(3) Manner.**

**(A)** A warrant is executed by arresting the defendant. Upon arrest, an officer possessing the warrant must show it to the defendant and orally explain its substance. If the officer does not possess the warrant, the officer must inform the defendant of the warrant's existence and of the offense charged and, at the defendant's request, must show the warrant to the defendant as soon as possible.

**(B)** A summons is served on an individual defendant:

**(i)** by delivering a copy to the defendant personally; or

**(ii)** by leaving a copy at the defendant's residence or usual place of abode or employment with a person of suitable age and discretion residing or employed at that location and by mailing a copy to the defendant's last known address.

**(C)** A summons is served on an organization by delivering a copy to an officer, to a managing or general agent, or to another agent appointed or legally authorized to receive service of process. A copy must also be mailed to the organization's last known address or to its principal place of business elsewhere in the Republic.

**(4) Return**.

**(A)** After executing a warrant, the officer must sign a report of the officer's actions thereon, showing the date and place of the arrest, and must return the warrant and the report to the judge before whom the defendant is brought in accordance with Rule 5, or the court named in the warrant if the defendant is released on bail or personal recognizance before being brought before a court or official. At the request of a government prosecutor, an unexecuted warrant must be brought back to and canceled by a judge.

**(B)** At or before the time stated in a summons for appearance of the defendant, the person who served the summons must sign a report of the person's actions thereon, showing the date, place, and method of service, and return the summons and report to the court named in the summons.

At the request of a government prosecutor, an unserved summons must be brought back to and canceled by a judge.

**(C)** At the request of a government prosecutor, a judge may deliver an unexecuted warrant, an unserved summons, or a copy of the warrant or summons to the police officer or other authorized person for execution or service.

**(d) Issuance of oral order in lieu of warrant or penal summons by Community Court.**

**(1)** A Community Court or any judge thereof may, if the court or judge deems the public interest so requires, issue an oral order in place of either a warrant of arrest or a penal summons, which shall have the same force and effect within the territorial jurisdiction of that court as a warrant or penal summons.

**(2)** Such an oral order may be served by orally communicating the substance thereof to the defendant and the report of execution or service of such an order may be made orally.

**(3)** Any person making an arrest on an oral order or serving such an order in place of a penal summons shall report all the essential facts to the court or official before whom the defendant is brought or ordered to appear.

**(4)** Any person by going to trial before a Community Court without requesting a copy of the charges against the person thereby waives the right to have a copy in advance of trial in that court, but the person does not thereby waive the right to such copy before trial in a District Court in the event of an appeal.

**Rule 4.1. Use of Citations**

A police officer, in any case in which the officer may lawfully arrest a person without a warrant, may, subject to such limitations as superiors may impose, issue and serve a citation upon the person instead of making an arrest, if the officer deems that the public interest does not require an arrest.

**Rule 5. Initial Appearance**

**(a) In General.**

**(1) Appearance Upon an Arrest.**

**(A)** A person making an arrest within the Republic must take the defendant without unnecessary delay before a judge, usually within 48 hours excluding weekends and holidays, unless a statute provides otherwise.

**(B)** A person making an arrest outside the Republic must take the defendant without unnecessary delay before a judge, unless a statute provides otherwise.

**(2) Exceptions**. If a defendant is arrested for violating probation or supervised release, Rule 32.1 applies.

**(3) Appearance Upon a Summons or Citation**. When a defendant appears in response to a summons under Rule 4 or citation under Rule 4.1, a judge must proceed under Rule 5 (d).

**(b) Arrest Without a Warrant.** If a defendant is arrested without a warrant, a complaint meeting Rule 4 (a)'s requirement of probable cause must be promptly filed in an appropriate court.

**(c) Reserved.**

**(d) Procedure.**

**(1) Advice**. At the defendant's initial appearance, the judge must inform the defendant of the following:

**(A)** the nature and cause of the accusations against the defendant and the information, complaint, or citation against the defendant, and any affidavit filed with it,

**(B)** if the defendant has been arrested, the defendant's right to challenge the arrest's legality,

**(C)** if the defendant is in custody, the defendant's right to see and contact legal counsel, family, and employer,

**(D)** if the defendant is in custody, the defendant's right to be charged or released within a reasonable time,

**(E)** the defendant's right to remain silent and that anything said can be used against the defendant,

**(F)** the defendant's right to retain legal counsel and, if the defendant does not have the funds to retain legal counsel, to have the court appoint legal counsel for the defendant at no charge,

**(G)** the defendant's right to pretrial release subject to reasonable assurance that the defendant will not flee or gravely endanger public safety, and

**(H)** the right to a preliminary hearing, if any.

**(2) Consulting with Counsel.** The judge must allow the defendant reasonable opportunity to consult with counsel.

**(3) Detention or Release**. The judge must detain or release the defendant as provided by the Constitution, statute, and these rules, including Rule 46.

**(4) Plea**. A defendant may be asked to plead only under Rule 10.

**(e) Video Teleconferencing.** Video teleconferencing may be used to conduct an appearance under this rule if the defendant consents.

**Rule 5.1. Preliminary Hearing**

**(a) In General**. A judge must a preliminary hearing unless:

**(1)** the defendant and the Government waive the hearing; or

**(2)** the defendant is only charged with a petty misdemeanor offense.

**(b) Reserved.**

**(c) Scheduling.** The judge must hold the preliminary hearing within a reasonable time, but no later than 14 days after the initial appearance if the defendant is in custody and no later than 42 days if not in custody.

**(d) Extending the Time**. With the defendant's consent and upon a showing of good cause-taking into account the public interest in the prompt disposition of criminal cases -a judge may extend the time limits in Rule 5.1 (c) one or more times. If the defendant does not consent, the judge may extend the time limits only on a showing that extraordinary circumstances exist and

justice requires the delay.

**(e) Hearing and Finding**. At the preliminary hearing, the defendant may cross-examine adverse witnesses and may introduce evidence but may not object to evidence on the ground that it was unlawfully acquired. If the judge finds good cause to believe an offense has been committed and the defendant committed it, the judge must promptly require the defendant to appear for further proceedings.

**(f) Discharging the Defendant.** If the judge does not find good cause to believe an offense has been committed or the defendant committed it, the judge must dismiss the statement of charges and discharge the defendant. A discharge does not preclude the government from later prosecuting the defendant for the same offense.

**(g) Recording the Proceedings**. The preliminary hearing must be recorded by a court reporter or by a suitable recording device. A recording of the proceeding may be made available to any party upon request. A copy of the recording and a transcript may be provided to any party upon request and upon any payment required by applicable regulations.

## TITLE III. JOINDER OF OFFENSES AND DEFENDANTS

### Rule 6. Reserved

### Rule 7. Reserved

### Rule 8. Joinder of Offenses or Defendants.

**(a) Joinder of Offenses**. An information, complaint, or citation may charge a defendant in separate counts with two or more offenses if the offenses charged are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan. The counts in an information, complaint, or citation may charge a defendant with felonies, misdemeanors, or both.

**(b) Joinder of Defendants**. An information or complaint may charge two or more defendants 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. The defendants may be charged in one or more counts together or separately. All defendants need not be charged in each count.

### Rule 9. Reserved.

## TITLE IV. ARRAIGNMENT AND PREPARATION FOR TRIAL

### Rule 10. Arraignment

**(a) In General.** An arraignment must be conducted in open court and must consist of:

**(1)** ensuring that the defendant has a copy of the information, complaint, or citation;

**(2)** reading the information, complaint, or citation to the defendant or stating to the defendant the substance of the charge, unless the defendant waives reading of the charge; and then

**(3)** asking the defendant to plead to the information, complaint, or citation.

Unless the Court orders that the defendant be held in custody pending disposition of the matter, the court shall inform the defendant that failure to appear after arraignment may be deemed a waiver or forfeiture of the right to be present during the trial will continue in the defendant's absence.

**(b) Waiving Appearances.** A defendant need not be present for the arraignment if

**(1)** the defend has only been charged with misdemeanour offense(s).

**(2)** the defendant, in a written waiver signed by both the defendant and defense counsel, has waived appearance and has affirmed that the defendant received a copy of the information, complaint, or citation, that the plea is not guilty, and that the defendant understands that the defendant's failure to appear at trial may be deemed a waiver or forfeiture of the right to be peresent during the trial and that the trial will continue in the defendant's absence; and

**(3)** the court accepts the waiver.

**(c) Video Teleconferencing.** Video teleconferencing may be used to arraign a defendant if the defendant consents.

**Rule 11. Pleas**

**(a) Entering a Plea.**

**(1) In General**. A defendant may plead not guilty, guilty, or (with the court's consent) nolo contendere.

**(2) Conditional Plea**. With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

**(3) Nolo Contendere Plea**. Before accepting a plea of nolo contendere, the court must consider the parties' views and the public interest in the effective administration of justice.

**(4) Failure to Enter a Plea**. If a defendant refuses to enter a plea or if a defendant organization fails to appear, the court must enter a plea of not guilty.

**(b) Considering and Accepting a Guilty or Nolo Contendere Plea.**

**(1) Advising and Questioning the Defendant**. Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

**(A)** government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;

**(B)** the right to plead not guilty, or having already so pleaded, to persist in that plea;

**(C)** the right to be presumed innocent until proven guilty beyond a reasonable doubt;

**(D)** the right to a speedy and public trial before an impartial tribunal and, if applicable, before a jury;

**(E)** the right to adequate time and facilities to prepare a defense;

**(F)** the right to self representation or to be represented by legal counsel - and if necessary have the court appoint counsel at no cost at trial and at every other stage of the proceeding;

**(G)** the right at trial to confront and cross-examine adverse witnesses, to remain silent and be protected from compelled self-incrimination, to object to illegally obtained evidence, such as the fruits of an illegal search or seizure or an illegally obtained confession, to testify and present evidence, and to compel the attendance of witnesses;

**(H)** the defendant's waiver of these trial rights if the court accepts a plea of guilty or nolo contendere;

**(I)** the nature of each charge to which the defendant is pleading;

**(J)** any maximum possible penalty, including imprisonment, fine, and term of supervised release;

**(K)** any mandatory minimum penalty;

**(L)** any applicable forfeiture;

**(M)** any court ordered restitution; and

**(N)** the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence.

**(2) Ensuring That a Plea Is Voluntary**. Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).

**(3) Determining the Factual Basis for a Plea**. Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

**(c) Plea Agreement Procedure.**

**(1) In General.** A government prosecutor and the defendant's attorney, or the defendant when proceeding *pro se*, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that a government prosecutor will:

**(A)** not bring, or will move to dismiss, other charges;

**(B)** recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate (such a recommendation or request does not bind the court); or

**(C)** agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular policy statement or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

**(2) Disclosing a Plea Agreement**. The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea

agreement *in camera*.

**(3) Judicial Consideration of a Plea Agreement.**

**(A)** To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement or reject it.

**(B)** To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B), the court must advise the defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request.

**(4) Accepting a Plea Agreement.** If the court accepts the plea agreement, it must inform the defendant that to the extent the plea agreement is of the type specified in Rule 11 (c )(1)(A) or (C), the agreed disposition will be included in the judgment.

**(5) Rejecting a Plea Agreement.** If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record and in open court (or, for good cause, *in camera*):

**(A)** inform the parties that the court rejects the plea agreement;

**(B)** advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and

**(C)** advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

**(d) Withdrawing a Guilty or Nolo Contendere Plea.** A defendant may withdraw a plea of guilty or nolo contendere:

**(1)** before the court accepts the plea, for any reason or no reason; or

**(2)** after the court accepts the plea, but before it imposes sentence if:

**(A)** the court rejects a plea agreement under Rule 11 (c)(5); or

**(B)** the defendant can show a fair and just reason for requesting the withdrawal.

**(e) Finality of a Guilty or Nolo Contendere Plea.** After the court imposes sentence, the defendant may not withdraw a plea of guilty or nolo contendere, and the plea may be set aside only on direct appeal or collateral attack.

