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CNMI SUPREME COURT
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Filing ID: 61924360
Case No.: ADM-2018
Deanna M Ogo

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE THE NORTHERN MARIANA ISLANDS SUPREME COURT RULE 53

ADMINISTRATIVE ORDER 2018-ADM-0002-RUL

ORDER

¶ 1 On January 23, 2018, the attached proposed *Northern Mariana Islands Supreme Court Rule 53* was submitted to the Nineteenth Northern Marianas Commonwealth Legislature for approval. Sixty (60) days have elapsed since submission and neither house of the Legislature has disapproved of the proposed rules.

¶2 IT IS HEREBY ORDERED that the *Northern Mariana Islands Supreme Court Rule 53*, attached as Exhibit A, is adopted as permanent pursuant to Article 4, § 9 of the NMI Constitution. Rule 53 became effective on March 26, 2018; and the former *Rule 18 of Northern Mariana Islands Rules of Practice*, which took effect on January 19, 2005, is hereby replaced by Rule 53.

SO ORDERED this 17th day of April, 2018.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
PERRY B. INOS
Associate Justice

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Rule 53. PHOTOGRAPHING; RECORDING; BROADCAST

(a) Photographing, Recording, Broadcasting, and Webcasting Prohibited. Except as provided in subsection (b) of this rule, proceedings in this Court and the Superior Court may not be photographed, recorded, broadcasted, or webcasted.

(b) Exceptions.

(1) Voice Recording by Court Reporters Permitted. Official court reporters are permitted to make voice recordings for the sole purpose of discharging their official duties.

(2) Photographing, Recording, Broadcasting, Webcasting, and Archiving Permitted by the Court and Superior Court. As public service, the Court and the Superior Court are permitted to photograph, record, broadcast, webcast, and archive trial and appellate court proceedings in accordance with the policies and procedures of this Court. This rule is not intended to provide an official record of proceedings. Webcast or broadcast may not be re-published in any manner by any person, in whole or in part, without the prior express written permission of the Court.

Exhibit A

E-FILED
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Northern Mariana Islands
Supreme Court Rules

Effective January 22, 2014

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INTRODUCTION

These Titles contain rules that address appellate procedure, bar admission, attorney and judicial discipline, and court administration. Title I contains rules addressing appellate procedure. Subsequent Titles contain the rules covering bar admission, attorney discipline, judicial discipline, and court administration. The Supreme Court has determined that these topics, which previously had their own respective sets of rules, should be consolidated along with the previous appellate rules into this single body of rules.

Under Title I, the Northern Mariana Islands Supreme Court Rules 1 through 48 are generally based on the Federal Rules of Appellate Procedure. Care has been taken to ensure that deviations from the federal rules are minimal. Accordingly, a deviation from an analogous federal rule is intentional. Rules designated by integers (e.g., "25") or decimals (e.g., "26.1") are based on the corresponding federal rule bearing the same number. Rules designated by dashed numbers (e.g., "27-1") are not. This numbering system is analogous to that used by the federal circuits, where local circuit rules are designated by dashed numbers. The only exceptions to this format are Rules 13 and 14, dealing with certified questions. These are not based on federal rules.

TITLE I. RULES OF APPELLATE PROCEDURE

I. APPLICABILITY OF RULES

Rule 1. Scope of Rules; Authority; Title; Definitions

(a) Scope of Rules.

(1) These rules govern procedure in proceedings before the Commonwealth Supreme Court unless separate rules have been promulgated to address the specific matter in question.

(2) When these rules provide for filing a motion or other document in the Superior Court, the procedure must comply with the practice of the Superior Court.

(b) [Reserved]

(c) Title. These rules are to be known as the Northern Mariana Islands Supreme Court Rules.

Rule 1-1. Authority; Forms; Definitions

(a) Authority. These rules are promulgated pursuant to Article IV, Section 9 of the Constitution of the Northern Mariana Islands.

(b) Forms.

(1) Unless otherwise noted, all forms contained in the Appendix of Forms are maintained by the Supreme Court and may be modified by the Court at any time without notice.

(2) Use of the prescribed forms is not required. But if another document is used in place of a form contained in the Appendix of Forms, the document must clearly indicate what it purports to be and must convey the information requested by the corresponding form contained in the Appendix of Forms.

(c) Definitions. The following definitions apply throughout these rules unless the context clearly indicates otherwise:

(1) "Clerk" means the Clerk of this Court.

(2) "File" or "filing" means electronic filing when the matter is one for which electronic filing is required. In instances where electronic filing is not required, "file" or "filing" means conventional paper filing.

(3) "This Court" or "the Court" means the Northern Mariana Islands Supreme Court. A single justice of the Court may act on the Court's behalf unless a specific rule requires action by the full panel.

(4) "Serve" or "serving" or "service" or "notice" means electronic service when the matter is one for which electronic service is required. In instances where electronic service is not required, "serve" or "serving" or "service" or "notice" means conventional forms of service or notice.

(5) "Superior Court" means the Northern Mariana Islands Superior Court.

Notes

[1] Subsection (b)(1). Because forms are used for administrative efficiency and do not affect parties' rights, they do not require legislative approval pursuant to NMI Constitution Article IV, Section 9.

Rule 2. Suspension of Rules

On its own or a party's motion, the Court may – to expedite its decision or for other good cause – suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b).

II. APPEALS FROM JUDGMENTS AND ORDERS OF THE SUPERIOR COURT

Rule 3. Appeal – How Taken

(a) Filing the Notice of Appeal.

(1) An appeal from the Superior Court to this Court may be taken only by filing a notice of appeal with the Superior Court clerk within the time allowed by Rule 4.

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is grounds only for this Court to act as it considers appropriate, including dismissing the appeal.

(b) Joint or Consolidated Appeals.

(1) When two or more parties are entitled to appeal from a Superior Court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by this Court.

(c) Contents of the Notice of Appeal.

(1) The notice of appeal must:

(A) Specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X";

(B) Designate the judgment, order, or part thereof being appealed and attach the separate entry of judgment.

(C) [Reserved]

(D) Specify if counsel is appointed.

(2) A pro se notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise.

(3) In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

(4) An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

(5) Form 1 in the Appendix of Forms is a suggested form of a notice of appeal.

(d) Serving the Notice of Appeal.

(1) The Superior Court clerk must serve notice of the filing of a notice of appeal on each party's counsel of record – excluding the appellant's – or, if a party is proceeding pro se, on the party. When a defendant in a criminal case appeals, the clerk must also serve a copy of the notice of appeal on the defendant, either by personal service or by mail addressed to the defendant. The Superior Court clerk must promptly send a copy of the notice of appeal to the Clerk.

(2) [Reserved]

(3) The Superior Court clerk's failure to serve notice does not affect the validity of the appeal. The clerk must note on the docket the names of the parties served and the date of service. Service is sufficient despite the death of a party or the party's counsel.

(e) Payment of Fees.

Upon filing a notice of appeal, the appellant must pay the Superior Court clerk all required fees.

Notes

[1] Subsection (c)(1)(B). The rule requires an appellant to attach the entry of judgment in a civil case, which must be a separate document. *Commonwealth v. Kumagai*, 2006 MP 20 ¶ 22. Otherwise, 150 days must pass from the entry of judgment or order before a party may properly file a notice of appeal, pursuant to Supreme Court Rule 4(a)(7)(A)(ii).

Rule 3-1. Docketing Statement; Response; Notice of Appearance; Notice of Potential Conflicts

(a) Docketing Statement.

(1) Purpose. The docketing statement aids the Court in identifying potential jurisdictional defects, opportunities for simplification or settlement of issues, and matters warranting expedited treatment.

(2) Filing the Docketing Statement. A docketing statement is filed by completing and filing Form 2 in the Appendix of Forms within the time provided by this rule.

(3) Who Must File. Any party filing a notice of appeal under Rule 3, except a party filing a notice of appeal pro se must file a docketing statement. If multiple appellants file a joint appeal, the appellants are encouraged to join in filing a single docketing statement, but separate docketing statements are permitted.

(4) Time for Filing.

(A) A party required to file a docketing statement must do so within 15 days after the Clerk gives notice that their notice of appeal has been docketed pursuant to Rule 12.

(B) Extensions of time for filing a docketing statement are disfavored and will only be granted upon motion demonstrating substantial need.

(5) Consequences for Failure to File a Docketing Statement.

(A) Failure to File. Failure to file a docketing statement is grounds for dismissal or other sanctions as the Court deems appropriate.

(B) Filing an Incomplete or Inaccurate Docketing Statement. Although parties are not bound by the issues identified in the docketing statement and may subsequently modify them, parties are required to make a good faith effort to fully and accurately complete the docketing statement. The Court may sanction a party or party's counsel if the Court finds the docketing statement sufficiently inaccurate or misleading.

(b) Opposing Parties Must Respond or File Appearance. Within 10 days after being served the docketing statement, all opposing parties must file a response or file a notice of appearance.

(1) Response to Docketing Statement. Any opposing party may file a response to the docketing statement if the party believes the docketing statement inaccurately presents the issues. Opposing parties may file joint or separate responses.

(A) Format of Response. The response shall be in the form of a pleading and shall specifically cite the alleged inaccuracies of the docketing statement.

(B) Jurisdictional Defects. An opposing party wishing to challenge appellate jurisdiction shall file a motion to dismiss rather than raising jurisdictional issues in a response to the docketing statement.

(2) Notice of Appearance.

(A) Counsel for any opposing party that chooses not to respond to a docketing statement, either jointly or separately, shall file a notice of appearance.

(B) Exception for Counsels of Record. Notice of appearance is not required from any counsel having previously filed a docketing statement, response, or notice of appearance in the matter.

(c) Notice of Potential Conflicts. When a party files its initial docketing statement, response, or notice of appearance, the party must also file a notice listing any potential conflicts, as defined by 1 CMC § 3308,

that might prevent a sitting justice from participating in the case. If the party is unaware of any such conflicts, the party must so state.

Notes

[1] Section (b). Prior to this rule, trial counsel was presumed to be appellate counsel unless the Court was informed otherwise. Section (b) not only furthers the goals of section (a), it also ensures appellate counsel appears. Counsel may either respond to the docketing statement or file a notice of appearance.

[2] Section (c). This section requires each party to file a notice stating whether the party knows of any potential conflicts that might cause a justice of the Court to recuse him or herself. This section should not be equated with a motion to disqualify. Nor does listing a potential conflict preclude a subsequent motion to disqualify if a justice fails to recuse.

Rule 4. Appeals: When Taken

(a) Appeal in a Civil Case.

(1) Time for Filing a Notice of Appeal.

(A) In a civil case, except as provided in Rules 4(a)(4) and 4(c), the notice of appeal required by Rule 3 must be filed with the Superior Court clerk within 30 days after the entry of judgment or order appealed from, as defined in subsection (7).

(2) Filing Before Entry of Judgment. A notice of appeal filed after the Superior Court announces a decision or order, but before the entry of the judgment or order, is treated as filed on the date of the entry. The Superior Court clerk shall refrain from filing the notice of appeal with the Supreme Court until such time as the separate entry of judgment is filed.

(3) Multiple Appeals. If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) Effect of a Motion on a Notice of Appeal.

(A) If a party timely files in the Superior Court any of the following motions under the Commonwealth Rules of Civil Procedure, the time to file a notice of appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) For judgment under Rule 50(b);

(ii) To amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) For attorney's fees under Rule 54(d)(2);

(iv) To alter or amend the judgment under Rule 59;

(v) For a new trial under Rule 59; or

(vi) For relief under Rule 60 if the motion is filed no later than 10 days after the judgment is entered.

(B)

(i) If a party files a notice of appeal after the Superior Court announces or enters a judgment – but before it disposes of any motion listed in Rule 4(a)(4)(A) – the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment altered or amended upon such a motion, must file a notice of appeal, or an amended notice of appeal – in compliance with Rule 3(c) – within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

(5) Motion for Extension of Time.

(A) The Superior Court may extend the time to file a notice of appeal if:

(i) A party so moves no later than 30 days after the time prescribed by Rule 4(a) expires; and

(ii) Regardless of whether its motion is filed before or during the 30 days after the time prescribed by Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with the Commonwealth Rules of Civil Procedure.

(C) No extension under Rule 4(a)(5) may exceed 30 days after the prescribed time or 10 days after the date when the order granting the motion is entered, whichever is later.

(6) Reopening the Time to File an Appeal. The Superior Court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) The court finds that the moving party did not receive notice under Commonwealth Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) The motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice under Commonwealth Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

(C) The court finds that no party would be prejudiced.

(7) Entry Defined.

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) [Reserved]

(ii) When the judgment or order is entered in the civil docket under Commonwealth Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

- The judgment or order is set forth on a separate document, or
- 150 days have run from entry of the judgment or order in the civil docket under Commonwealth Rule of Civil Procedure 79(a).

(b) Appeal in a Criminal Case.

(1) Time for Filing a Notice of Appeal.

(A) In a criminal case, a defendant's notice of appeal must be filed in the Superior Court within 30 days after the later of:

(i) The entry of either the judgment or the order being appealed; or

(ii) The filing of the government's notice of appeal.

(B) When the government is entitled to appeal, its notice of appeal must be filed in the Superior Court within 30 days after the later of:

(i) The entry of the judgment or order being appealed; or

(ii) The filing of a notice of appeal by any defendant.

(2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision, sentence, or order – but before the entry of the judgment or order – is treated as filed on the date of the entry.

(3) Effect of a Motion on a Notice of Appeal.

(A) If a defendant timely makes any of the following motions under the Commonwealth Rules of Criminal Procedure,

the notice of appeal from a judgment of conviction must be filed within 30 days after the entry of the order disposing of the last such remaining motion, or within 30 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:

(i) For judgment of acquittal under Rule 29;

(ii) For a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is made no later than 10 days after the entry of judgment; or

(iii) For arrest of judgment under Rule 34.

(B) A notice of appeal filed after the court announces a decision, sentence, or order – but before it disposes of any of the motions referred to in Rule 4(b)(3)(A) – becomes effective upon the later of the following:

(i) The entry of the order disposing of the last such remaining motion; or

(ii) The entry of the judgment of conviction.

(C) A valid notice of appeal is effective – without amendment – to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

(4) Motion for Extension of Time. Upon a finding of excusable neglect or good cause, the Superior Court may – before or after the time has expired, with or without motion and notice – extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

(5) Jurisdiction. The filing of a notice of appeal under this Rule 4(b) does not divest the Superior Court of jurisdiction to correct a sentence under Commonwealth Rule of Criminal Procedure 35(a), nor does the filing of a motion under 35(a) affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under Commonwealth Rule of Criminal Procedure 35(a) does not suspend the time for filing a notice of appeal from a judgment of conviction.

(6) Entry Defined. A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the criminal docket.

(c) Appeal by an Inmate Confined in an Institution.

(1) If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the

benefit of this rule. Timely filing may be shown by a declaration, sworn under penalty of perjury, attesting to compliance with the applicable filing deadline, or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(2) If an inmate files the first notice of appeal in a civil case under Rule 4(c), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the Superior Court dockets the first notice.

(3) When a defendant in a criminal case files a notice of appeal under Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the Superior Court's docketing of the defendant's notice of appeal, whichever is later.

(d) Mistaken Filing in this Court.

If a notice of appeal in either a civil or criminal case is mistakenly filed in this Court, the Clerk must note on the notice the date when it was received and send it to the Superior Court. The notice is then considered filed in the Superior Court on the date so noted.

Notes

[1] Section (a)(7)(A)(ii). For a further explanation of the separate document rule, see Note 1 under Rule 3.

Rule 4-1. Counsel in Criminal Appeals

(a) Continuity of Representation on Appeal.

(1) Counsel in criminal cases, whether retained or appointed by the Superior Court, shall ascertain whether the defendant wishes to appeal and file a notice of appeal upon the defendant's request. Counsel shall continue to represent the defendant on appeal until counsel is relieved and replaced by substitute counsel or by the defendant pro se.

(2) If counsel's appointment continues on appeal in accordance with this Rule, counsel shall provide notice to the Clerk that he or she is representing the client by virtue of a court appointment.

Rule 5. [Reserved]

Rule 6. [Reserved]

Rule 7. Bond for Costs on Appeal in Civil Cases

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

Rule 8. Relief Pending Appeal

(a) Motion for Stay.

(1) Initial Motion in the Superior Court.

A party must ordinarily move first in the Superior Court for the following relief:

(A) A stay of the judgment or order of the Superior Court pending appeal;

(B) Approval of a supersedeas bond; or

(C) An order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(2) Motion in this Court; Conditions on Relief.

A motion for relief mentioned in Rule 8(a)(1) may be made to this Court.

(A) The motion must:

(i) Show that moving first in the Superior Court would be impracticable; or

(ii) State that, a motion having been made, the Superior Court denied the motion or failed to afford the relief requested and state any reasons given by the Superior Court for its action.

(B) The motion must also include:

(i) The reasons for granting the relief requested and the facts relied on;

(ii) Originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) Relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) A motion under Rule 8(a)(2) must be filed with the Clerk and may be made to and considered by a single justice.

(E) The Court may condition relief on a party's filing a bond or other appropriate security in the Superior Court.

(b) Proceeding Against a Surety. If a party gives security in the form of a bond or stipulation or other undertaking with one or more sureties,

each surety submits to the jurisdiction of the Superior Court and irrevocably appoints the Superior Court clerk as the surety's agent on whom any papers affecting the surety's liability on the bond or undertaking may be served. On motion, a surety's liability may be enforced in the Superior Court without the necessity of an independent action. The motion and any notice that the Superior Court prescribes may be served on the Superior Court clerk, who must promptly mail a copy to each surety whose address is known.

(c) Stay in a Criminal Case. Rule 38 of the Commonwealth Rules of Criminal Procedure governs a stay in a criminal case.

Notes

[1] Section (c). The procedure set out in Rule 8(a) remains applicable to stays in criminal cases.

Rule 9. Review of Superior Court Order of Release or Detention in Criminal Cases

(a) Release Before Judgment of Conviction.

(1) The Superior Court must state in writing, or orally on the record, the reasons for an order regarding the release or detention of a defendant in a criminal case. A party appealing from the order must file with this Court a copy of the Superior Court's order and memorandum in support as soon as practicable after filing the notice of appeal. An appellant who questions the factual bases for the Superior Court's order must file a transcript – audio or written – of the release proceedings or an explanation of why a transcript was not obtained.

(2) After reasonable notice to the appellee, this Court must promptly determine the appeal of the release or detention order on the basis of the papers, affidavits, and parts of the record that the parties present or the Court requires. Unless the Court so orders, briefs need not be filed.

(3) This Court may order the defendant's release pending the disposition of the appeal.

(b) Release After Judgment of Conviction. A party entitled to do so may obtain review of a Superior Court order regarding release after a judgment of conviction by filing a notice of appeal from that order in the Superior Court, or by filing a motion in this Court if the party has already filed a notice of appeal from the judgment of conviction. Both the order and the review are subject to Rule 9(a). The papers filed by the party seeking review must include a copy of the judgment of conviction.

(c) Criteria for Release. The Court must make its decision regarding release in accordance with Commonwealth Rule of Criminal Procedure 46. The defendant has the burden of establishing that he

or she will not flee or pose a danger to any other person or to the community and that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in reversal or an order for a new trial.

Rule 10. The Record on Appeal

(a) Composition of the Record on Appeal. The following items constitute the record on appeal:

(1) The original papers and exhibits filed in the Superior Court;

(2) The transcript of proceedings, if any; and

(3) A certified copy of the docket entries prepared by the Superior Court clerk.

(b) The Transcript of Proceedings. The transcript of proceedings shall be prepared pursuant to Rule 11-1.

(c) Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript Is Unavailable. If the transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within 10 days after being served. The statement and any objections or proposed amendments must then be submitted to the Superior Court for settlement and approval. As settled and approved, the statement must be included by the Superior Court clerk in the record on appeal.