**(f) Admissibility or Inadmissibility of a Plea, Plea Discussions, and Related Statements**. The admissibility or inadmissibility of a plea, a plea discussion, and any related statement is governed by Rule of Evidence 410.

**(g) Recording the Proceedings.** The proceedings during which the defendant enters a plea must be recorded by a court reporter or by a suitable recording device. If there is a guilty plea or a nolo contendere plea, the record must include the inquiries and advice to the defendant required under Rule 11 (b) and (c).

**(h) Harmless Error.** A variance from the requirements of this rule is harmless error if it does not affect substantial rights.

**Rule 12. Pleadings and Pretrial Motions**

**(a) Pleadings**. The pleadings in a criminal proceeding are the information, complaint, or citation, and the pleas of not guilty, guilty, and nolo contendere.

**(b) Pretrial Motions.**

**(1) In General.** Rule 47 applies to a pretrial motion.

**(2) Motions That May Be Made Before Trial**. A party may raise by pretrial motion any defense, objection, or request that the court can determine without a trial of the general issue.

**(3) Motions That Must Be Made Before Trial**. The following must be raised before trial:

**(A)** a motion alleging a defect in instituting the prosecution;

**(B)** a motion alleging a defect in the information, complaint, or citation - but at any time while the case is pending, the court may hear a claim that the information, complaint, or citation fails to invoke the court's jurisdiction or to state an offense;

**(C)** a motion to suppress evidence;

**(D)** a Rule 14 motion to sever charges or defendants; and

**(E)** a Rule 16 motion for discovery.

**(c) Motion Deadline**. The court may, at the arraignment or as soon afterward as practicable, set a deadline for the parties to make pretrial motions and may also schedule a motion hearing.

**(d) Ruling on a Motion**. the court must decide every pretrial motion before trial unless it finds good cause to defer a ruling. The court must not defer ruling on a pretrial motion if the deferral will adversely affect a party's right to appeal. When factual issues are involved in deciding a motion, the court must state its essential findings on the record.

**(e) Waiver of a Defense, Objection, or Request.** A party waives any Rule 12(b)(3) defense, objection, or request not raised by the deadline the court sets under Rule 12(c) or by any extension the court provides. For good cause, the court may grant relief from the waiver.

**(f) Recording the Proceedings**. All proceedings at a motion hearing, including any findings of fact and conclusions of law made orally by the court, must be recorded by a court reporter or a suitable recording device.

**(g) Defendant's Continued Custody or Release Status.** If the court grants a motion to dismiss based on a defect in instituting the prosecution, in the information, or in the complaint, it may order the defendant to be released or detained for a specified time until a new information or complaint is filed. This rule does not affect any statutory period of limitations.

**Rule 13. Joint Trial of Separate Cases**

The court may order that separate cases be tried together as though brought in a single information, complaint, or citation if all offenses and all defendants could have been joined in a single information, complaint, or citation.

**Rule 14. Relief from Prejudicial Joinder**

**(a) Relief**. If the joinder of offenses or defendants in an information, complaint, or citation or a consolidation for trial appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants' trials, or provide any other relief that justice requires.

**(b) Defendant's Statements**. Before ruling on a defendant's motion to sever, the court may order a government prosecutor to deliver to the court any defendant's statement that the government intends to use as evidence.

**Rule 15. Depositions**

**(a) When Taken.**

**(1) In General.** A party may move that a prospective witness be deposed in order to preserve testimony for trial. The court may, upon good cause shown, grant the motion. If the court orders the deposition to be taken, it may also require the deponent to produce at the deposition any designated material that is not privileged, including any book, paper, document, record, recording, or data.

**(2) Detained Material Witness**. A witness who is detained under Rule 17(i) may request to be deposed by filing a written motion and giving notice to the parties. The court may then order that the deposition be taken and may discharge the witness after the witness has signed under oath the deposition transcript.

**(b) Notice.**

**(1) In General**. A party seeking to take a deposition must give every other party reasonable written notice of the deposition's date and location. The notice must state the name and address of each deponent. If requested by a party receiving the notice, the court may, for good cause, change the deposition's date or location.

**(2) To the Custodial Officer**. A party seeking to take the deposition must also notify the officer who has custody of the defendant of the scheduled date and location.

**(c) Defendant's Presence.**

**(1) Defendant in Custody.** The officer who has custody of the defendant must produce the defendant at the deposition and keep the defendant in the witness's presence during the examination, unless the defendant:

**(A)** waives in writing the right to be present; or

**(B)** persists in disruptive conduct justifying exclusion after being warned by the court that disruptive conduct will result in the defendant's exclusion.

**(2) Defendant Not in Custody.** A defendant who is not in custody has the right upon request to be present at the deposition, subject to any conditions imposed by the court. If the government tenders the defendant's expenses as provided in Rule 15(d) but the defendant still fails to appear, the defendant- absent good cause- waives both the right to appear and any objection to the taking and use of the deposition based on that right.

**(d) Expenses.** If the deposition was requested by the government, the court may- or if the defendant is unable to bear the deposition expenses, the court must-order the government to pay:

**(1)** any reasonable travel and subsistence expenses of the defendant and the defendant's attorney to attend the deposition; and

**(2)** the costs of the deposition transcript.

**(e) Manner of Taking**. Unless these rules or a court order provides otherwise, a deposition must be taken and filed in the same manner as a deposition in a civil action, except that:

**(1)** A defendant may not be deposed without that defendant's consent.

**(2)** The scope and manner of the deposition examination and cross-examination must be the same as would be allowed during trial.

**(3)** The government must provide to the defendant or the defendant's attorney, for use at the deposition, any statement of the deponent in the government's possession to which the defendant would be entitled under Rule 16.

**(f) Use as Evidence.** A party may use all or part of a deposition as provided by the Rules of Evidence.

**(g) Objections**. A party objecting to deposition testimony or evidence must state the grounds for the objection during the deposition.

**(h) Depositions by Agreement Permitted.** The parties may by agreement take and use a deposition with the court's consent.

**Rule 16. Disclosure and Discovery**

**(a) When**. Discovery may commence upon the filing of the information, complaint, or citation.

**(b) Motions.** Requests or motions for discovery must be made not later than 20 days after arraignment in the court having jurisdiction to try the offense charged. Requests must be answered within 10 days after service of the request. The court may enlarge or shorten the times herein specified.

**(c) Disclosure by the Government**.

**(1)** Except as otherwise provided in these rules as to protective orders, the government must, upon written request of defendant's counsel or, if the defendant is not represented by counsel, upon written request of the defendant, disclose to defendant's counsel or the defendant such part or all of the following material and information within its possession or control designated in said request:

**(A)** The names and last known addresses of persons known by the government to have information that relates to the subject matter of the offense, together with their written or recorded statements, and existing memoranda, reporting or summarizing part or all of their oral statements;

**(B)** Any written or recorded statements and the substance of any oral statements made by the defendant or by a co-defendant, a list of all witnesses to the making and a list of all witnesses to the acknowledgment of such statements, and the last known addresses of such witnesses;

**(C)** Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons;

**(D)** A written summary of any testimony that the government intends to use under Rules 702, 703, or 705 of the Rules of Evidence at trial. The summary must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications;

**(E)** Any books, papers, documents, photographs, or objects, which pertain to the case or which were obtained from or belong to the defendant;

**(F)** Any record of prior criminal convictions of the defendant and any persons the government or the defendant intends to call as witnesses at a hearing or the trial;

**(G)** If there has been any photographic or electronic surveillance (including wiretapping), relating to the offense with which the defendant is charged, of the defendant or of conversations to which the defendant was a party or of the defendant's premises; this disclosure must be in the form of a written statement by the government prosecutor briefly setting forth the facts pertaining to the time, place, and persons making the same; and

**(H)** Any material or information, within the possession or control of the government, which tends to negate the guilt of the defendant as to the offense charged, mitigate the degree of the offense charged, or reduce the punishment.

**(2)** The request provided for by this rule must be made by serving a copy of the request upon the government prosecutor and each defendant to be tried jointly with the defendant. The original of such request must be filed in the court having jurisdiction to try the case.

**(d) Disclosure by Government to Defendant by Court Order Requiring a Showing of Good Cause.**

**(1)** The defense may make a written motion in the court having jurisdiction to try said case requesting the government to disclose material and information not covered by Rule 16(c). Such motion must specify the material or information sought to be disclosed. If the court finds the request to be reasonable, the court must order the government to disclose to the defendant that material and information requested which is found by the court to be relevant and material to the defendant's case.

**(2)** The court must specify the material and information to be disclosed and the time and manner in which the government must make disclosure under this rule.

**(e) Disclosure by Defendant to Government Without Court Order.**

**(1)** Except as otherwise provided in these rules as to protective orders, and subject to constitutional limitations, on written request by the government, the defendant must disclose to the government prosecutor such part or all of the following material or information within the defendant's possession or control designated in such request:

**(A)** Any reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons, which the defense intends to introduce into evidence at a hearing or trial, except those portions of any of the above containing statements made by the defendant need not be disclosed;

**(B)** A written summary of any testimony that the defendant intends to use under Rules 702, 703, or 705 of the Rules of Evidence at trial. The summary must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications;

**(C)** The names and last known addresses of persons, other than defendant, whom defendant intends to call as witnesses at any hearing or at the trial, together with their written or recorded statements, and existing memoranda reporting or summarizing part or all of their oral statements;

**(D)** Those parts of any books, papers, documents, photographs, or objects, except such as contain statements of the defendant, which the defendant intends to introduce in evidence at a hearing or trial;

**(E)** If the defendant intends to rely on the defense of insanity at the time of the offense, disclosure of such intent must be in the form of a written statement by counsel for the defendant; and

**(F)** If the defendant intends to rely on the defense of alibi and the government in its request specifies the place, date, and time of the crime charged, disclosure must be in the form of a written statement by counsel for the defendant, announcing such intent and giving specific information as to the place at which the defendant claims to have been at the time of the alleged offense, and, as particularly as is known, the names and addresses of the witnesses by whom the defendant proposes to establish such alibi.

**(2)** The request provided for by this rule must be made by serving a copy of the request upon the defendant or the defendant's attorney, and upon each defendant or the defendant's attorney who is to be tried jointly with the defendant. The original of such request must be filed in the court having jurisdiction to try the case.

**(f) Disclosure by Defendant to Government by Court Order Requiring a Showing of Good Cause.**

**(1)** Subject to constitutional limitations, the government may make a written motion in the court having jurisdiction to try the case requesting the defendant to disclose material and information

not covered in Rule 16(e). Such motion must specify the material or information sought to be disclosed. If the court finds the request to be reasonable, the court must order the defendant to disclose to the government that material and information requested which is found by the court to be relevant and material to the government's case.

**(2)** Upon motion by the government, and subject to constitutional limitations and any other safeguards deemed appropriate by the court, and upon a showing of good cause, the court may order the defendant to:

**(A)** Appear in a lineup;

**(B)** Speak for identification;

**(C)** Be fingerprinted;

**(D)** Pose for photographs not involving re-enactment of a scene;

**(E)** Try on articles of clothing;

**(F)** Provide a sample of the defendant's handwriting;

**(G)** Submit to the taking of specimens of material from under defendant's fingernails;

**(H)** Submit to the taking of samples of the defendant's blood, hair, and other materials of the defendant's body, which involve no unreasonable intrusion thereof;

**(I)** Submit to a reasonable physical or medical inspection of the defendant's body; and

**(J)** Submit to an examination to determine the existence of insanity at the time of the offense, if the defendant gives notice under Rule 16(e)(1)(D) of intent to rely on the defense of insanity at the time of the offense. The court may, at the request of a party or on its own motion, order that defendant to submit to a competency examination to determine the defendant's mental competency to stand trail.