(d) Agreed Statement as the Record on Appeal. In place of the record on appeal as defined in Rule 10(a), the parties may prepare, sign, and submit to the Superior Court a statement of the case showing how the issues presented by the appeal arose and were decided in the Superior Court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the Court's resolution of the issues. If the statement is truthful, it – together with any additions that the Superior Court may consider necessary for a full presentation of the issues on appeal – must be approved by the Superior Court and must then be certified to this Court as the record on appeal. The Superior Court clerk must then send it to the Clerk within the time provided by Rule 11. A copy of the agreed statement may be filed in place of the appendix required by Rule 30.

(e) Correction or Modification of the Record.

(1) If any difference arises about whether the record truly discloses what occurred in the Superior Court, the difference must be submitted to and settled by that court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

(A) On stipulation of the parties;

(B) By the Superior Court before or after the record has been forwarded; or

(C) By this Court.

(3) All other questions as to the form and content of the record must be presented to this Court.

Rule 11. Assembling the Record

(a) Appellant's Duty. An appellant filing a notice of appeal must comply with Rule 11-1 and must do whatever else is necessary to enable the Superior Court clerk to assemble and certify the record. If there are multiple appeals from a judgment or order, the Superior Court clerk must certify a single record.

(b) [Reserved]

(c) Retention of Record in the Superior Court for Use in Preparing the Appeal; Certification of Record.

(1) The Superior Court clerk shall retain the record for use by the parties in preparing appellate papers.

(2) The Superior Court clerk shall file with the Clerk and serve on the parties a certification of record stating that the record, including all transcripts prepared pursuant to Rule 11-1 and all necessary exhibits, is complete for purposes of appeal. A certified copy of the docket entries as well as a digital copy of the entire record shall be transmitted to the Supreme Court. If the entire record is not available in a digital format, the Superior Court clerk shall lodge the entire paper record with the Supreme Court. This Court retains authority to request at any time during the pendency of the appeal that any inadvertently omitted parts of the record be transmitted. The filing of the certificate of record with this Court shall indicate that this Court considers the record filed.

(3) The Superior Court clerk must file the certificate of record and serve the parties either:

(A) Within 20 days after the appellant certifies that no transcript will be ordered pursuant to Rule 11-1(b)(1), provided that the appellee does not order a transcript pursuant to Rule 11-1(b)(2)(B);

(B) Within 10 days after the appellant files the certified transcript pursuant to Rule 11-1(c)(1)(B) or a copy of this

Court's order permitting an audio transcript to be included in the record on appeal pursuant to Rule 11-1(a)(1)(A)(ii).

Rule 11-1. Transcripts

(a) General.

(1) Types of Transcripts. As used in these rules, "transcript" refers generally to any official record of in-court proceedings created pursuant to a court rule. An audio or certified transcript may be included in the record on appeal as an audio transcript or a certified transcript, subject to the limitations set out in this Rule.

(A) Audio Transcript.

(i) Definition. As used in these rules, an audio transcript is an electronic duplication of the original audio recordings of Superior Court proceedings prepared by the Superior Court clerk. In limited instances as provided by Rule 11-1(a)(1)(A)(ii), audio transcripts may be included in the record on appeal.

(ii) Inclusion in the Record. Appellant may file a motion in this Court to accept an audio transcript for inclusion in the record on appeal. Audio transcripts are permissible in criminal appeals, except for appeals by the government, upon a showing of need. Audio transcripts are disfavored in civil cases, and permission to include them in the record will only be granted in cases where a party would likely be substantially prejudiced by the cost or time required to prepare a certified transcript.

If this Court grants an appellant's motion to include an audio transcript in the record on appeal, appellant must file with the Superior Court clerk a copy of this Court's order. The Superior Court clerk must forward a copy of the audio transcript to the Clerk when the Superior Court clerk certifies the record pursuant to Rule 11(c).

(B) Certified Transcript.

(i) Definition. A certified transcript is a type-written transcript prepared from the audio transcript by the Superior Court or by a court-approved transcription service.

(ii) Inclusion in the Record. Certified transcripts are always permitted in the record on appeal, provided that the procedures in this Rule are followed.

(2) Motion to Permit Audio Transcript. If an appellant desires to include an audio transcript in the record on appeal, the appellant must file a motion in this Court explaining why obtaining a certified transcript would be unduly burdensome. Such a motion must be filed within the time period for filing Form 3 as provided by Rule 11-1(b)(1). Any party may file an opposition to such a motion within 5 days. The time period for ordering a certified transcript will be tolled during pendency of such motion.

(3) Unsupported Finding or Conclusion. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript which includes all evidence relevant to that finding or conclusion.

(b) Requesting and Preparing the Audio Transcript.

(1) Appellant Orders. Within 15 days after filing the notice of appeal or entry of an order disposing of the last timely remaining motion of a type specified in Rule 4(a)(4)(A), whichever is later, the appellant must file with the Superior Court clerk and serve on the appellee a copy of Form 3 requesting either a transcript of such parts of the proceedings the appellant considers necessary or that no transcript will be ordered.

(2) Appellee May Supplement.

(A) If the appellee considers it necessary to have a transcript of other parts of the proceedings, the appellee must, within 10 days after the service of Form 3 and the statement of the issues, request such additional parts by filing Form 3 and serving a copy on the appellant; and

(B) The appellant may, within 5 days after being served with the appellee's Form 3, request any additional portions of the transcript by filing an amended Form 3 and serving a copy on the appellee.

(3) Superior Court Prepares.

(A) The Superior Court clerk must prepare the audio transcript within 10 days of receiving the last timely filed Form 3, and must include in the audio transcript all portions requested by either party.

(B) The Superior Court clerk must provide a copy of the audio transcript to both the appellant and the appellee, and must retain a copy in the Superior Court case file.

(4) Notice of Completion by Superior Court. The Superior Court clerk shall promptly file in this Court and serve on the parties a notice when either:

(A) The audio transcript is complete; or

(B) More than 10 days have elapsed since the appellant certified pursuant to Rule 11-1(b)(1) that no transcript would be ordered and the appellee has not requested an audio transcript pursuant to Rule 11-1(b)(2)(A); or more than 10 days have elapsed since the filing of the notice of appeal and Form 3 has not been filed.

(5) Payment. The cost of the audio transcript must be paid by any party receiving the audio transcript from the Superior Court.

(c) Preparation of the Certified Transcript for Appointed Counsel.

(1) Transcript Designation.

(A) Parties Encouraged to Agree. The parties are encouraged to confer and agree upon the portions of the in-court proceedings that should be included in the certified transcript. If the parties are able to agree, they must file a joint Form 4 within 15 days after service of the Rule 11-1(b)(4)(A) notice.

(B) In Absence of Agreement. If the parties are unable to agree as to the portions of the in-court proceedings that should be included in the certified transcript, each party must file a separate Form 4 within 15 days after service of the Rule 11-1(b)(4)(A) notice. Each party should designate all portions they believe are required for the appeal.

(2) Transcript Preparation.

(A) Upon timely receipt of a joint Form 4, or after timely receipt of each party's separate Form 4, the Superior Court clerk must prepare and file a certified transcript as follows:

(i) Upon receiving Form 4, the Superior Court clerk must file in this Court a notice stating when Form 4 was received and the expected assignment and completion date of the certified transcript.

(ii) If the certified transcript cannot be completed within 30 days of the Superior Court clerk's receipt of Form 4, the Superior Court clerk may request the Clerk to grant additional time to complete it. The Clerk must note on the docket the action taken and notify the parties.

(iii) If the Superior Court clerk fails to file the transcript on time, the Clerk must notify the Superior Court presiding judge and take any other action this Court directs.

(d) Preparation of the Certified Transcript for Pro Se, Retained Counsel, or Government Counsel.

(1) Transcript Designation.

(A) Parties Encouraged to Agree. The parties are encouraged to confer and agree upon the portions of the in-court proceedings that should be included in the certified transcript. If the parties are able to agree, they must file a joint Form 4 within 15 days after service of the Rule 11-1(b)(4)(A) notice.

(B) In Absence of Agreement. If the parties are unable to agree as to the portions of the in-court proceedings that should be included in the certified transcript, each party must file a separate Form 4 within 15 days after service of the Rule 11-1(b)(4)(A) notice.

(2) Preparation. Parties are responsible for the preparation of the certified transcript. If the certified transcript cannot be completed within 30 days after Form 4 has been filed, a party may request additional time to complete it. The Clerk must note on the docket the action taken and notify the parties.

Rule 12. Docketing the Appeal; Filing a Representation Statement

(a) Docketing the Appeal. Upon receiving the copy of the notice of appeal from the Superior Court clerk under Rule 3(d), the Clerk shall docket the appeal under the title of the Superior Court action and provide notice of the transmittal to the parties identified in the notice of appeal and must identify the appellant, adding the appellant's name if necessary.

(b) Filing a Representation Statement. Unless the Court designates another time, the attorney who filed the notice of appeal must, within 15 days after filing the notice, file a statement with the Clerk naming the parties that the attorney represents on appeal. This information may be included in the docketing statement.

(c) Substitution of Attorneys and Notice of Substitution. An attorney representing a party in a case pending before the Court, including an attorney representing the government or an indigent defendant, must file a notice with the Court within 30 days of any changes in representation.

III. CERTIFIED QUESTIONS

Rule 13. Certified Questions: From Federal Court

(a) When Appropriate. A federal court may certify to this Court questions of Commonwealth law where the federal court finds that:

(1) The question may be determinative in the proceedings before it; and

(2) There is no controlling precedent in the decisions of this Court.

(b) How Brought. To certify a question, the federal court must prepare a Certification Order and forward it to this Court.

(1) Contents of the Certification Order. The Certification Order must set forth:

(A) The question or questions of law to be answered;

(B) A statement of facts explaining the controversy from which the question or questions of law arose; and

(C) Each party's name and contact information, or attorney's name and contact information if represented.

(2) Preparing the Certification Order. The Certification Order shall be prepared by the certifying court and signed by the judge presiding over the proceedings from which the certified question originates.

(3) Forwarding the Certification Order. The clerk of the certifying court shall forward the Certification Order under official seal to this Court.

(c) Procedure in This Court.