**(3)** If requested by any party, the court must hear evidence on the necessity of discovery requested under Rule 16(f)(2).

**(4)** In its order directing discovery under this rule, the court must make the grounds for its

decision a part of the record.

**(5)** The court must specify the material and information to be disclosed and the time and manner in which the defendant must make disclosure under this rule.

**(6)** The defendant shall have the right to have counsel present during any disclosure under Rule 16(f)(2).

**(7)** Rule 16(f)(2) shall not apply to investigative procedures before the filing of an information.

**(g) Manner of Making Disclosure.** Unless otherwise ordered by the court, disclosure under Rules 16(c) through 16(e) must be:

**(1)** In a manner agreed to by the government and the defendant, or

**(2)** By the party making disclosure notifying opposing counsel that the material and information to be disclosed may be inspected, obtained, tested, copied, or photographed at a specified time and place and whether suitable facilities are available.

**(h) Continuing Duty to Disclose**. If subsequent to complying with a request for disclosure or order of court, a party discovers information that the party would have been required to disclose under the request or order, the party must furnish such additional information to opposing counsel, and if the additions are discovered during trial, the court also must be notified.

**(i) Use of Matters Disclosed**. Any information or materials obtained pursuant to these rules must be used only for the purpose of preparation and trial of the case.

**(j) Matters Not Subject to Disclosure**. The following matters shall not be subject to disclosure:

**(1)** Legal research, or records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the government prosecutor or members of the prosecutor's legal or investigative staff, or of the defendant, defense counsel, or members of the defendant's legal or investigative staff,

**(2)** An informant's identity where identity is a prosecution secret, a failure to disclose will not infringe the constitutional rights of the defendant, and disclosure is not essential to a fair determination of the cause. Disclosure must not be denied hereunder as to the identity of an informant to be produced at a hearing or trial; and

**(3)** Any material or information which involves a substantial risk of prejudice to national security, where a failure to disclose will not infringe the constitutional rights of the defendant, and where disclosure is not essential to a fair determination of the cause. Disclosure must not be denied hereunder as to material or information which is to be disclosed at a hearing or trial.

**(k) Protective Orders**. The court may at any time, on motion and for good cause shown, order:

**(1)** Specified disclosures be denied, regulated, restricted, or deferred, or make such other order as it deems appropriate, provided that all material to which a party is entitled must be disclosed in time to permit counsel to make beneficial use thereof;

**(2)** Non-discoverable parts or portions contained in otherwise discoverable material or information may be excised and the balance thereof only be disclosed, and the excised parts or portions must be sealed, impounded, or preserved in the records of the court, to be made available to a reviewing court in the event of an appeal; and

**(3)** At any proceeding for showing cause for denial, regulation, restriction, or deferment of disclosure, or any portions thereof, that such be made in camera, with a record made of such proceeding and the entire record of such in camera proceeding must be sealed, impounded, and preserved in the records of the court, to be made available to a reviewing court in the event of an appeal.

**(I) Sanctions**. If at any time during the course of the proceeding it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court may order such party to make disclosure of material and information not previously disclosed, grant a continuance, exclude such evidence, or enter such other orders as it deems just under the circumstances. Willful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the court.

**Rule 17. Subpoena**

**(a) Content**. A subpoena must state the court's name and the title of the proceeding, include the seal of the court, command the witness to attend and testify at the time and place the subpoena specifies, warn the witness that his or her failure without adequate excuse to obey the subpoena may be deemed a contempt of court, and be signed by a judge or clerk.

**(b) Defendant Unable to Pay**. Upon a defendant's *ex parte* application, the court must order that a subpoena be issued for a named witness if the defendant shows an inability to pay the witness's fees and the necessity of the witness's presence for an adequate defense. If the court orders a subpoena to be issued, the process costs and witness fees will be paid in the same manner as those paid for witnesses the government subpoenas.

**(c) Producing Documents and Objects.**

**(1) In General**. A subpoena may order the witness to produce any books, papers, documents, data, or other objects the subpoena designates. The subpoena may direct the witness to produce the designated items in court before trial or before they are to be offered in evidence. When the items arrive, the court may permit the parties and their attorneys to inspect all or part of them.

**(2) Quashing or Modifying the Subpoena**. On motion made promptly, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive.

**(d) Service**. A police officer or any nonparty who is at least 18 years old may serve a subpoena. The server must deliver a copy of the subpoena to the witness and must tender to the witness one day's witness-attendance fee and the legal mileage allowance. The server need not tender the attendance fee or mileage allowance when the Republic, a government officer, or a government agency has requested the subpoena. Service may be made either (i) by delivering a copy of the subpoena to the witness and orally explaining the substance thereof to the person named, or (ii) by leaving it at the witness's dwelling house or usual place of abode or of employment with some person of suitable age and discretion residing or employed therein, and orally explaining the substance thereof as above provided. At or before the time stated for appearance in a subpoena, the person who served the subpoena must sign a report of the person's actions thereon and have it delivered to the court that issued the subpoena. The person's report must show the date, place, and method of service.

**(e) Place of Service.**

**(1) In the Republic**. A subpoena requiring a witness to attend a hearing or trial may be served at any place within the Republic.

**(2) In a Foreign Country**. If the witness is in a foreign country, the subpoena may be served where authorized by law, treaty, or government agreement, in such manner as the court may authorize or direct.

**(f) Issuing a Deposition Subpoena**.

**(1) Issuance**. A court order to take a deposition authorizes the clerk to issue a subpoena for any witness named or described in the order.

**(2) Place**. After considering the convenience of the witness and the parties, the court may order-and the subpoena may require-the witness to appear anywhere the court designates.

**(3) Oral Orders by Community Courts**. A Community Court judge may, if the judge deems the public interest so requires, issue an oral order in place of a written subpoena which will have the same force and effect within the territorial jurisdiction of that court as a subpoena. Such order may be served by orally communicating the substance thereof to the person subpoenaed. Report of service of such an order may be made orally.

**(g) Contempt**. The court may hold in contempt a witness who, without adequate excuse, disobeys a subpoena, or oral order in place of one, issued by a judge or clerk.

**(h) Attendance of Child as Witness**. When the testimony of a child under 14 years of age is desired, the parent or guardian may be subpoenaed to bring the child to attend as a witness.

**(i) Detention and release of witness.**

**(1)** Whenever the court has reason to believe that a witness may be intimidated or become unavailable at the trial, the witness may be detained as a material witness; provided, that no such person shall be detained for a period of more than 10 days without a further order being made. A report of such detention shall be made forthwith in the manner provided for the transmission

of the record.

**(2)** A person detained as a material witness shall be entitled to be released as a matter of right upon giving bail for appearance as witness in an amount fixed by the court ordering the detention or any higher court. The court ordering the detention, or any higher court, may order the witness's release without bail if the witness has been detained for an unreasonable length of time and may modify at any time the requirement as to bail.

**Rule 17.1. Pretrial Conference**

On its own, or on a party's motion, the court may hold one or more pretrial conferences to promote a fair and expeditious trial. When a conference ends, the court must prepare and file a memorandum of any matters agreed to during the conference. The government may not use any statement made during the conference by the defendant or the defendant's attorney unless it is in writing and is signed by the defendant and the defendant's attorney.

**TITLE V. RESERVED**

**Rule 18. Reserved**

**Rule 19. Reserved**

**Rule 20. Reserved**

**Rule 21. Reserved**

**Rule 22. Reserved**

**TITLE VI. TRIAL**

**Rule 23. Jury or Non-jury Trial**

**(a) Jury Trial**.

**(A)** Any defendant accused of committing an offense punishable by three (3) or more years in prison shall with respect to the offense be entitled to a trial by a jury, unless the defendant knowingly and voluntarily waives the right to a jury trial.

**(B)** If an offense is punishable by less than three (3) years in prison, the defendant is not entitled to a jury trial with respect to the offense.

**(C)** Whenever the defendant waives the right to a jury trial or the defendant does not have a right to a jury trial, the offense shall be tried to the court alone.

**(b) Jury Size**. A jury consists of 4 persons unless otherwise provided by law.

**(c) Non-jury Trial**. In a case tried without a jury, the court must find the defendant guilty, not guilty, guilty of a lesser included offense (naming the lesser offense), or that the charge is

merged in that of a more serious charge in which it is necessarily included. A lesser included offense is as defined in Rule 31 (c). If before the finding a party requests, the court must state its specific findings of fact in open court or in a written decision or opinion.

**Rule 24. Trial Jurors**

**(a) Examination**.

**(1) In General**. The court may examine prospective jurors or may permit the attorneys for the parties to do so.

**(2) Court Examination**. If the court examines the jurors, it must permit the attorneys for the parties to:

**(A)** ask further questions that the court considers proper; or

**(B)** submit further questions that the court may ask if it considers them proper.

**(b) Alternate Jurors.**

**(1) In General**. The court may impanel 5 or 6 prospective jurors to allow for 1 or 2 alternate jurors to replace any jurors who are unable to perform or who are disqualified from performing their duties.

**(2) Procedure.**

**(A)** The fifth and sixth prospective jurors must have the same qualifications and be selected and sworn in the same manner as any other juror.

**(B)** Alternate jurors shall be chosen by lot by the Clerk of the Court at the end of the trial and shall replace jurors in the same sequence in which they were selected. An alternate juror who replaces a juror has the same authority as the other jurors.

**(3) Retaining Alternate Jurors**. The court may retain alternate jurors after the jury retires to deliberate. The court must ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew.

**(c) Peremptory Challenges**. Each side is entitled to two peremptory challenges to prospective jurors. The court may allow additional peremptory challenges to multiple defendants, and may allow the defendants to exercise those challenges separately or jointly.

**Rule 25. Judge's Disability**

**(a) During Trial**. Any judge regularly sitting in or assigned to the court may complete a jury trial if:

**(1)** the judge before whom the trial began cannot proceed because of death, sickness, or other

disability; and

**(2)** the judge completing the trial certifies familiarity with the trial record.

**(b) After a Verdict or Finding of Guilty.**

**(1) In General**. After a verdict or finding of guilty, any judge regularly sitting in or assigned to a court may complete the court's duties if the judge who presided at trial cannot perform those duties because of absence, death, sickness, or other disability.

**(2) Granting a New Trial**. The successor judge may grant a new trial if satisfied that:

**(A)** a judge other than the one who presided at the trial cannot perform the post trial duties; or

**(B)** a new trial is necessary for some other reason.

**Rule 26. Taking Testimony**

**(a) In General**. In every trial the testimony of witnesses must be taken in open court, unless otherwise provided by a statute, rule or, upon good cause, by court order.

**(b) Child Witness Testimony**.

**(1) Definitions.**

**(A)** "Alternative method" means a method by which a child witness testifies which does not include all of the following:

**(i)** having the child testify in person in an open forum;

**(ii)** having the child testify in the presence and full view of the finder of fact and the court; and

**(iii)** allowing all of the parties to be present, to participate, and to view and be viewed by the child.

"Alternative method" includes, but is not limited to:

**(iv)** interviewing a child in chambers;

**(v)** audio visual recordings to be later presented in the courtroom;

**(vi)** closed-circuit television which is transmitted directly to the courtroom; and

**(vii)** room arrangements that avoid direct confrontation between the child witness and the defendant or the finder of fact.

**(B)** "Child witness" means an individual under the age of 16 who has been or will be called to testify in a proceeding.

**(2) Hearing Whether to Allow Testimony by Alternative Method.**

**(A)** The court may sua sponte order a hearing to determine whether to allow a child witness to testify by an alternative method. The court, for good cause shown, shall order the hearing upon motion of a party, a child witness, or an individual determined by the court to have sufficient standing to act on behalf of the child. The motion should be sought at least 21 days before the trial date, unless the court finds on the record that the need for the hearing was not reasonably foreseeable.

**(B)** A hearing to determine whether to allow a child witness to testify by an alternative method must be conducted on the record after reasonable notice to all parties, any nonparty movant, and any other person the court specifies. In conducting the hearing, the court is not bound by rules of evidence except the rules of privilege. The hearing shall be conducted by the court without a jury.

**(C)** The hearing may, in the discretion of the court, be conducted in an in camera proceeding.

**(D)** The child witness's presence is not required at the hearing unless ordered by the court.

**(3) Standards for Determining Whether the Child Witness May Testify by Alternative Method.**

**(A)** The court may allow a child witness to testify by an alternative method only in the following situations:

**(i)** The child witness may testify otherwise than in an open forum in the presence and full view of the finder of fact if the court finds by a preponderance of the evidence that allowing the child to testify by an alternative method is necessary to serve the best interests of the child or to enable the child to reasonably communicate with the finder of fact.

**(ii)** The child witness may testify other than face-to-face with the defendant if the court finds by a preponderance of the evidence that,

**(a)** the alternative method is necessary to protect the welfare of the child witness,

**(b)** the child witness would be traumatized, not by the courtroom generally, but by the presence of the defendant, and

**(c)** the emotional distress suffered by the child witness in the presence of the defendant is more than de minimis, i.e., more than mere nervousness or excitement or some reluctance to testify.

**(B)** In making the finding, the court shall consider evidence, including expert testimony, on:

**(i)** the nature of the proceeding;

**(ii)** the age and maturity of the child;

**(iii)** the relationship of the child to the parties in the proceeding;

**(iv)** the nature and degree of emotional trauma that the child may suffer in testifying;

**(v)** alternative methods reasonably available;

**(vi)** available means for protecting the interests of or reducing emotional trauma to the child without resort to an alternative method;

**(vii)** the relative rights of the parties;

**(viii)** the importance of the proposed testimony of the child;

**(ix)** any other relevant factor.

**(4) Order Regarding Testimony by Alternative Method.**

**(A)** An order allowing or disallowing a child witness to testify by an alternative method must state the findings of fact and conclusions of law that support the court's determination.

**(B)** An order allowing a child witness to testify by an alternative method must:

**(i)** state the method by which the child is to testify;

**(ii)** list any individual or category of individuals allowed to be in, or required to be excluded from, the presence of the child during the testimony;

**(iii)** state any special conditions necessary to facilitate a party's right to examine or cross-examine the child;

**(iv)** state any condition or limitation upon the participation of individuals present during the testimony of the child; and

**(v)** state any other condition necessary for taking or presenting the testimony.

**(C)** The alternative method ordered by the court may be no more restrictive of the rights of the parties than is necessary under the circumstances to serve the purposes of the order.

**(D)** Testimony by alternative method must be done on record.

**(5) Right of Party to Examine Child Witness.** An alternative method ordered by the court must permit a full and fair opportunity for examination or cross-examination of the child witness by each party.

**(6) Testimonial Aids.**

**(A)** The court may permit a child to use anatomical dolls, puppets, drawings, or other demonstrative devices the court deems appropriate for the purpose of assisting a child in testifying.

**(B)** The court may permit a child to testify while sitting on the lap of a family member, or with a family member near, if the court finds that the child would be more at ease and better able to testify while doing so.

**(7) Two-way Closed Circuit Television.**

**(A)** If the court orders the taking of testimony by television, the attorneys for the parties, not including the defendant represented pro se, shall be present in a room outside the courtroom with the child witness and the child witness shall be subjected to direct and cross-examination.

**(B)** The only other persons who may be permitted in the room with the child during the child's testimony are:

**(i)** persons necessary to operate the television equipment;

**(ii)** a judicial officer, appointed by the court; and

**(iii)** other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child.

**(C)** The child's testimony shall be transmitted by closed circuit television into the courtroom for viewing and hearing by the defendant and the judge, and also the jury and the public, if

applicable. The defendant shall be provided with the means of private, contemporaneous communication with the defendant's attorney during the testimony. The closed circuit television transmission shall relay into the room in which the child is testifying the defendant's image, and the voice of the judge.

**(8) Videotaped Deposition.**

**(A)** If the court orders the taking of testimony by videotape deposition, the trial judge shall preside at the videotape deposition of a child witness and shall rule on all questions as if at trial. The only other persons who may be permitted to be present at the proceeding are:

**(i)** the attorneys for the parties;

**(ii)** persons necessary to operate the videotape equipment;

**(iii)** other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child; and

**(iv)** the defendant, subject to part (C).

**(B)** The defendant shall be afforded the rights applicable to defendants during trial, including the right to an attorney, the right to be confronted with the witness against the defendant, and the right to cross-examine the child.

**(C)** If the use of videotaped deposition is based on evidence that the child is unable to testify in the physical presence of the defendant, the court may order that the defendant, including a defendant represented pro se, be excluded from the deposition room. If the court orders the defendant be excluded from the deposition room, the court shall order that closed circuit television equipment relay the child's testimony into the room in which the defendant is viewing the proceeding, and that the defendant be provided with a means of private, contemporaneous communication with the defendant's attorney during the deposition.

**(D)** The videotape shall be transmitted to the clerk of the courts and shall be made available to counsel for viewing during normal business hours.

**(E)** Pursuant to a Rule 26(b)(D) order, the court may admit the complete videotape record of the examination of the child into evidence in lieu of the child's testifying at the trial.

**(F)** Upon timely receipt of notice that new evidence has been discovered after the original videotaping and before or during trial, the court, for good cause shown, may order additional videotaped deposition. The testimony of the child shall be restricted to the matters specified by the court as the basis for granting the order.

**(G)** In connection with the taking of the videotaped deposition, the court may enter a protective order for the purpose of protecting the privacy of the child.

**(H)** The videotape of the deposition shall be destroyed 5 years after the date on which the trial court entered its judgment, but not before a final judgment is entered on appeal. The videotape shall become part of the court record and be kept by the court until it is destroyed.

**Rule 26.1. Foreign Law Determination**

A party intending to raise an issue of foreign law must provide the court and all parties with reasonable written notice. Issues of foreign law are questions of law, but in deciding such issues a court may consider any relevant material or source -including testimony - without regard to the Rules of Evidence.

**Rule 26.2. Reserved**

**Rule 26.3. Mistrial**

Before ordering a mistrial, the court must give each defendant and the government an opportunity to comment on the propriety of the order, to state whether that party consents or objects, and to suggest alternatives.

**Rule 27. Proving an Official Record**

A party may prove an official record, an entry in such a record, or the lack of a record or entry in the same manner as in a civil action.

**Rule 28. Interpreters**

The court may select, appoint, and set the reasonable compensation for an interpreter. If the defendant requires an interpreter for other than Marshallese to English or English to Marshallese translation, the court may require the defendant to bear the costs of compensating the interpreter. If the defendant cannot afford to pay these costs, the court may require the government to pay the interpreter's compensation.

**Rule 29. Motion for a Judgment of Acquittal**

**(a) At the Close of the Government's Case.** After the government closes its evidence or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction. The court may on its own consider whether the evidence is insufficient to sustain a conviction. If the court denies a motion for a judgment of acquittal at the close of the government's evidence, the defendant may offer evidence without having reserved the right to do so.

**(b) Reserving Decision**. The court may reserve decision on the motion, proceed with the trial (where the motion is made before the close of all the evidence), submit the case to the jury, and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict. If the court reserves decision, it must decide the motion on the basis of the evidence at the time the ruling was reserved.

**(c) After Jury Verdict or Discharge.**

**(1) Time for a Motion.** A defendant may move for a judgment of acquittal, or renew such a motion, within 7 days after a guilty verdict or after the court discharges the jury, whichever is later, or within any other time the court sets during the 7-day period.

**(2) Ruling on the Motion**. If the jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal. If the jury has failed to return a verdict, the court may enter a judgment of acquittal.

**(3) No Prior Motion Required**. A defendant is not required to move for a judgment of acquittal before the court submits the case to the jury as a prerequisite for making such a motion after jury discharge.

**(d) Conditional Ruling on a Motion for a New Trial.**

**(1) Motion for a New Trial**. If the court enters a judgment of acquittal after a guilty verdict, the court must also conditionally determine whether any motion for a new trial should be granted if the judgment of acquittal is later vacated or reversed. The court must specify the reasons for that determination.

**(2) Finality**. The court's order conditionally granting a motion for a new trial does not affect the finality of the judgment of acquittal.

**(3) Appeal.**

**(A) Grant of a Motion for a New Trial**. If the court conditionally grants a motion for a new trial and an appellate court later reverses the judgment of acquittal, the trial court must proceed with the new trial unless the appellate court orders otherwise.

**(B) Denial of a Motion for a New Trial**. If the court conditionally denies a motion for a new trial, an appellee may assert that the denial was erroneous. If the appellate court later reverses the judgment of acquittal, the trial court must proceed as the appellate court directs.

**Rule 29.1. Trial Procedure.**

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

**(a) Opening Statements.** Prior to the presentation of evidence, the prosecution may make an opening statement. The defendant make may an opening statement after that given by the prosecution, unless the defendant elects to make an opening statement after the conclusion of the prosecution's case and before presenting evidence. The opening statement may not be used to argue law, but may identify what the prosecution or the defendant expects the evidence to be or how that evidence will prove the case. Counsel must refrain from making remarks that cannot be proven, but may state fully the matters counsel expects to prove by admissible evidence. Although counsel may argue as forcefully and ably as counsel's abilities permit, counsel may not inflame the passions of the jury or appeal to jury prejudice.

**(b) Calling Witnesses.** After making any such statement, 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 a sequence

as possible.

**(c) Administering Oath.**

(1) An oath of affirmation must be administered by the presiding judge or the clerk or assistant clerk of court to each witness before the witness testifies.

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

(3) 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 evidence, the defendant or defendant's counsel may cross-examine the witness upon any matter appearing in direct examination, or with the court's consent any other matter, 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 pursuant to Rule 29(a) consider whether the evidence introduced by the prosecution is sufficient to support the charge.

**(i) The 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 defendant or defendant's counsel to present defendant's defense in respect to the charges against the defendant.

**(2)** The defendant may make an opening statement, if the defendant has not done so earlier. The defendant may also call and examine any witnesses for the defense in the same manner as is provided for the prosecution above. These witnesses are subject to cross-examination by the prosecution in the same manner as is provided for the defense above.

**(j) Defense Closes**. After all the witnesses 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 re-call 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 defendant may be permitted to call or re-call any witness for the purpose of rebutting any material statement made by a rebuttal witness for the prosecution, or for the purpose of giving testimony on any new matter raised during the rebuttal. Such leave to call or re-call witnesses in rebuttal should be freely granted whenever a 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 and admissible evidence available to the party.