(1) Docketing. Immediately upon receiving a Certification Order, the Clerk shall docket and forward it to the Court.

(2) Preliminary Examination. The Court shall preliminarily examine the Certification Order for sufficiency.

(A) Clarification. If the Court believes any aspect of the Certification Order requires clarification, the Court may require the certifying court to amend the Certification Order accordingly.

(B) Record. If the Court determines all or any portion of the record before the certifying court would be beneficial in answering the certified question, the Court may require such portion be appended to the Certification Order.

(C) Dismissal for Insufficiency. If the certifying court is unable or unwilling to provide sufficient clarification or the portion of the record as requested by the Court, the Court may reject the Certification Order as insufficient.

(3) Order Accepting or Refusing the Question. The Court will issue an order either accepting or refusing the question at its sole discretion with or without cause.

(4) Briefing. If the Court determines the case should be briefed, a briefing schedule will be set and the parties notified.

(A) No briefs will be accepted other than those pursuant to a briefing schedule.

(B) These Rules control briefing to the extent not specifically contradicted by the briefing schedule or Court order.

(C) Citing to Record. A party wishing to direct the Court's attention to any portion of the record before the certifying court shall:

(i) If the portion is appended to the Certification Order, cite that portion of the Certification Order; or

(ii) If the portion has not been appended to the Certification Order, append the portion to the brief.

(5) Oral Argument. If the Court determines that the case should be argued, oral arguments will be set and the parties notified.

(d) Costs. Costs shall be the same as in civil appeals.

(1) Borne Equally. Costs shall be equally divided between the parties unless:

(A) Otherwise ordered by the certifying court in its order of certification; or

(B) Otherwise ordered by this Court.

(2) Commonwealth Exempted. If the Commonwealth government or any of its instrumentalities is a party, it shall be exempted from paying its divided share.

(e) Certification. The Clerk shall certify the opinion in response to the Certification Order within 30 days after the issuance of such opinion.

Notes

[1] Subsection (c)(1). The Clerk is not required to notify parties of docketing, and parties are not required to enter appearances.

[2] Subsection (c)(2)(A)–(C). The Court is granted express authority to require the certifying court to clarify the Certification Order and append portions of the record or face having the Certification Order dismissed. This is an extension of the Court's inherent authority and the previous Rule 5 of the Commonwealth Rules of Appellate Procedure (Commonwealth Rules) requiring "distinct and definite" questions.

[3] Subsection (c)(3)(C). Rule 5's language in the former Commonwealth Rules "[t]he fact that any part of the record has not been appended shall not prevent the parties or the Court from relying on it" has been removed. The new Rule seeks to have any portion of the record relied upon to be filed in this Court, either through subsection (c)(2)(B) or subsection (c)(3)(C)(ii).

[4] Section (d). If the government is a party, costs are still divided equally, but the government is not required to pay its share.

Rule 14. Certified Questions: From Commonwealth Officials

(a) When Appropriate.

(1) Appropriate Parties. To certify a question under this Rule, parties must be Commonwealth officials either:

(A) Elected by the people; or

(B) Appointed by the Governor.

(2) Appropriate Subject. The dispute must relate to the parties exercising their powers or responsibilities under the Constitution or any statute of the Northern Mariana Islands.

(b) How Brought. The parties must prepare a Petition and file it with this Court.

(1) Contents of Petition. The Petition must stipulate the following:

(A) The question or questions of law to be answered;

(B) A statement of facts explaining the controversy from which the question or questions of law arose; and

(C) Each party's name and contact information, or attorney's name and contact information if represented.

(2) Preparing and Filing the Petition. The Petition shall be prepared by the parties jointly, or their attorneys if represented, signed by each party, and filed with this Court.

(c) Procedure in This Court.

(1) Docketing. Immediately upon receiving a Petition, the Clerk shall docket and forward it to the Court.

(2) Preliminary Examination. The Court shall preliminarily examine the Petition for sufficiency.

(A) Clarification. If the Court believes any aspect of the Petition requires clarification, the Court may require the parties to amend the Petition accordingly.

(B) Dismissal for Insufficiency. If the parties are unable or unwilling to provide sufficient clarification or the portion of the record as requested by the Court, the Court may reject the Petition as insufficient.

(3) Order Accepting or Refusing the Question. The Court will issue an order either accepting or refusing the question at its sole discretion with or without cause.

(4) Briefing. If the Court determines the case should be briefed, a briefing schedule will be set and the parties notified.

(A) No briefs will be accepted other than those pursuant to a briefing schedule.

(B) These Rules control briefing to the extent not specifically contradicted by the briefing schedule or Court order.

(5) Oral Argument. If the Court determines that the case should be argued, oral arguments will be set and the parties notified.

Notes

Rule 14 is intended to guide Commonwealth officials wishing to certify questions pursuant to NMI Constitution, Article IV, Section 11.

IV. REVIEW OR ENFORCEMENT OF AN ORDER OF AN ADMINISTRATIVE AGENCY, BOARD, COMMISSION, OR OFFICER

Rule 15. [Reserved]

Rule 16. [Reserved]

Rule 17. [Reserved]

Rule 18. [Reserved]

Rule 19. [Reserved]

Rule 20. [Reserved]

V. EXTRAORDINARY WRITS

Rule 21. Writs of Mandamus and Prohibition, and Other Extraordinary Writs

(a) Mandamus or Prohibition to a Court: Petition, Filing, Service, and Docketing.

(1) A party petitioning for a writ of mandamus or prohibition directed to a court must file a petition along with a declaration attesting that a copy of the same was provided to all parties and the judge of the trial court proceeding. All parties to the proceeding in the trial court other than the petitioner are respondents for all purposes.

(2) Caption and Contents of Petition.

(A) The petition must be titled "In re [name of petitioner]".

(B) The petition must state:

(i) The relief sought;

(ii) The issues presented;

(iii) The facts necessary to understand each issue presented by the petition; and

(iv) The reasons why the writ should be issued.

(C) The petition must include a copy of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition.

(3) Upon proper filing of the petition, the Clerk must docket the petition and submit it to the Court.

(b) Denial; Order Directing Answer; Briefs; Precedence.

(1) The Court may deny the petition without an answer. Otherwise, it may at its discretion order the respondent, if any, to answer within a fixed time.

(2) Two or more respondents may answer jointly.

(3) The Court may invite or order the trial court judge to address the petition and/or may invite an amicus curiae to do so. The trial court judge may request permission to address the petition but may not do so unless invited or ordered by the Court.

(4) If briefing or oral argument is required, the Clerk must advise the parties and, when appropriate, the trial court judge and/or amicus curiae.

(5) The writ proceeding must be given preference over ordinary civil cases.

(6) The Clerk must send a copy of the final disposition to the trial court judge.

(c) Other Extraordinary Writs. An application for an extraordinary writ other than one provided for in Rule 21(a) must conform, so far as is practicable, to the procedures prescribed in Rule 21(a) and (b).

(d) Form of Papers. All papers must conform to Rule 32(b)(2). Except by the Court's permission, a paper must not exceed 30 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 21(a)(2)(C).

Notes

[1] Section (a). The former Commonwealth Rule treated the parties and the trial court itself as respondents for purposes of answering the petition. However, in the caption, the trial court was the named respondent and the parties were listed as real parties in interest. Subsection (a)(1) seeks to bring the procedure and caption in line with each other, and in line with the rationale for writs of mandamus and prohibition. An application for a writ of mandamus or prohibition generally seeks review of the merits of a

judge's underlying decision rather than being directed at the judge in his or her personal capacity. *See* FED. R. APP. P. 21, committee note (1996). Accordingly, subsection (a)(1) now makes clear that all parties to the trial court proceeding are respondents, and the trial court judge is not. The required caption is changed to read simply "In re [name of petitioner]."

[2] Subsection (b)(3). The trial court judge is not required to answer an application for a writ of mandamus or prohibition unless expressly ordered to do so by the Court.

Rule 21-1. Original Actions

An application to this Court to consider any matter over which it has original jurisdiction, such as an action pursuant to Article II, § 4(b) of the Constitution of the Commonwealth of the Northern Mariana Islands, must be made by filing a petition with the Clerk with proof of service on the respondents. Proceedings on the application must conform, so far as is practicable, to the procedures prescribed in Rule 21(a), (b), and (d).

VI. HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS

Rule 22. Habeas Corpus Proceedings

An application for a writ of habeas corpus must be made to the Superior Court. If made to this Court, the application must be transferred to the Superior Court. If the Superior Court denies an application made or transferred to it, renewal or submission of the application before this Court is not permitted. However, the applicant may, under 6 CMC § 7107, appeal to this Court from a Superior Court order denying such an application.

Rule 23. Custody or Release of a Prisoner in Habeas Corpus Proceedings

(a) Transfer of Custody Pending Review. Pending review by this Court of a decision in a habeas corpus proceeding commenced before the Superior Court for the release of a prisoner, the person having custody of the prisoner shall not allow the prisoner to be transferred outside the jurisdiction of the Northern Mariana Islands unless a transfer is directed by this Court.

(b) Detention or Release Pending Review of Decision Not to Release. While a decision not to release a prisoner is under review, the Superior Court or this Court may order that the prisoner be:

(1) Detained in the custody from which release is sought;

(2) Detained in other appropriate custody; or

(3) Released on personal recognizance, with or without surety.

(c) Release Pending Review of Decision Ordering Release. While a decision ordering the release of a prisoner is under review, the prisoner must – unless the Superior Court or this Court orders otherwise – be released on personal recognizance, with or without surety.

(d) Modification of Initial Order on Custody. An initial order governing the prisoner's custody or release, including any recognizance or surety, continues in effect pending review unless for special reasons shown to this Court, the order is modified or an independent order regarding custody, release, or surety is issued.

Notes

[1] Section (a) prohibits the judge who denies an application for writ of habeas corpus from permitting the official with custody of the prisoner to transfer the prisoner outside the jurisdiction of the Northern Mariana Islands. The language does not prohibit transfer of custody to another Commonwealth official, provided the prisoner remains within the jurisdiction of the Northern Mariana Islands.

Rule 24. Proceeding in Forma Pauperis

(a) Leave to Proceed in Forma Pauperis.

(1) Motion in the Superior Court. Except as stated in Rule 24(a)(3), a party to a Superior Court action who desires to appeal in forma pauperis must file a motion in the Superior Court. The party must attach an affidavit that:

(A) Demonstrates the party's inability to pay or to give security for fees and costs;

(B) Claims an entitlement to redress; and

(C) States the issues that the party intends to present on appeal.

(2) Action on the Motion. If the Superior Court grants the motion, the party may proceed on appeal without prepaying or giving security for fees and costs, unless a statute provides otherwise. If the Superior Court denies the motion, it must state its reasons in writing.

(3) Prior Approval. Any party who was permitted to proceed in forma pauperis in the Superior Court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) The Superior Court – before or after the notice of appeal is filed – certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(B) A statute provides otherwise.

(4) Notice of Superior Court's Denial. The Superior Court clerk shall immediately notify the parties and this Court when the Superior Court does any of the following:

(A) Denies a motion to proceed on appeal in forma pauperis;

(B) Certifies that the appeal is not taken in good faith; or

(C) Finds that the party is not otherwise entitled to proceed in forma pauperis.

(5) Motion in this Court after Superior Court's Denial. A party may file a motion to proceed on appeal in forma pauperis in this Court within 10 days after service of the notice prescribed in Rule 24(a)(4). The motion must include a copy of the affidavit filed in the Superior Court and the Superior Court's statement of the reasons for its action. If no affidavit was filed in the Superior Court, the party must include the affidavit prescribed by Rule 24(a)(1).

(b) [Reserved]

(c) Leave to Use Original Record. A party allowed to proceed on appeal in forma pauperis may request that the appeal be heard on the original record without reproducing any part thereof.

Notes

[1] Section (c). The previous language in the Commonwealth Rules requiring papers to be in typewritten form is deleted, but the current rule should not be read as permitting non-typewritten filings. The rules make clear that all filings must be typewritten, and because the added cost associated with typewritten materials is negligible, such costs will not likely be of concern to persons seeking in forma pauperis status. Accordingly, the language was unnecessary, and potentially confusing.

VII. GENERAL PROVISIONS

Rule 25. Filing and Service

(a) Filing.

(1) Filing with the Clerk. A paper required or permitted to be filed in this Court must be filed with the Clerk.

(2) Filing: Method and Timeliness.

(A) In General. Filing must be made according to the Commonwealth Rules for Electronic Filing and Service unless otherwise ordered by the Court.

(B) [Reserved]

(C) Inmate Filing. A paper filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration, sworn under penalty of perjury, attesting to compliance with the applicable filing deadline, or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(3) [Reserved]

(4) Clerk's Refusal of Documents. The Clerk may not refuse to accept a paper for filing solely because it is not presented in proper form as required by these rules.

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

(c) Manner of Service. Service must be made electronically according to the Commonwealth Rules for Electronic Filing and Service unless the Court orders otherwise or electronic service is impossible, inappropriate or unavailable.

(1) If electronic service is impossible, or if electronic service is unavailable under law or court rule for a particular paper, filing may be had by either of the following:

(A) Personal service, including delivery to a responsible person at the office of counsel; or

(B) By mail;

(C) By third-party commercial carrier for delivery within 3 calendar days; or

(D) By electronic means, if the party being served consents in writing.

(2) [Reserved]

(3) When non-electronic service is required or appropriate, service on a party must be by a manner that is both reasonable considering such factors as the immediacy of the relief sought, distance, and cost; and at least as expeditious as the manner used to file the paper with the Court.

(4) When non-electronic service is required or electronic service is otherwise impossible, inappropriate or unavailable, service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service pursuant to Rule 25(c)(1)(D) is complete on transmission, unless the paper was not received

by the party served and the party making service is notified that the paper was not received by the party served.

(d) Proof of Service. A paper served electronically as provided by the Commonwealth Rules for Electronic Filing and Service does not require additional proof of service.

(1) A paper served by any means other than as provided by the Commonwealth Rules for Electronic Filing and Service must contain either of the following:

(A) An acknowledgment of service by the person served; or

(B) Proof of service consisting of a statement by the person who made service certifying:

(i) The date and manner of service;

(ii) The names of the persons served; and

(iii) The recipient's mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery as appropriate for the manner of service.

(2) [Reserved]

(3) Proof of service may appear on or be affixed to the papers filed.

Notes

[1] Rule 25 is updated to include electronic filing considerations and to more closely track modifications to Rule 25 of the Federal Rules of Appellate Procedure.

[2] Subsection (c)(1). The rule is intended to provide an alternative method of service when electronic service is inappropriate (e.g., for documents that initiate an action, such as a petition for a writ of mandamus), when a person is unable to electronically serve a party (e.g., the party does not have a known US address or fax number), or when serving documents not permitted to be electronically served (e.g., sealed documents).

Rule 26. Computation and Extension of Time

(a) Computing Time. The following rules apply in computing any period of time specified in these rules, court order, or applicable statute:

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

(2) Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days, unless stated in calendar days.

(3) Include the last day of the period unless it is a Saturday, Sunday, legal holiday, or – if the act to be done is manually filing a paper in court rather than electronic filing – a day on

which the weather or other conditions make the clerk's office inaccessible.

(4) As used in this rule, "legal holiday" means New Year's Day, Martin Luther King Day, Commonwealth Covenant Day, President's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Commonwealth Cultural Day, Citizenship Day, Veteran's Day, Thanksgiving Day, Constitution Day, Christmas Day, any other day designated a public holiday by law, and any day designated an administrative holiday by the Chief Justice.

(b) Extending Time. For good cause, the Court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. But the court may not extend the time to file:

(1) A notice of appeal (except as authorized in Rule 4); or

(2) [Reserved]

(c) Additional Time after Service. When a party is required or permitted to act within a prescribed period after a paper is served on that party, 5 calendar days are added to the prescribed period unless the paper is delivered on the date of service stated in the proof of service.

(1) For purposes of Rule 26(c), a paper is treated as delivered on the date of service only if it was personally served or electronically served pursuant to the Commonwealth Rules for Electronic Filing and Service.

(2) Rule 26(c) does not apply when an order of this Court prescribes the time in which a party is required or permitted to act.

Notes

[1] Subsection (a)(2). Whereas the previous Rule 26(a) of the Commonwealth Rules excluded intermediate weekends and legal holidays only when calculating periods of time less than 7 days, the current language excludes intermediate weekends and legal holidays when calculating any period of time less than 11 days. This change brings the current rule in line with Federal Rule of Appellate Procedure 26(a)(2).

[2] Section (c). The time added to the prescribed period is increased from 3 to 5 days to more accurately reflect the transit period of mail between the Commonwealth and the United States mainland.

[3] Subsection (c)(1). This language is intended to specify the instances in which Rule 26(c) is applicable, rather than leaving applicability to hinge on a factual inquiry in each case. Rule 26(c) applies only when service is accomplished by means other than personal service or electronic service pursuant to Commonwealth Rules for Electronic Filing and Service. Thus, service by mail or facsimile would invoke the 5-day extension provided by Rule 26(c).

Rule 26.1. Corporate Disclosure Statement

(a) Who Must File. Any nongovernmental corporate party to a proceeding governed by these Rules must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation.

(b) Time for Filing; Supplemental Filing. A party must file the Rule 26.1(a) statement with the principal brief or upon filing a motion, response, petition, or answer, whichever occurs first. Even if the statement has already been filed, the party's principal brief must include the statement before the table of contents. A party must supplement its statement whenever the information that must be disclosed under Rule 26.1(a) changes.

Rule 27. Motions

(a) In General

(1) Application for Order or Other Relief. An application for an order or other relief is made by motion unless these rules prescribe another form. A motion must be in writing unless the Court permits otherwise.

(2) Who May File. Any party may file a motion, but when represented by counsel, the represented individual may not file a motion or pleading except for a motion to discharge counsel or vacate the appointment of counsel. The Clerk will transmit that motion to counsel of record for that party.

(3) Contents of a Motion.

(A) Grounds and Relief Sought. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

(B) Accompanying Documents.

(i) Any affidavit or other paper necessary to support a motion must be served and filed with the motion. An affidavit shall contain only factual information.

(ii) A motion seeking substantive relief must include a copy of the trial court's order, judgment, or opinion or the agency's decision as a separate exhibit.

(iii) A proposed order granting the relief requested shall be included as a separate document with every motion filed.

(iv) Every motion in a criminal appeal shall recite any previous application for the relief sought and the bail status of the defendant.

(C) Documents barred or not required.

(i) A separate brief supporting or responding to a motion must not be filed.

(ii) A notice of motion is not required.

(4) Response. Any party may file a response to a motion. Rule 27(a)(3) governs its contents.

(A) Time to File. The response must be filed within 8 days after service of the motion unless the Court shortens or extends the time. A motion authorized by Rules 8, 9, or 41 may be granted before the 8-day period runs only if the Court gives reasonable notice to the parties that it intends to act sooner.

(B) Request for Affirmative Relief. A response may include a motion for affirmative relief. The time to respond to the motion, and to reply to that response, are governed by Rule 27(a)(4)(A) and (a)(5). The title of the response must alert the Court to the request for relief.

(5) Reply to Response. Any reply to a response must be filed within 5 days after service of the response. A reply must not present matters that do not relate to the response.

(b) Form of Papers; Page Limits; and Number of Copies

(1) Format.

(A) Reproduction. A motion, response, or reply may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) Caption. A cover should not be used but there must be a caption that includes the case number, the name of the court, the title of the case, and a brief descriptive title indicating the purpose of the motion and identifying the party or parties for whom it is filed.

(C) Binding. If the document is to be filed manually rather than electronically, it must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open.

(D) Paper Size, Line Spacing, and Margins. The document must be on white, 8 1/2 by 11 inch paper. The text must use 1 1/2 spacing, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(E) Typeface and Type Style. The document must comply with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6).

(2) Page Limits. A motion or a response to a motion must not exceed 20 pages, exclusive of the corporate disclosure statement and accompanying documents authorized by Rule 27(a)(2)(B), unless the Court permits or directs otherwise. A reply to a response must not exceed 10 pages.