**(l) Summation**. After all the witnesses have testified, the prosecution and the defense may make closing arguments and summations. The prosecution must sum up first, and the defense second. The prosecution is allowed a rebuttal argument. Only one statement may be made on behalf of each defendant. Closing arguments may sum up the facts of the case, review reasonable inferences deducible from the evidence, deal with any matters of law that require argument, respond to opposing counsel, and plead for mercy or justice. Counsel may not express personal opinions as to the credibility of a witness or the weight of the evidence. Counsel may not argue facts not admitted into evidence. Counsel may not inflame the passions of the jury or appeal to their prejudice. During closing argument, the prosecution may not comment on the defendant's failure to testify, unless the defense raises the issue of the defendant's silence, then the prosecution, during rebuttal, may comment on the defendant's silence. The prosecution may comment on the strength of the government's case and point out that its evidence was not contradicted.

**(m) Examination of Witnesses by the Court**. The court may at any stage of the trial question any witnesses and may call or re-call any witnesses at any time before finding, if it considers it necessary in the interests of justice.

**Rule 30. Jury Instructions**

**(a) In General**. Any party may request in writing that the court instruct the jury on the law as specified in the request. The request must be made at the close of the evidence or at any earlier time that the court reasonably sets. When the request is made, the requesting party must furnish a copy to every other party.

**(b) Ruling on a Request.** The court must inform the parties before closing arguments how it intends to rule on the requested instructions.

**(c) Time for Giving Instructions**. The court may instruct the jury before or after the arguments are completed, or at both times.

**(d) Objections to Instructions.** A party who objects to any portion of the instructions or to a failure to give a requested instruction must inform the court of the specific objection and the grounds for the objection before the jury retires to deliberate. An opportunity must be given to object out of the jury's hearing and, on request, out of the jury's presence. Failure to object in accordance with this rule precludes appellate review, except as permitted under Rule 52(b).

**Rule 31. Jury Verdict**

**(a) Return.** The jury must return its verdict to a judge in open court. The verdict must be unanimous.

**(b) Partial Verdicts, Mistrial, and Retrial.**

**(1) Multiple Defendants**. If there are multiple defendants, the jury may return a verdict at any time during its deliberations as to any defendant about whom it has agreed.

**(2) Multiple Counts.** If the jury cannot agree on all counts as to any defendant, the jury may return a verdict on those counts on which it has agreed.

**(3) Mistrial and Retrial.** If the jury cannot agree on a verdict on one or more counts, the court may declare a mistrial on those counts. The government may retry any defendant on any count on which the jury could not agree.

**(c) Lesser Offense or Attempt.** A defendant may be found guilty of any of the following:

**(1)** an offense necessarily included in the offense charged;

**(2)** an attempt to commit the offense charged; or

**(3)** an attempt to commit an offense necessarily included in the offense charged, if the attempt is an offense in its own right.

**(d) Jury Poll**. After a verdict is returned but before the jury is discharged, the court must on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity, the court may direct the jury to deliberate further or may declare a mistrial and discharge the jury.

## TITLE VII. POST-CONVICTION PROCEDURES

### Rule 32. Sentencing and Judgment

**(a) Definitions**. The following definitions apply under this rule:

**(1)** "Crime of violence or sexual abuse" means:

**(A)** a crime that involves the use, attempted use, or threatened use of physical force against another's person or property; and

**(B)** a crime under Sections 113-116, 131-135, 145, and 152 of the Criminal Code, 31 MIRC Clip. 1, and any amendments or replacements thereof.

**(2)** "Victim" means an individual against whom the defendant committed an offense for which the court will impose sentence.

**(b) Time of Sentencing.**

**(1) In General**. The court must impose sentence without unnecessary delay.

**(2) Reserved.**

**(c) Reserved.**

**(d) Reserved.**

**(e) Reserved.**

**(f) Reserved.**

**(g) Reserved.**

**(h) Reserved.**

**(i) Sentencing.**

**(1) Reserved.**

**(2) Introducing Evidence; Producing a Statement.** The court may permit the parties to introduce evidence on the sentencing of the defendant.

**(3) Reserved.**

**(4) Opportunity to Speak.**

**(A) By a Party**. Before imposing sentence, the court must:

(i) provide the defendant's attorney an opportunity to speak on the defendant's behalf;

(ii) address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence; and

(iii) provide a government prosecutor an opportunity to speak equivalent to that of the defendant's attorney.

(**B) By a Victim**. Before imposing sentence, the court must address any victim of a crime of violence or sexual abuse who is present at sentencing and must permit the victim to speak or submit any information about the sentence. Whether or not the victim is present, a victim's right to address the court may be exercised by the following persons if present:

(i) a parent, legal guardian, or other principle care-giver, if the victim is younger than 18 years

or is incompetent; or

(ii) one or more family members or relatives the court designates, if the victim is deceased, incapacitated, or requests that another family member speak on the victim's behalf.

**(C) *In Camera* Proceedings**. Upon a party's motion and for good cause, the court may hear *in camera* any statement made under Rule 32(1)(4).

**(j) Defendant's Right to Appeal.**

**(1) Advice of a Right to Appeal.**

**(A) Appealing a Conviction**. If the defendant pleaded not guilty and was convicted, after sentencing the court must advise the defendant of the right to appeal the conviction.

**(B) Appealing a Sentence**. After sentencing - regardless of the defendant's plea - the court must advise the defendant of any right to appeal the sentence.

**(C) Appeal Costs**. The court must advise a defendant who is unable to pay appeal costs of the right to ask for permission to appeal in *forma pauperis*.

**(D) Failure to Give Notice**. The court's failure to give the defendant notice of the right to appeal does not affect the time to appeal, or relieve- or authorize the court to relieve - a party's failure to appeal within the allowed time.

**(2) Reserved.**

**(k) Judgment**. In the judgment of conviction, the court must set forth the plea, the jury verdict or the court's findings, the adjudication, and the sentence. If the defendant is found not guilty or is otherwise entitled to be discharged, the court must so order. The judge must sign the judgment, and the clerk must enter it and serve it on the parties. The filing of a judgment constitutes entry of judgment.

**Rule 32.1. Revoking or Modifying Probation or Supervised Release**

**(a) Initial Appearance**.

**(1) Person In Custody**. A person held in custody for violating probation or supervised release must be taken without unnecessary delay before a judge.

**(2) Upon a Summons.** When a person appears in response to a summons for violating probation or supervised release, a judge must proceed under this rule.

**(3) Advice.** The judge must inform the person of the following:

**(A)** the alleged violation of probation or supervised release;

**(B)** the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel; and

**(C)** the person's right, if held in custody, to a preliminary hearing under Rule 32.1(b)(1).

**(4) Release or Detention**. The judge must order that the person be detained, unless the judge finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released pending further proceedings. The burden of establishing that the person will not flee or pose a danger to any other person or to the community rests with the person.

**(b) Revocation.**

**(1) Preliminary Hearing**.

**(A) In General**. If a person is in custody for violating a condition of probation or supervised release, a judge must promptly conduct a hearing to determine whether there is good cause to believe that a violation occurred. The person may waive the hearing.

**(B) Requirements**. The hearing must be recorded by a court reporter or by a suitable recording device. The judge must give the person:

(i) notice of the hearing and its purpose, the alleged violation, and the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel;

(ii) an opportunity to appear at the hearing and present evidence; and

(iii) upon request, an opportunity to question any adverse witness, unless the judge determines that the interest of justice does not require the witness to appear.

**(C) Referral**. If the judge finds good cause, the judge must conduct a revocation hearing. If the judge does not find good cause, the judge must dismiss the proceeding.

**(2) Revocation Hearing**. Before revoking the conditions of probation or supervised release, the court must hold the revocation hearing within a reasonable time, unless a hearing is waived by the person. The person is entitled to:

**(A)** written notice of the alleged violation;

**(B)** disclosure of the evidence against the person;

**(C)** an opportunity to appear, present evidence, and question any adverse witness unless the court determines that the interest of justice does not require the witness to appear; and

**(D)** notice of the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel.

**(c) Modification.**

**(1) In General**. Before modifying the conditions of probation or supervised release, the court must hold a hearing, at which the person has the right to counsel.

**(2) Exceptions**. A hearing is not required if:

**(A)** the person waives the hearing; or

**(B)** the relief sought is favorable to the person and does not extend the term of probation or of supervised release; and

**(C)** a government prosecutor has received notice of the relief sought, has had a reasonable opportunity to object, and has not done so.

**(d) Disposition of the Case**. The court may revoke or modify probation if the evidence presented is such as to reasonably satisfy the judge that the conduct of the probation has not been as good as required by the conditions of probation. Proof beyond a reasonable doubt is not required. The court's disposition of the case is governed by Part XXIX of the Criminal Code, 31 MIRC Sec's 181-192.

**Rule 32.2. Seized Property**

**(a) Retention**. Any property seized in connection with an alleged offense must be retained pending trial in accordance with the orders of the court. Such property must be produced in court, if practicable. If the property is perishable, the court may order that it be sold and the proceeds held until the disposition of the case.

**(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 that shall be incorporated in the record of the case.

**Rule 33. New Trial**

**(a) Defendant's Motion**. Upon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires. If the case was tried without a jury, the court may take additional testimony and enter a new judgment.

**(b) Time to File.**

**(1) Newly Discovered Evidence**. Any motion for a new trial grounded on newly discovered evidence must be filed within one year after the verdict or finding of guilty. If an appeal is

pending, the court may not grant a motion for a new trial until the appellate court remands the case.

**(2) Other Grounds**. Any motion for a new trial grounded on any reason other than newly discovered evidence must be filed within 7 days after the verdict or finding of guilty, or within such further time as the court sets during the 7-day period.

**Rule 34. Arresting Judgment**

**(a) In General**. Upon the defendant's motion or on its own, the court must arrest judgment if:

**(1)** the statement of charges does not charge an offense; or

**(2)** the court does not have jurisdiction of the charged offense.

**(b) Time to File**. The defendant must move to arrest judgment within 7 days after the court accepts a verdict or finding of guilty, makes a finding of guilty, or after a plea of guilty or nolo contendere, or within such further time as the court sets during the 7-day period.

**Rule 35. Correcting or Reducing a Sentence**

**(a) Correcting Clear Error**. Within 7 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error.

**(b) Reducing a Sentence for Substantial Assistance**.

**(1) In General**. Upon the government's or the defendant's motion made within one year of sentencing, the court may reduce a sentence if the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person.

**(2) Later Motion**. Upon the government's or the defendant's motion made more than one year after sentencing, the court may reduce a sentence if the defendant's substantial assistance involved:

**(A)** information not known to the defendant until one year or more after sentencing;

**(B)** information provided by the defendant to the government within one year of sentencing, but which did not become useful to the government until more than one year after sentencing; or

**(C)** information the usefulness of which could not reasonably have been anticipated by the defendant until more than one year after sentencing and which was promptly provided to the government after its usefulness was reasonably apparent to the defendant.

**(3) Evaluating Substantial Assistance.** In evaluating whether the defendant has provided substantial assistance, the court may consider the defendant's pre-sentence assistance.

**Rule 36. Clerical Error**

After giving any notice it considers appropriate, the court may at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission.

**Rule 37. Reserved**

**Rule 38. Staying a Sentence or a Disability**

**(a) Reserved.**

**(b) Imprisonment.**

**(1) Stay Granted**. If the defendant appeals, the court may stay - on any conditions it deems appropriate - a sentence of imprisonment.

**(2) Stay Denied; Place of Confinement.** If the defendant is not released pending appeal, the court may recommend to the Attorney-General that the defendant be confined near the place of the trial or appeal for a period reasonably necessary to permit the defendant to assist in preparing the appeal.

**(c) Fine.** If the defendant appeals, the court may stay a sentence to pay a fine or a fine and costs. The court may stay the sentence on any terms considered appropriate and may require the defendant to:

**(1)** deposit all or part of the fine and costs into the court's registry pending appeal;

**(2)** post a bond to pay the fine and costs; or

**(3)** submit to an examination concerning the defendant's assets and, if appropriate, order the defendant to refrain from dissipating assets.