(3) Number of Copies. If the document is to be filed manually rather than electronically, an original and 4 copies must be filed unless the Court requires a different number.

(c) Oral Argument. A motion will be decided without oral argument unless the Court orders otherwise.

Rule 27-1. Emergency Motions

(a) If a movant certifies that to avoid irreparable harm relief is needed in less than 21 days, the motion shall be governed by the following requirements:

(1) Before filing the motion, the movant must make every practicable effort to notify the Clerk and opposing counsel, and to serve the motion at the earliest possible time.

(2) Any motion under this Rule must state directly under the caption "Emergency Motion Under Rule 27-2."

(3) A certificate of counsel for the movant, entitled "Rule 27-2 Certificate," must follow the caption page and must contain:

(A) The telephone numbers and office addresses of the attorneys for all of the parties;

(B) Facts showing the existence and nature of the claimed emergency; and

(C) When and how counsel for the other parties were notified and whether they have been served with the motion; or, if not notified and served, why that was not done.

(4) The motion shall state whether all grounds advanced in support thereof in this Court were submitted to the Superior Court, and, if not, why the motion should not be remanded or denied.

(b) Motions in Emergency Criminal Interlocutory Appeals. If emergency treatment is sought in an interlocutory criminal appeal, motions for expedition, summary affirmance or reversal, or dismissal, they may be filed pursuant to Rule 27-2. To avoid delay in the disposition of such motions, counsel should include with the motions all material that may bear upon the disposition of the appeal, including: a copy of the notice of appeal; Superior Court docket sheet, moving papers of the parties and any responses thereto filed in the Superior Court; the Superior Court's order at issue; information concerning the scheduled trial date; information

regarding co-defendants; and information concerning other counts contained in the information but not in issue.

(c) Motions filed under this Rule must otherwise conform to Rule 27.

Rule 27-2. Motions: Disposition

(a) Motions Determined by the Clerk.

(1) The Clerk may rule upon the following motions, unless the ruling is determinative of the merits of the appeal, without referring them to the Court or a justice:

(A) Routine, unopposed motions; and

(B) Motions to extend time for filing briefs pursuant to Rule 31-1.

(2) The Clerk may not rule upon motions to:

(A) Extend time to file a petition for rehearing; or

(B) File a document if the time period specified in these rules for filing the document, including any previous extensions, has already expired when the motion is filed.

(b) Motions Determined by a Single Justice. Any motion may be decided by a single justice except those described in section (c) of this Rule, a contested motion to dismiss, or a motion that is otherwise determinative of the merits of the appeal. A justice has the discretion to refer any motion determinable by a single justice to the full Court for decision.

(c) Motions Determined by the Full Court.

(1) The following motions must be decided by the full Court:

(A) Motions that would have the effect of determining the merits of a proceedings;

(B) Motions to reconsider an order entered by a single justice; and

(C) Motions referred to the full Court by a single justice;

(2) Notwithstanding Rule 27-2(c)(1), a single justice may enter an order that is necessary to prevent irreparable harm while a motion is pending before the full Court.

(d) Motion to Reconsider. A party who is aggrieved by an order on a motion may move to have the order reconsidered.

(1) Filing. The aggrieved party must file a motion to reconsider within 10 days after being served with a copy of the order.

(2) Response.

(A) Within 7 days after being served with a motion to reconsider an order entered by the Clerk or a single justice, the non-moving party may file a response.

(B) No reply to a motion to reconsider an order entered by the full Court is permitted unless requested by the Court.

(3) Determination.

(A) A motion to reconsider an order entered by the Clerk shall be decided by a single justice, unless the single justice refers the motion to the full Court.

(B) A motion to reconsider an order entered by a single justice shall be decided by the full Court.

(C) A motion to reconsider an order entered by the full Court shall be decided by the full Court.

(e) Disposition of a Motion for a Procedural Order. The Court may act on a motion for a procedural order – including a motion under Rule 26(b) – at any time without awaiting a response, and may, by rule or by order in a particular case, authorize the Clerk to act on specified types of procedural motions. A party adversely affected by the Court's or the Clerk's action may file a motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.

Notes

[1] Portions of this Rule are based on Alaska Rule of Appellate Procedure 503(e) - (h).

Rule 28. Briefs

(a) Appellant's Brief. The appellant's brief must contain, under appropriate headings and in the order indicated:

(1) A corporate disclosure statement if required by Rule 26.1;

(2) A table of contents, with page references;

(3) A table of authorities – cases (alphabetically arranged), statutes, and other authorities – with references to the pages of the brief where they are cited;

(4) A jurisdictional statement, including:

(A) The basis for the trial court's or agency's subject matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;

(B) The basis for this Court's jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;

(C) The filing dates establishing the timeliness of the appeal or petition; and

(D) An assertion that the appeal is from a final order or judgment that disposes of all parties' claims and that has been entered as a separate document, or information establishing this Court's jurisdiction on some other basis;

(5) A statement of the issues presented for review;

(6) A statement of the case briefly indicating the nature of the case, the course of proceedings, and the disposition below;

(7) A statement of facts relevant to the issues submitted for review with appropriate references to the record (see Rule 28(e));

(8) A summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;

(9) The argument, which must contain:

(A) Appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(B) For each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues); and

(10) A short conclusion stating the precise relief sought.

(b) Appellee's Brief. The appellee's brief must conform to the requirements of Rule 28(a)(1)-(9), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:

(1) The jurisdictional statement;

(2) The statement of the issues;

(3) The statement of the case;

(4) The statement of the facts; and

(5) The statement of the standard of review.

(c) Reply Brief. The appellant may file a brief in reply to the appellee's brief. Unless the Court permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, and a table of authorities – cases (alphabetically arranged), statutes,

and other authorities – with references to the pages of the reply brief where they are cited.

(d) References to Parties. In briefs and at oral argument, counsel should minimize use of the terms "appellant" and "appellee." To make briefs clear, counsel should use the parties' actual names or the designations used in the lower court or agency proceeding, or such descriptive terms as "the employee," "the injured person," "the taxpayer," "the ship," or "the stevedore."

(e) References to the Record. References to the parts of the record contained in the appendix filed with the appellant's brief must be to the pages of the appendix. If the original record is used under Rule 30(f) and is not consecutively paginated, or if the brief refers to an unreproduced part of the record, any reference must be to the page of the original document. For example:

- Answer p. 7;
- Motion for Judgment p. 2;
- Transcript p. 231.

Only clear abbreviations may be used. A party referring to evidence whose admissibility is in controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(f) Reproduction of Statutes, Rules, Regulations, etc. If the Court's determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts must be set out in the brief or in an addendum at the end, or may be supplied to the court in pamphlet form.

(g) [Reserved]

(h) [Reserved]

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

(j) Citation of Supplemental Authorities. If pertinent and significant authorities come to a party's attention after the party's brief has been filed – or after oral argument but before decision – a party may promptly advise the Clerk by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited.

Rule 28.1. Cross-Appeals

(a) Applicability. This rule applies to a case in which a cross-appeal is filed. Rules 28(a)-(c), 31(a)(1), and 32(a)(2) do not apply to such a case, except as otherwise provided in this rule.

(b) Designation of Appellant. The party who files a notice of appeal first is the appellant for the purposes of this rule and Rules 30 and 34. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.

(c) Briefs. In a case involving a cross-appeal:

(1) Appellant's Principal Brief. The appellant must file a principal brief in the appeal. That brief must comply with Rule 28(a).

(2) Appellee's Principal and Response Brief. The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That appellee's brief must comply with Rule 28(a), except that the brief need not include a statement of the case or a statement of the facts unless the appellee is dissatisfied with the appellant's statement.

(3) Appellant's Response and Reply Brief. The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 28(a)(2)-(9), except that none of the following need appear unless the appellant is dissatisfied with the appellee's statement in the cross appeal:

(A) The jurisdictional statement;

(B) The statement of the issues;

(C) The statement of the case;

(D) The statement of the facts; and

(E) The statement of the standard of review.

(4) Appellee's Reply Brief. The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 28(a)(2)-(3) and must be limited to the issues presented by the cross-appeal.

(5) No Further Briefs. Unless the Court permits, no further briefs may be filed in a case involving a cross-appeal.

(d) Cover. The front cover of a brief must contain the information required by Rule 32(a)(2).

(e) Length. The length of a brief must conform to Rule 32(a)(7).

(f) Time to Serve and File a Brief. Briefs must be served and filed as follows:

(1) The appellant's principal brief, within 40 days after the record is filed;

(2) The appellee's principal and response brief, within 30 days after the appellant's principal brief is served;

(3) The appellant's response and reply brief, within 30 days after the appellee's principal and response brief is served; and

(4) The appellee's reply brief, within 14 days after the appellant's response and reply brief is served, but at least 3 days before argument unless the Court, for good cause, allows a later filing.

Notes

[1] Section (d). Federal Rule of Appellate Procedure 28.1(d)'s requirement of color-coded brief covers is not adopted, as colored covers are more burdensome than helpful for electronically filed documents.

Rule 29. Brief of Amicus Curiae

(a) When Permitted. The United States or the Commonwealth may file an amicus curiae brief without consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing.

(b) Motion for Leave to File. The motion must be accompanied by the proposed brief and state:

(1) The movant's interest; and

(2) The reason why an amicus brief is desirable and why the matters are relevant to the disposition of the case.

(c) Contents and Form. An amicus brief must comply with Rule 32. In addition to the requirements of Rule 32, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. If an amicus curiae is a corporation, the brief must include a disclosure statement like that required of parties by Rule 26.1. An amicus brief need not comply with Rule 28, but must include the following:

(1) A table of contents with page references;

(2) A table of authorities – cases (alphabetically arranged), statutes and other authorities – with references to the page(s) of the brief where they are cited;

(3) A concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file; and

(4) An argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review.

(d) Length. Except by the Court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the Court grants a party

permission to file a longer brief, that extension does not affect the length of an amicus brief.

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

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

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

Rule 30. Appendix to the Briefs

(a) Appellant's Responsibility.

(1) Contents of the Appendix. The appellant must prepare and file an appendix to the briefs containing:

(A) The relevant docket entries in the proceeding below;

(B) The relevant portions of the pleadings, charge, findings, or opinion;

(C) The judgment, order, or decision in question; and

(D) Other parts of the record to which the parties wish to direct the court's attention.

(2) Excluded Material. Memoranda of law in the Superior Court should not be included in the appendix unless they have independent relevance. Parts of the record may be relied on by the court or the parties even though not included in the appendix. Parties cannot incorporate by reference briefs submitted to the Superior Court or refer this Court to such briefs for their arguments on the merits of the appeal.

(3) Time to File. The appellant must file the appendix along with its principle brief within the time provided by Rule 31.

(b) All Parties' Responsibilities.

(1) Determining the Contents of the Appendix. The parties are encouraged to agree on the contents of the appendix. In the absence of an agreement, the appellant must, within 10 days after the record is filed, serve on the appellee a designation of the parts of the record the appellant intends to include in the appendix and a statement of the issues the appellant intends to present for review. The appellee may, within 10 days after receiving the designation, serve on the appellant a designation

of additional parts in the appendix. This paragraph applies also to a cross-appellant and a cross-appellee.

(2) Costs of Appendix. Unless the parties agree otherwise, the appellant must pay the cost of the appendix, including the cost of any parts designated by the appellee. The cost of the appendix is a taxable cost. But if any party causes unnecessary parts of the record to be included in the appendix, the court may impose the cost of those parts on that party.

(3) Sanctions for Inclusion of Unnecessary Material. Sanctions may be levied against attorneys who unreasonably and vexatiously increase litigation costs by including unnecessary material in the appendix.

(c) [Reserved]

(d) Format of the Appendix. The appendix must be consecutively paginated and begin with a table of contents identifying the page at which each part begins. The relevant docket entries must follow the table of contents. Other parts of the record must follow chronologically. Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) should be omitted.

(e) [Reserved]

(f) Appeal on the Original Record Without an Appendix. The court may, upon a party's motion or sua sponte, dispense with the appendix and permit an appeal to proceed on the original record with any copies of the record, or relevant parts, that the court may order the parties to file.

Notes:

[1] Section (b). Prior to adoption of the current rule, each party was free to file its own excerpts of record; if the appellant failed to include some information that the appellee believed important, the appellee could file its own supplemental excerpts of record including such omissions. However, the current rule requires a single appendix. The appellant is responsible for compiling the appendix and paying all costs associated with it. The appellant is even required to pay the cost including items designated by the appellee, but the appellant may be reimbursed for such costs in two instances. First, because costs are taxable against the losing party, the appellant, if successful on appeal, may recover the full cost of compiling the appendix, including those costs attributable to the appellee. Second, regardless of which party prevails on appeal, each party is responsible for the cost of including unnecessary items in the appendix.

Rule 31. Serving and Filing Briefs

(a) Time to Serve and File a Brief.

(1) The appellant must serve and file a brief within 40 days after the record is filed. The Appellee must serve and file a brief within 30 days after the appellant's brief is served. The

appellant may serve and file a reply brief within 14 days after service of the appellee's brief but a reply brief must be filed at least 3 days before argument, unless the court, for good cause, allows a later filing.

(2) The Court may, upon motion or sua sponte, order an expedited briefing schedule and shorten the time to serve and file briefs. The Court may extend time to serve and file a brief or permit a party to serve and file a late brief upon motion pursuant to Rule 31-1.

(b) Number of Copies. If a document is to be filed manually rather than electronically, an original and 4 copies must be filed.

(c) Consequence of Failure to File. If an appellant fails to timely file a brief, an appellee may move to dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument unless the Court grants permission.

Rule 31-1. Extensions of Time for Filing Briefs; Late Filing of Briefs

(a) Extensions of Time for Filing Briefs.

(1) Automatic Extensions. A party is entitled to one automatic extension of time to file a brief. An automatic extension grants the party an additional 30 days for a principal brief or 10 days for a reply brief, unless the party requests a shorter extension.

(A) Motion for Automatic Extension.

(i) A party must request an automatic extension of time by filing a motion specifically citing Rule 31-1(a)(1).

(ii) The Clerk shall grant a motion for an automatic extension of time if the moving party has not previously requested and been granted an extension of time to file a brief.

(B) Unavailable if Previous Extension Granted. A party may not request an automatic extension of time to file a brief if the party has previously requested and been granted an extension of time to file a brief.

(C) Bars Further Extensions of Time. If a party requests and is granted an automatic extension of time to file a brief, the party may not request a discretionary extension of time pursuant to Rule 31-1(a)(2).

(2) Discretionary Extensions. Discretionary extensions of time are disfavored and will only be granted in cases of extreme need.

(A) Motion for Discretionary Extension.

(i) A party must request a discretionary extension of time by filing a motion specifically citing Rule 31-1(a)(2) and conforming to the requirements of Rule 31-1(a)(2)(B).

(ii) The Clerk shall grant or deny a motion for a discretionary extension of time.

(iii) If the Clerk denies a motion for a discretionary extension of time, the moving party may file a motion for review of the Clerk's decision, which shall be decided by a justice of the Court.

(B) Contents of Motion. A motion for a discretionary extension of time shall be filed before the expiration of time for filing the brief, and shall be accompanied by an affidavit stating:

(i) When the brief is due;

(ii) How many extensions, including automatic extensions, have been previously granted;

(iii) Whether previous requests for extensions have been denied wholly or in part;

(iv) The length of the requested extension;

(v) The reasons an extension is necessary;

(vi) Counsel's representation that counsel has exercised diligence and that the brief will be filed within the time requested; and

(vii) A statement noting whether opposing counsel objects to the extension or why the moving party has been unable to determine any such party's position.

(b) Late Filing of Briefs. A late brief may be filed only with the permission of the Court, on such conditions as the Court may order. A motion to file a late brief is highly disfavored where a motion for a discretionary extension could have been filed but was not, or was filed and denied. A motion to file a late brief must include an affidavit conforming to Rule 31-1(a)(2)(B).

Notes:

[1] Section (a). This section provides for two alternative methods by which a party may seek additional time to file a brief. An automatic extension will be granted if the preconditions are met, but receiving an automatic extension bars a party from obtaining another extension. A discretionary extension will be granted only upon a showing of extreme need, but discretionary extensions are not limited in number or duration. The Clerk is empowered to grant or deny extensions in order to expedite what is typically a routine administrative matter. However, if the Clerk denies a motion for a discretionary extension, the party may have that decision reviewed by a justice of the Court.

[2] Section (b). As with the 1992 rules, a party may file a late brief with leave of the Court. However, this section is not intended to enable parties to circumvent section (a)'s limitations on extensions of time.

Rule 32. Form of Briefs, Appendices, and Other Papers

(a) Form of a Brief.

(1) Reproduction.

(A) The brief may be reproduced by any process that yields a clear black image on light paper. If a brief is filed manually rather than electronically, the paper must be opaque and unglazed, and only one side of the paper may be used.

(B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.

(C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original.

(2) Cover. Briefs must include a white cover with a caption that includes:

(A) The number of the case centered at the top;

(B) The name of this Court;

(C) The title of the case (see Rule 12(a));

(D) The nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court, agency, or board below;

(E) The title of the brief, identifying the party or parties for whom the brief is filed; and

(F) The name, address, and telephone number of counsel representing the party for whom the brief is filed.

(3) Binding. If the document is to be filed manually rather than electronically, it must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open.

(4) Paper Size, Line Spacing, and Margins. The document must be on white, 8 1/2 by 11 inch paper. The text must use 1 1/2 spacing, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(5) Typeface. Briefs should be typed in proportionally-spaced, 11-point font.

(6) Type Styles. Briefs should be set in plain Times New Roman, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.

(7) Length. A brief may not exceed 35 pages total, inclusive of the caption, headings, table of contents, etc.

(b) Form of Other Papers.

(1) Motion. The form of a motion is governed by Rule 27(b).

(2) Other Papers. Any other paper, including a petition for panel rehearing or a petition for hearing or rehearing en banc, and any response to such a petition, must be reproduced in the manner prescribed by Rule 32(a).

(c) Signature. Every brief, motion, or other paper filed with the court must be signed by the party filing the paper or, if the party is represented, by one of the party's attorneys. Attorneys must include their Northern Mariana Islands Bar Association membership numbers.

(d) Substantial Compliance Required. The Clerk must accept for filling all documents that substantially comply with this rule. The Clerk may reject documents that do not substantially comply, but a party may motion the Court to accept such non-conforming documents.

(e) Brief Not in Conformity. When the brief of an appellant is not in substantial conformity with these rules, the appeal may be dismissed or the brief stricken and sanctions, including a fine, may be levied by the Court. When the brief of an appellee is not in substantial conformity with these rules, the brief may be stricken and sanctions including a fine may be levied by the Court. Any party who may be adversely affected by application of this rule may submit a memorandum or affidavits setting forth the reasons for non-conformance with these rules.

Rule 32.1 Citing Judicial Dispositions

(a) Citation Permitted. Parties may cite dispositions from any jurisdiction that have been designated "unpublished," "not for publication," "non-precedential," "not precedent," or the like, provided the party clearly notes that fact in the citation.

(b) Copies Required. If a party cites a judicial opinion, order, judgment, legal treatise or practice guide, or other written disposition that is not available in a publicly accessible electronic database, the party must file and serve a copy of that opinion, order, judgment, legal treatise, practice guide, or other disposition with the brief or other paper in which it is cited. Such a copy does not count toward the page length limitation of Rule 32(a)(7).

Notes:

[1] This rule allows a party to cite any judicial disposition. However, a party must clearly indicate when a disposition is non-precedential, and must provide a copy of a disposition that is not readily obtainable by public means.

Rule 33. Appeal Conferences

(a) Generally. The Court may direct the attorneys – and, when appropriate, the parties – to participate in one or more conferences to address any matter that may aid in disposing of the proceedings, including simplifying the issues and discussing settlement. A judge or other person designated by the court may preside over the conference, which may be conducted in person, by videoconferencing, or by telephone. Before a settlement conference, the attorneys must consult with their clients and obtain as much authority as feasible to settle the case. The court may, as a result of the conference, enter an order controlling the course of the proceedings of implementing any settlement agreement.