**(d) Probation.** If the defendant appeals, the court may stay a sentence of probation. The court must set the terms of any stay.

**(e) Restitution and Notice to Victims.**

**(1) In General**. If the defendant appeals, the court may stay - on any terms considered appropriate - any sentence providing for restitution.

**(2) Ensuring Compliance**. The court may issue any order reasonably necessary to ensure compliance with a restitution order or a notice order after disposition of an appeal, including:

**(A)** a restraining order;

**(B)** an injunction;

**(C)** an order requiring the defendant to deposit all or part of any monetary restitution into the court's registry; or

**(D)** an order requiring the defendant to post a bond.

**(f) Disability**. If the defendant's conviction or sentence creates a civil or employment disability, the court may stay the disability pending appeal on any terms considered appropriate. The court may issue any order reasonably necessary to protect the interest represented by the disability pending appeal, including a restraining order or an injunction.

**Rule 39. Reserved**

**TITLE VIII. SUPPLEMENTARY AND SPECIAL PROCEEDINGS**

**Rule 40. Reserved**

**Rule 41. Search and Seizure**

**(a) Scope and Definitions.**

**(1) Scope**. This rule does not modify any statute regulating search or seizure, or the issuance and execution of a search warrant in special circumstances.

**(2) Definitions**. The following definitions apply under this rule:

**(A)** "Property" includes documents, books, papers, any other tangible objects, and information.

**(B)** "Daytime" means the hours between 6:00 a.m. and 10:00 p.m. according to local time.

**(b) Authority to Issue a Warrant**. At the request of a police officer or a government prosecutor, a High Court or District Court judge has authority to issue a warrant to search for and seize a person or property within the Republic and a Community Court judge has authority to issue a warrant to search for and seize a person or property within the judge's territorial jurisdiction. Application for a warrant shall ordinarily be made to a judge of the District Court or a Community Court.

**(c) Persons or Property Subject to Search or Seizure**. A warrant may be issued for any of the following:

**(1)** evidence of a crime;

**(2)** contraband, fruits of crime, or other items illegally possessed;

**(3)** property designed for use, intended for use, or used in committing a crime; or

**(4)** a person to be arrested or a person who is unlawfully restrained.

**(d) Obtaining a Warrant.**

**(1) Probable Cause**. After receiving an affidavit or other information, a judge must issue the warrant if there is probable cause to search for and seize a person or property under Rule 41(c).

**(2) Requesting a Warrant in the Presence of a Judge.**

**(A) Warrant on an Affidavit.** When a police officer or a government prosecutor presents an affidavit in support of a warrant, the judge may require the affiant to appear personally and may examine under oath the affiant and any witness the affiant produces.

**(B) Warrant on Sworn Testimony**. The judge may wholly or partially dispense with a written affidavit and base a warrant on sworn testimony if doing so is reasonable under the circumstances.

**(C) Recording Testimony**. Testimony taken in support of a warrant must be recorded by a court reporter or by a suitable recording device, and the judge must file the transcript or recording with the clerk, along with any affidavit.

**(3) Requesting a Warrant by Telephonic or Other Means.**

**(A) In General.** A judge may issue a warrant based on information communicated by telephone or other appropriate means, including facsimile transmission.

**(B) Recording Testimony**. Upon learning that an applicant is requesting a warrant, a judge must:

**(i)** place under oath the applicant and any person on whose testimony the application is based; and

**(ii)** make a verbatim record of the conversation with a suitable recording device, if available, or by a court reporter, or in writing.

**(C) Certifying Testimony**. The judge must have any recording or court reporter's notes transcribed, certify the transcription's accuracy, and file a copy of the record and the transcription with the clerk. Any written verbatim record must be signed by the judge and filed with the clerk.

**(D) Suppression Limited**. Absent a finding of bad faith, evidence obtained from a warrant issued under Rule 41(d)(3)(A) is not subject to suppression on the ground that issuing the warrant in that manner was unreasonable under the circumstances.

**(e) Issuing the Warrant.**

**(1) In General**. The judge must issue the warrant to a police officer authorized to execute it.

**(2) Contents of the Warrant**. The warrant must identify the person or property to be searched, identify any person or property to be seized, and designate the judge to whom it must be returned. The warrant must command the officer to:

**(A)** execute the warrant within a specified time no longer than 10 days, plus whatever time the judge determines will be reasonably required for the officer to travel to the point where the search is to be made and to return such warrant to the appropriate judge;

**(B)** execute the warrant during the daytime, unless the judge for good cause, and after hearing statements under oath in support of a non-daytime search, expressly authorizes execution at another time; and

**(C)** return the warrant to the judge designated in the warrant.

**(3) Warrant by Telephonic or Other Means**. If a judge decides to proceed under Rule 41 (d) (3)(A), the following additional procedures apply:

**(A) Preparing a Proposed Duplicate Original Warrant.** The applicant must prepare a "proposed duplicate original warrant" and must read or otherwise transmit the contents of that document verbatim to the judge.

**(B) Preparing an Original Warrant.** The judge must enter the contents of the proposed duplicate original warrant into an original warrant.

**(C) Modifications.** The judge may direct the applicant to modify the proposed duplicate original warrant. In that case, the judge must also modify the original warrant.

**(D) Signing the Original Warrant and the Duplicate Original Warrant.** Upon determining to issue the warrant, the judge must immediately sign the original warrant, enter on its face the exact time it is issued, and direct the applicant to sign the judge's name on the duplicate original warrant.

**(f) Executing and Returning the Warrant.**

**(1) Noting the Time.** The officer executing the warrant must enter on its face the exact date and

time it is executed.

**(2) Inventory**. An officer present during the execution of the warrant must prepare and verify an inventory of any property seized. The officer must do so in the presence of another officer and the person from whom, or from whose premises, the property was taken. If either one is not present, the officer must prepare and verify the inventory in the presence of at least one other credible person.

**(3) Receipt.** The officer executing the warrant must:

**(A)** give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken; or

**(B)** leave a copy of the warrant and receipt at the place where the officer took the property.

**(4) Return.** The officer executing the warrant must promptly return it - together with a copy of the inventory - to the judge designated on the warrant. The judge must, on request, give a copy of the inventory to the person from whom, or from whose premises, the property was taken and to the applicant for the warrant. The officer must verify the inventory with a statement signed and sworn to by the officer to the effect that the inventory is a true account of all property taken under the warrant.

**(g) Motion to Return Property**. A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move in court for the property's return. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

**(h) Motion to Suppress**. A defendant may move to suppress evidence in the court where the trial will occur, as Rule 12 provides.

**(i) Forwarding Papers to the Clerk**. The judge to whom the warrant is returned must attach to the warrant a copy of the return, of the inventory, and of all other related papers and must deliver them to the clerk.

**(j) Confidentiality of Warrant Information**. The record of proceedings regarding the issuance of a search warrant, including affidavits, recordings, and transcripts, must be kept sealed until the warrant is executed. However, the court may order prior release of these documents.

**(k) Oral order in lieu of search warrant.**

**(1)** A Community Court or any judge thereof may, if the public interest so requires, issue an oral order in place of a search warrant. Such oral order shall have the same force and effect within the territorial jurisdiction of that court as a search warrant and must be returnable before the issuing court or judge.

**(2)** An oral order in place of a search warrant may be orally communicated to the person from

whom or from whose premises the property is taken, and no inventory shall be required in such case, but the property seized must be brought promptly before the court or judge issuing the order, and the policeman executing it may orally report action taken thereon.

**(3)** The court or judge must, upon request, allow the applicant for the order and the person from whom or from whose premises the property was taken to view the property taken, and must report all actions in the matter to the clerk of courts as soon as possible.

**(4)** If the grounds on which the order was issued are controverted, the court or judge must proceed to take testimony orally. Such testimony need not be reduced to writing.

**(l) Entering building or ship to execute search warrant.** If a building or ship or any part thereof is designated as the place to be searched, the police officer executing the warrant or oral order in place of a warrant may enter without demanding permission if the officers finds the building or ship open. If the building or ship is closed, the officer shall first demand entrance in a loud voice and state that the officer desires to execute a search warrant or an oral order in place thereof as the case may be. If the doors, gates, or other bars to the entrance are not immediately opened, the officer may force an entrance, by breaking them if necessary. Having entered, the officer may demand that any other part of the building or ship, or any closet, or other closed space within the place designated in the search warrant in which the officer has reason to believe the property is concealed, be opened for inspection, and, if refused, the officer may break them. Whenever practicable these demands and statements shall be made in a language generally understood in the locality. Notwithstanding the above, a court for good cause, and after hearing statements under oath in support of an unannounced entrance, may authorize execution of the warrant without an announced entrance. Good cause exists when announcing entrance would (1) create a danger to the police officers' safety, (2) allow suspects to escape, (3) likely result in the destruction of evidence sought to be seized, or (4) result in some other consequence improperly frustrating legitimate law enforcement efforts.

**Rule 42. Criminal Contempt**

Subject to the provisions of Part VIII of the Judiciary Act 1983, 27 MIRC Sec's 256-259, criminal contempt may be prosecuted as provided for in this rule.

**(a) Disposition After Notice**. Any person who commits criminal contempt may be punished for that contempt after prosecution on notice.

**(1) Notice**. The court must give the person notice in open court, in an order to show cause, or in an arrest order. The notice must:

**(A)** state the time and place of the trial;

**(B)** allow the defendant a reasonable time to prepare a defense; and

**(C)** state the essential facts constituting the charged criminal contempt and describe it as such.

**(2) Appointing a Prosecutor**. The court must request that the contempt be prosecuted by a

government prosecutor, unless the interest of justice requires the appointment of another attorney. If the government declines the request, the court must appoint another attorney to prosecute the contempt.

**(3) Counsel**. The defendant in a criminal contempt proceeding is entitled to have the assistance of counsel and to introduce evidence either in defense or in explanation and mitigation of the penalty to be imposed.

**(4) Bail**. The defendant in a criminal contempt proceeding is entitled to be admitted to bail.

**(5) Trial and Disposition**. A person being prosecuted for criminal contempt must be released or detained as Rule 46 provides. If the criminal contempt involves disrespect toward or criticism of a judge, that judge is disqualified from presiding at the contempt trial or hearing unless the defendant consents. Upon a finding or verdict of guilty, the court must impose the punishment.

**(b) Summary Disposition**. Notwithstanding any other provision of these rules, the court (other than the Traditional Rights Court) may summarily punish a person who commits criminal contempt in its presence if the judge saw or heard the contemptuous conduct and so certifies. The contempt order must recite the facts, be signed by the judge, and be filed with the clerk.

**(c) Review and Appeal**. Contempt proceedings, whether summary or otherwise, in any court, including a Community Court, are subject to review and appeal to the same extent as other cases in that court, and the record must be forwarded in the same manner.

## TITLE IX. GENERAL PROVISIONS

### Rule 43. Defendant's Presence

**(a) When Required**. Unless this rule or Rule 10 provides otherwise, the defendant must be present at:

**(1)** the initial appearance, the initial arraignment, and the plea;

**(2)** every trial stage, including jury impanelment, and the return of the verdict; and

**(3)** sentencing.

**(b) When Not Required**. A defendant need not be present under any of the following circumstances:

**(1) Organizational Defendant**. The defendant is an organization represented by counsel who is present.

**(2) Misdemeanor Offense**. The offense is punishable by fine or by imprisonment for not more

than one year, or both, and with the defendant's written consent, the court permits arraignment, plea, trial, and sentencing to occur in the defendant's absence.

**(3) Conference or Hearing on a Legal Question**. The proceeding involves only a conference or hearing on a question of law.

**(4) Sentence Correction.** The proceeding involves the correction or reduction of sentence under Rule 35.

**(c) Waiving Continued Presence.**

**(1) In General**. A defendant who was initially present at arraignment, or whose appearance at the arraignment was waived under Rule 10, waives the right to be present under the following circumstances:

**(A)** when the defendant is voluntarily absent during trial, regardless of whether the court informed the defendant that failure to appear after arraignment may be deemed a waiver or forfeiture of the right to be present during the trial and that the trial will continue in the defendant's absence;

**(B)** when the defendant is voluntarily absent during sentencing; or

**(C)** when the court warns the defendant that it will remove the defendant from the courtroom for disruptive behavior, but the defendant persists in conduct that justifies removal from the courtroom.

**(2) Waiver's Effect**. If the defendant waives the right to be present, the trial may proceed to completion, including the verdict's return and sentencing, during the defendant's absence.

**Rule 44. Right to and Appointment of Counsel**

**(a) Right to Appointed Counsel**. A defendant who is unable to obtain counsel is entitled to have counsel appointed to represent the defendant at every stage of the proceeding from initial appearance through appeal, unless the defendant waives this right.

**(b) Reserved.**

**(c) Inquiry Into Joint Representation.**

**(1) Joint Representation**. Joint representation occurs when:

**(A)** two or more defendants have been charged jointly under Rule 8(b) or have been joined for trial under Rule 13; and

**(B)** the defendants are represented by the same counsel, or counsel who are associated in law

practice.

**(2) Court's Responsibilities in Cases of Joint Representation**. The court must promptly inquire about the propriety of joint representation and must personally advise each defendant of the right to the effective assistance of counsel, including separate representation.

Unless there is good cause to believe that no conflict of interest is likely to arise, the court must take appropriate measures to protect each defendant's right to counsel.

**Rule 45. Computing and Extending Time**

**(a) Computing Time**. Except as otherwise provided by law for particular purposes, in computing any time, other than one stated expressly in hours or more exactly than that, the following rules apply in computing any period of time specified in these rules or any court order:

(1) **Day of the Event Excluded**. Exclude the day of the act, event, or default that begins the period.

(2) **Exclusion from Brief Periods**. Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days.

(3) **Last Day**. Include the last day of the period unless it is a Saturday, Sunday, legal holiday, or day on which weather or other conditions make the clerk's office inaccessible. When the last day is excluded, the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or day when the clerk's office is inaccessible.

**(4) "Legal Holiday" Defined.** As used in this rule, "legal holiday" means:

**(A)** the day set aside by statute for observing:

**(i)** New Year's Day;

**(ii)** Memorial Day and Nuclear Victim's/Survivor's Day;

(**iii**) Good Friday;

**(iv)** Constitution Day;

(**v**) Fisherman's Day;

(**vi**) Dri Jerbal Day;

(**vii**) Manit Day;

**(viii)** Presidents' Day;

(**ix**) Gospel Day;

**(x)** Christmas Day; and

**(B)** any other day declared a holiday by the Public Service Commission in consultation with the Cabinet.

**(b) Extending Time.**

**(1) In General**. When an act must or may be done within a specified period, the court on its own may extend the time, or for good cause may do so on a party's motion made:

**(A)** before the originally prescribed or previously extended time expires; or

**(B)** after the time expires if the party failed to act because of excusable neglect.

**(2) Exceptions**. The court may not extend the time to take any action under Rules 29, 33, 34, and 35, except as stated in those rules.

**(c) Additional Time After Service**. When these rules permit or require a party to act within a specified period after a notice or a paper has been served on that party, three days are added to the period if service occurs in the manner provided under Rule of Civil Procedure 5(b)(2)(B) or (C).

**Rule 46. Release from Custody; Supervising Detention**

**(a) Before Trial**. Pursuant to the provisions of Article II, Section 4(3) of the Constitution, pretrial bail shall not be required in an amount greater than needed to ensure that the defendant will appear for trial, nor may any person be detained before trial when other means are available to provide reasonable assurance that the person will not flee or gravely endanger the public safety. In determining the conditions for pretrial release and whether the defendant shall be released upon recognizance, the judge shall consider:

**(1)** the nature and circumstances of the offense;

**(2)** the weight of the evidence;

**(3)** the character of the defendant;

**(4)** the defendant's family ties;

**(5)** the defendant's employment;

**(6)** the defendant's financial resources;

**(7)** the length of the defendant's residence in the community;

**(8)** any record of convictions;

**(9)** the defendant's record of appearance at court proceedings or of flight to avoid prosecution;

**(10)** any other available information relevant to whether the defendant is likely to appear at court proceedings; and

**(11)** any risk that the defendant's release would pose to a person or the public.

In addition to any specific conditions set by the court, pretrial release automatically includes the following conditions: that the defendant appear before the court where and when ordered to do so; that the defendant not depart from the atoll of the defendant's first appearance without the permission of the court; that the defendant not have any contact with government witnesses, except in the presence of defense counsel and only then for purposes of preparing the defendant's defense; and that the defendant keep the peace and be of good behavior until final disposition of the case.

A defendant who has been released on bail is subject to revocation of release, modification of release conditions, an order of detention, and a prosecution for contempt of court. A government prosecutor may initiate a proceeding for revocation or modification of an order of release by filing a motion with the court. The judge may issue an arrest warrant for such person, and shall enter an order of revocation or modification if, after notice and hearing, the judge finds good cause to believe that the defendant violated a National Government law or local government ordinance, or clear and convincing evidence that the defendant has violated

any other condition of release, and, in the case of revocation, further finds that there are no conditions of release that will assure that the defendant will not flee or pose a danger to the safety of any other person. If the judge finds good cause to believe that the defendant has violated a National Government law or local government ordinance, there is a rebuttable presumption that no conditions of release will assure that the defendant will not flee or pose a danger to the safety of any other person. Upon motion by the defendant, the court may reconsider a detention order or condition of release.

**(b) During Trial**. A person released before trial continues on release during trial under the same terms and conditions. But the court may order different terms and conditions or terminate the release if necessary to ensure that the person will be present during trial or that the person's conduct will not obstruct the orderly and expeditious progress of the trial.

**(c) Pending Sentencing or Appeal**. The court may release the person under such conditions as it deems appropriate and necessary if it finds that the person will not flee or pose a danger to any other person or to the community pending sentencing or appeal. The burden of establishing that the person will not flee or pose a danger to any other person or to the community rests with the person.

**(d) Pending Hearing on a Violation of Probation or Supervised Release**. Rule 32.1(a)(4) governs release pending a hearing on a violation of probation or supervised release.

**(e) Bail and Surety**. United States currency may be accepted as bail. If a bail bond is given, one or more sureties may be required. A person of good standing in the community who is in a position of moral or customary authority over the defendant, such as a parent, head of extended family group, or the chief of the person's lineage or clan, may be accepted as surety without the disclosure of property by way of justification, if the court taking bail or determining the sufficiency of the surety considers that such surety will reasonably guarantee the appearance of the defendant. Otherwise, the court may only approve a bond if the surety appears to be qualified. Such qualification must be demonstrated by the surety's affidavit that its assets are adequate. The affidavit must include the following:

**(1)** the property that the surety proposes to use as security;

**(2)** any encumbrance on that property;

**(3)** the number and amount of any other undischarged bonds and bail undertakings the surety has issued; and

**(4)** any other liability of the surety.

Notwithstanding anything in these rules to the contrary, no judge, clerk, assistant clerk, or other court official and no lawyer or trial assistant practicing or appearing in the Marshall Islands courts shall be accepted as surety in any case or proceeding pending in any court of the Republic of the Marshall Islands.

**(f) Bail Forfeiture.**

**(1) Declaration.** The court must declare the bail forfeited if a condition of the bail is breached.

**(2) Setting Aside.** The court may set aside in whole or in part a bail forfeiture upon any condition the court may impose if:

**(A)** the surety later surrenders into custody the person released on the surety's appearance bond; or

**(B)** it appears that justice does not require bail forfeiture.

**(3) Enforcement.**

**(A) Default Judgment and Execution.** If it does not set aside a bail forfeiture, the court must, upon the government's motion, enter a default judgment.

**(B) Jurisdiction and Service**. By entering into a bond, each surety submits to the court's jurisdiction and irrevocably appoints the clerk as its agent to receive service of any filings affecting its liability.

**(C) Motion to Enforce.** The court may, upon the government's motion, enforce the surety's liability without an independent action. The government must serve any motion, and notice as the court prescribes, on the clerk. If so served, the clerk must promptly mail a copy to the surety at its last known address.

**(4) Remission.** After entering a judgment under Rule 46(f)(3), the court may remit in whole or in part the judgment under the same conditions specified in Rule 46(f)(2).

**(g) Exoneration.** The court must exonerate the surety and release any bail when the condition for giving bail has been satisfied or when the court has set aside or remitted the forfeiture. The court must exonerate a surety who deposits cash in the amount of the bond or timely surrenders the defendant into custody.

**(h) Supervising Detention Pending Trial.**

**(1) In General**. To eliminate unnecessary detention, the court may supervise the detention of any defendants awaiting trial and of any persons held as material witnesses.

**(2) Reports**. A government prosecutor must report biweekly to the court, listing each material witness held in custody for more than 10 days pending arraignment or trial. For each material witness listed in the report, a government prosecutor must state why the witness should not be released with or without a deposition being taken under Rule 15(a).

**(i) Forfeiture of Property**. The court may dispose of a charged offense by ordering the forfeiture of property, if a fine in the amount of the property's value would be an appropriate sentence for the charged offense.

**Rule 47. Motions and Supporting Affidavits**

**(a) In General**. A party applying to the court for an order must do so by motion.

**(b) Form and Content of a Motion**. A motion - except when made during a trial or hearing - must be in writing, unless the court permits the party to make the motion by other means. A motion must state the grounds on which it is based and the relief or order sought and, if involving a question of law, must be accompanied by a memorandum of points and authorities that sets forth a brief statement of the case, the relief sought, the facts relied upon, the applicable law, and clear and concise argument in support of the motion. A motion may be supported by affidavit. When a motion is based on facts not appearing in the record, the court may hear the matter on written statements under oath, or the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

**(c) Timing of a Motion**. A party must serve a written motion - other than one that the court may hear *ex parte*- and any hearing notice at least 5 days before the hearing date, unless a rule or court order sets a different period. For good cause, the court may set a different period upon *ex partye* application.

**(d) Memorandum of Points and Authorities and Affidavit Supporting a Motion.** The moving party must serve any supporting memorandum of points and authorities and affidavit with the motion. A responding party must serve any opposing memorandum of points and authorities and affidavit at least one day before the hearing, unless the court permits later service.

**(e) Declaration in lieu of affidavit**. In lieu of an affidavit, an unsworn declaration may be made by a person, in writing, subscribed as true under penalty of law, and dated, in substantially the following form:

"I, _____, declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief.

Dated:

_____
(Signature)"

**(f) Argument**. Argument on any motion or other matter shall be allowed in the discretion of the court and when authorized must be as brief as is consistent with a fair representation of the matter under consideration.

**Rule 48. Dismissal**

**(a) By the Government**. The government may, with leave of court, dismiss an information, complaint, or citation. The government may not dismiss the prosecution during trial without the defendant's consent.

**(b) By the Court**. The court may dismiss an information, complaint, or citation if unnecessary delay occurs in bringing a defendant to trial.

**Rule 49. Serving and Filing Papers**

**(a) When Required.** A party must serve on every other party any written motion, written notice, designation of the record on appeal, or similar paper.

**(b) How Made**. Service must be made in the manner provided for a civil action. When these rules or a court order requires or permits service on a party represented by an attorney, service must be made on the attorney instead of the party, unless the court orders otherwise.

**(c) Notice of a Court Order**. When the court issues an order on any post-arraignment motion, the clerk must provide notice in a manner provided for in a civil action. The clerk's failure to give notice does not affect the time to appeal, or relieve - or authorize the court to relieve -a party's failure to appeal within the allowed time.

**(d) Filing**. A party must file with the court a copy of any paper the party is required to serve with a certificate of service on other parties. A paper must be filed in a manner provided for in a civil action.

**Rule 50. Prompt Disposition**

Scheduling preference must be given to criminal proceedings as far as practicable.

**Rule 51. Preserving Claimed Error**

**(a) Exceptions Unnecessary**. Exceptions to rulings or orders of the court are unnecessary.

**(b) Preserving a Claim of Error**. A party may preserve a claim of error by informing the court-when the court ruling or order is made or sought- of the action the party wishes the court to take, or the party's objection to the court's action and the grounds for that objection. If a party does not have an opportunity to object to a ruling or order, the absence of an objection does not later prejudice that party. A ruling or order that admits or excludes evidence is governed by Rule of Evidence 103.

**Rule 52. Harmless and Plain Error**

**(a) Harmless Error**. Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.

**(b) Plain Error**. A plain error that affects substantial rights may be considered even though it was not brought to the court's attention.

**Rule 53. Courtroom Photographing and Broadcasting Prohibited**

Except as otherwise provided by a statute or these rules, the court must not permit the taking of photographs in the courtroom during judicial proceedings or the broadcasting of judicial proceedings from the courtroom.

**Rule 54. Form of Pleadings and Motions**

**(a) General**. Unless otherwise ordered by the court, all pleadings, motions, and other papers filed with the court must be in substantially the form described in this rule.

**(b) General requirements.**

**(1) Quality and Size of Paper, and Style of Type.**

**(A)** Papers to be filed must be typed or printed in black and must be neat, clean, and legible.

**(B)** The paper must be un-ruled, opaque, unglazed and white of standard quality, 8½ x 11 inches in size, and not less than thirteen pound weight.

**(C)** The type must be standard 12 Times New Roman or equivalent.

**(2) Margins.**

**(A)** Each page must have a top margin of at least 1 inch.

**(B)** Each page must have a bottom margin of at least of an 3/4 inch.

**(C)** Each page must have a left-hand margin of at least 1 inch.

**(D)** Each page must have a right-hand margin of at least 3/4 of an inch.

**(3) Spacing.**

**(A)** Lines on each page must be double-spaced or one and one-half spaced; provided that the following may be single-spaced: name and address blocks; titles; captions; headings, quotations; descriptions of real property; footnotes; footers; certificates of service; acknowledgment blocks; and signature blocks.

**(B)** The line height for each line must not be less than 0.162 inches.

**(4) Two - sided Documents**. Only pre-printed exhibits may be filed as two-sided documents. All other documents are to be single-sided.

**(5) Pagination.** All pages to a pleading, motion, or other paper must be numbered consecutively at the bottom and must be firmly bound together at the top; provided, however, the page number may be omitted from the first page.

**(6) Signature.** Signatures and all other handwritten entries on papers must be in legible black or blue ink. The name of the signatory must be typed or printed under the signature.

**(7) Exhibits.** Exhibits may be fastened to pages of the specified size. Copies of exhibits must be as legible as the original.

**(c) No flyleaf shall be attached**. No flyleaf shall be attached to any paper.

**(d) Form of first page of a paper**. Except as provided in paragraph (f), the first page of each paper must be in the following form:

**(1)** The space at the top left of the center of the page must contain the following: name; office address; telephone number; facsimile number (if any); and email address (if any) of the attorney for the party in whose behalf the paper is filed, or of the party if appearing pro se; and the name of the party represented;

**(2)** The space at the top right of the center of the page must be left blank for the use of the clerk of the court;

**(3)** The caption must conform to the following:

**(A)** The name of the court must be centered and not less than 3 inches from the top of the page;

**(B)** The space to the left of the center of the page must contain the case name;

**(C)** In the space to the right of the case name there must be listed the following: the case number; the title of the paper; the title of paper(s) attached (if any); and the hearing date and time and trial date and time, if set.

**(e) Contents of first paragraph.** When the purpose of the motion is to request the court to issue an order, the first paragraph of the motion must contain a concise statement of the relief

sought. When applicable, the first paragraph must include a reference to any prior order, judgment, or decision implicated by the relief sought.

**(f) Two or more papers or documents filed together**. When two or more papers or documents are filed together (such as a motion and its supporting documents), the documents following the first document need not begin on a new page and need not comply with the first page requirements of paragraph (d), except that the title of the ensuing document(s) must be centered on the page before the first paragraph of that document.

**(g) Signing of pleadings and other papers**. Every pleading and other paper must be signed by the party or the party's counsel. Where two or more papers or documents are filed together, the party or party's counsel need only provide one signature at the close of the papers filed together, with the exception that where affidavits or declarations of counsel are filed together with pleadings or other papers, the affidavits, or declarations must be separately executed.

**(h) Forms furnished by the court**. If the court shall furnish forms, those forms must be used in all appropriate instances, unless otherwise permitted by the court. Approved forms may be reproduced through photocopiers, computers, or other means. A reproduced form must be similar in design and content to the approved form. Any person filing a form that is not identical in content to an approved form must advise the court of the differences by attaching a short explanatory addendum to the document. The court may impose sanctions upon the person filing for failure to comply with this rule. The approved forms or any reproduction thereof permitted by this rule shall not be subject to the format requirements of this rule.

**Rule 55. Records**

**(a) Language**. The proceedings and record of each case in any court, including a Community Court, may be either in the Marshallese or in the English language as the court deems best.

**(b) 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 must be accepted in place of the record. A sufficient certificate must be signed by any member of the court to the satisfaction of the reviewing authority or the court hearing the case on appeal, and must contain 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.

**(c) Responsibility for the Record**. The judge of any court, including a Community Court, who presides at any trial, hearing, or other proceeding, is responsible for the making of the record of that trial, hearing, or proceeding, and may require any other judge hearing the matter, or a reporter, or clerk, to assist in making the record.

**(d) Duties of the Chief Clerk of the Courts**. The Chief Clerk of the Courts must keep such dockets, indexes, and records in addition to those herein required, as the Chief Justice of the High Court may from time to time prescribe. In addition to the functions prescribed by law and these rules, the Chief Clerk of the Courts must perform such duties as the Chief Justice of the High Court, or a judge for any of the courts for which the clerk acts, may direct.

**(e) Records Open to the Public**. Except as otherwise provided by Act of the Nitij ela and

these rules, all court records in the custody of the Chief Clerk of the Courts must 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 the proceedings thereon be disclosed only to those required to take action in connection therewith until after the arrest of the defendant, or until the defendant's arraignment if arraigned without arrest, and any such order must be complied with. No charge may be made for permitting examination of records, nor may any explanation be required as to why a person wished to see a record.

**Rule 56. When Court Is Open**

**(a) In General**. A court is considered always open for any filing, and for issuing and returning process, making a motion, or entering an order.

**(b) Office Hours**. The Chief Clerk of the Courts' office-with the Chief Clerk, a deputy, or an assistant in attendance-must be open during business hours on all days except Saturdays, Sundays, and legal holidays.

**(c) Special Hours**. The High Court may provide by rule or order that the Chief Clerk of the Court's office will be open for specified hours on Saturdays.

**Rule 57. Impounding and Disposition of Funds and Other Property**

**(a) 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.

**(b) Disposition**. Receipts must be given for all fines and property forfeited. Property forfeited to the Republic may be disposed of as the court directs, or in accordance with such procedure as may be prescribed by the Constitution, Acts of the Nitijela, and by applicable accounting or other instructions with respect thereto. All fines collected and proceeds of property forfeited to the Republic under the order of any court, including the Community Court, must be treated and accounted for in accordance with law.

**Rule 58. Reserved**

**Rule 59. Procedure Not Otherwise Specified**

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

**Rule 60. Title**

These rules may be known and cited as the Marshall Islands Rules of Criminal Procedure and MIRCrP.

**Rule 61. Effective Date**

**(a) Effective Date of Original Rules**. These rules, adopted by the High Court on April 25, 2005, shall take effect on May l, 2005. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedures apply.

**(b) Effective Date of 2006 Amendments**. The amendments adopted by the High Court on February 21, 2006, shall take effect on March 20, 2006. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedures apply.

**(c) Effective Date of 2007 Amendments**. The amendments adopted by the High Court on June 26, 2007, shall take effect on July 25, 2007. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedures apply.

**APPENDIX OF FORMS**

**FORM A - CRIMINAL COMPLAINT** CRIM. CASE NO._____

The undersigned being duly sworn charges _____

(Name description accuse)

of _____ Village, _____ Atoll, with the criminal offense(s) of _____

and says that on or about _____ o'clock _____.m. on _____, 20 ____, at _____, _____ Village, _____ Atoll,

(location of offense(s))

the accused did_____
_____
_____
_____
in violation of _____

_____ _____
Signature of Police Officer Print Name of Police officer

Sworn to before me and signed in my presence on _____, 20____.

_____
Judge/Clerk of the _____Court

---

ACCEPTED FOR PROSECUTION AND REQUEST FOR PENAL SUMMONS

Accepted for prosecution and request for penal summons _____, 20_____.

_____
Authorized Government Prosecutor

---

PENAL SUMMONS

To:_____Address:_____

You are hereby summoned to appear before the _____ Court at _____Village, _____ Atoll, on _____, 20__, at o'clock __. m., to answer the charge(s) of _____ made against you in the above complaint. Failure to obey this summons will render you liable to arrest upon a warrant.

Date:_____

_____

Judge of the _____ Court

**FORM B - AFFIDAVIT FOR A SEARCH WARRANT**

The undersigned Applicant states under oath:

1. A search is requested in relation to an offense substantially described as follows:
_____
_____

_____
_____

2. The place, person, or thing to be searched is described as follows:
_____
_____
_____
_____

3. The things or persons to be searched for are described as follows:
_____
_____
_____
_____
_____
_____
_____

4. The material facts constituting probable cause that the search should be made are:
_____
_____
_____
_____
_____
_____

5. The things or persons searched for constitute -

a. _____ evidence of a crime;

b. _____ contraband, fruits of crime, or other items illegally possessed;

c. _____ property designed for use, intended for use, or used in committing a crime; or

d. _____ a person to be arrested or a person who is unlawfully restrained; or

e. _____ property or persons that may be searched for and seized under the following statute:
_____.

6. _____ The premises to be searched belong to or are they occupied by the person who is believed to have committed a crime OR

_____ The reasons why the person whose premises are to be searched cannot be given

a prior opportunity in an adversary hearing to challenge or comply with a subpoena identifying the persons or things to be produced without creating an undue risk that the persons or things sought would be removed or otherwise made unavailable are as follows:

_____
_____
_____
_____
_____
_____
_____
_____

7. _____ I have personal knowledge of the facts set forth in this affidavit OR

_____ I was advised of the facts set forth in this affidavit, in whole or in part, by an informer. This informer's credibility or the reliability of the information may be determined from the following facts:

_____
_____
_____
_____
_____
_____
_____
_____
_____

The statements above are true and accurate to the best of my knowledge and belief.

_____ _____
Title of Applicant Applicant

Subscribed and sworn to before me this day.

_____ _____
Date and Time Justice/Judge