(b) Purpose. The Court, sua sponte or upon motion, may order any proceeding under these rules to be scheduled for one or more conferences in order to consider simplification of the issues, the possibility of settlement, concerns regarding certifying the record or briefing, or other matters to facilitate disposition.

(1) Notice. The appeal conference officer shall give notice to all parties, or parties' counsel if represented, of the time and location of an appeal conference.

(2) Physical or Virtual Presence Required. All parties, or parties' counsel if represented, must attend an appeal conference. At the appeal conference officer's discretion, an appeal conference may be conducted in person, by telephone, by video conferencing, or by any combination thereof.

(c) Appeal Conference Officer. An appeal conference officer is an individual designated by the Court to preside over an appeal conference.

(1) Disqualification of Appeal Conference Officer. If otherwise ineligible to serve as a justice or justice pro tem in relation to the pending matter, the appeal conference officer is disqualified from so serving.

(2) Limited Power to Make Orders. The appeal conference officer has the power to schedule and continue appeal conferences and to extend or suspend the briefing schedule. All such orders shall be filed with the Court.

(d) Confidentiality. Any statement, representation, or offer of settlement made during an appeal conference is confidential unless made part of the appeal conference report.

(e) Appeal Conference Report. The appeal conference officer shall prepare, or request a party to prepare, an appeal conference report to be filed with the Court.

(1) Time for Filing. The appeal conference report shall be filed within 15 days after completion of the appeal conference. If additional appeal conferences are scheduled, the appeal conference report shall be filed within 15 days after completion of the final appeal conference.

(2) Contents. The appeal conference report shall detail any agreements reached by the parties, including agreements to settle or simplify one or more issues. If no agreements are reached, the appeal conference report shall so indicate. If any agreement reached by the parties requires Court approval or acceptance, the appeal conference report shall include a proposed order to that effect.

(3) Signatures. All parties, or a party's counsel if represented, must sign the appeal conference report evidencing their agreement to be bound by its contents.

Notes

[1] Rule 33 replaces and builds on former Rule 13 ("Settlement Conference") and former Rule 33 ("Pre-Hearing Conference") of the Commonwealth Rules. The goal of Rule 33 is to provide a timely and effective means to clarify the operative issues and, when possible, reduce those issues through settlement. Additionally, Rule 33 provides an informal mechanism to address procedural issues unrelated to the merits. The rule is designed to foster resolution by nonadversarial means to the greatest extent possible.

[2] Section (b). Whereas former Commonwealth Rule 13 required a "conference judge" and former Commonwealth Rule 33's pre-hearing conferences were conducted before the Court, Rule 33 does not require a current or former judge or justice to preside over an appeal conference. Instead, any person designated by the Court, including law clerks, staff attorneys, or the Clerk, may serve as an appeal conference officer. Designating non-judicial court staff as appeal conference officers avoids the costs associated with appointing pro tem settlement judges, as was the practice under former Commonwealth Rule 13, while also ensuring sitting justices will not later be disqualified from hearing the case.

Rule 34. Oral Argument

(a) In General.

(1) Party's Statement. Any party may file a statement explaining why oral argument should, or need not, be permitted.

(2) Standards. Oral argument must be allowed in every case unless the panel of three justices, after examining the briefs and record, unanimously agrees that oral argument is unnecessary for any of the following reasons:

(A) The appeal is frivolous;

(B) The dispositive issue or issues have been authoritatively decided; or

(C) The facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

(b) Notice of Argument; Postponement. The Clerk must advise all parties whether oral argument will be scheduled, and, if so, the date, time, and place for it. Each side shall have 25 minutes to argue, unless the time is shortened or enlarged by the Court. A motion to postpone the argument or to allow longer argument must be filed reasonably in advance of the hearing date.

(c) Order and Contents of Argument**.** The Appellant opens and concludes the argument. Counsel must not read at length from briefs, records, or authorities.

(d) Cross-Appeals and Separate Appeals. If there is a cross-appeal, Rule 28.1(b) determines which party is the appellant and which is the appellee for purposes of oral argument. Unless the court directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.

(e) Nonappearance of a Party. If the appellee fails to appear for argument, the court must hear appellant's argument. If the appellant fails to appear for argument, the court may hear the appellee's argument. If neither party appears, the case will be decided on the briefs, unless the court orders otherwise. Failure to appear may result in sanctions.

(f) Submission on Briefs. The parties may agree to submit a case for decision on the briefs, but the court may direct that the case be argued.

(g) Use of Physical Exhibits at Argument; Removal. Counsel intending to use physical exhibits other than documents at the argument must request leave from the Court at least one week prior to the scheduled argument. After the argument, counsel must remove the exhibits from the courtroom, unless the Court directs otherwise. The Clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the Clerk gives notice to remove them.

Rule 35. [Reserved]

Rule 36. Entry of Judgment; Notice

(a) Entry. A judgment is entered when it is noted on the docket. The Clerk must prepare, sign, and enter the judgment:

(1) After receiving the Court's opinion, but if settlement of the judgment's form is required, after final settlement of the judgment; or

(2) If a judgment is rendered without an opinion, as the Court instructs.

(b) Notice. On the date upon which judgment is entered, the Clerk must serve on all parties a copy of the judgment and a copy of the opinion, if one was written.

Notes:

[1] Section (a). All dispositions require an entry of judgment. Generally, the Clerk should enter judgment immediately upon receiving the Court's written opinion, unless the written opinion notes that final judgment must be fixed by settlement. If the Court does not issue a written opinion, the Clerk must prepare and enter judgment based on the Court's instructions.

[2] Section (b). The Clerk may, but is no longer required to, provide the Superior Court with a courtesy copy of the opinion and judgment. However, the Superior Court receives a copy of both once the Court issues its mandate.

Rule 37. Interest on Judgment

(a) When the Court Affirms. Unless the law provides otherwise, if a money judgment in a civil case is affirmed, whatever interest is allowed by law is payable from the date when the Superior Court's judgment was entered.

(b) When the Court Reverses. If the court modifies or reverses a judgment with a direction that a money judgment be entered in the Superior Court, the mandate must contain instructions about the allowance of interest.

Rule 38. Frivolous Appeal-Damages and Costs

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

Notes:

[1] The current rule modifies former Commonwealth Rule 38(a) by requiring a separate motion or notice and opportunity to respond before damages or costs are awarded against a party or counsel bringing a frivolous appeal. Although former Commonwealth Rule 38(a) did not explicitly require such procedural safeguards, the Court has long required them.

[2] Former Commonwealth Rule 38(b) is deleted. That section was based on Federal Rule of Civil Procedure 11. It was partly duplicative, partly contradictory, and largely confusing.

Rule 39. Costs

(a) Against Whom Assessed. The following rules apply unless the law provides, or the court orders otherwise:

(1) If an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;

(2) If a judgment is affirmed, costs are taxed against the appellant;

(3) If a judgment is reversed, costs are taxed against the appellee;

(4) If a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the court orders.

(b) [Reserved]

(c) [Reserved]

(d) Bill of Costs: Objections: Insertion in Mandate.

(1) A party who wants costs taxed must serve and file an itemized and verified bill of costs within 14 days after entry of judgment.

(2) Objections to a bill of costs must be filed within 10 days after service of the bill of costs, unless the court extends the time.

(3) The Clerk must prepare and certify an itemized statement of costs for insertion in the mandate, but issuance of the mandate must not be delayed for taxing costs. If the mandate issues before costs are finally determined, the Superior Court clerk must add the statement of costs, or any amendment of it, to the mandate at the Clerk's request.

(e) Costs on Appeal Taxable in the Superior Court. The following costs on appeal are taxable in the Superior Court for the benefit of the party entitled to costs under this rule:

(1) The preparation and transmission of the record;

(2) The preparation of the transcript, if needed to determine the appeal;

(3) Premiums paid for a supersedeas bond or other bond to preserve rights pending appeal; and

(4) The fee for filing the notice of appeal.

Rule 39-1. Request for Attorney Fees; Opposition

(a) Request for Attorney Fees. A request for attorney fees must be filed separately from any bill of costs.

(1) Time Limits for Request. Absent a statutory provision to the contrary, a request for attorney fees shall be filed no later than 5 calendar days after the expiration of the period within which a petition for rehearing may be filed, unless a timely petition

for rehearing is filed. If a timely petition for rehearing is filed, the request for attorney fees shall be filed no later than 5 days after the court's disposition of the petition.

(2) Contents of Request. A request for an award of attorney fees must be supported by a memorandum showing that the party seeking fees is legally entitled to them and must be accompanied by a document stating the total amount sought and containing:

(A) A detailed itemization of the tasks performed, the date they were performed, and the amount of time spent by each lawyer on each task;

(B) A showing that the hourly rates claimed are justified; and

(C) An affidavit or declaration attesting to the accuracy of the information.

(b) Opposition to Request. An opposition to a request for attorney fees must be filed separately from any objection to a bill of costs. Any party from whom attorney fees are requested may file an opposition within 10 days after being served with the request. The party seeking fees may file a reply to the opposition within 5 days after being served with the opposition.

Notes

[1] This rule is based on Ninth Circuit Rules 39-1.6 and 39-1.7. It expands upon the provisions of Rule 39(d) (1992).

Rule 40. Petition for Rehearing

(a) Time to File; Contents; Answers; Action by the Court if Granted.

(1) Time. Unless the time is shortened or extended by an order of the Court, a petition for rehearing may be filed within 14 days after entry of judgment.

(2) Contents. The petition must state with particularity each point of law or fact that the petitioner believes the Court has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted.

(3) Answer. Unless the Court requests, no answer to a petition for rehearing is permitted. But ordinarily rehearing will not be granted in the absence of such a request.

(4) Action by the Court. If a petition for rehearing is granted, the court may do any of the following:

(A) Make a final decision of the case without re-argument;

(B) Restore the case to the calendar for re-argument or resubmission;

(C) Issue any other appropriate order.

(b) Form of Petition; Length. The petition must comply in form with Rule 32. Unless the court permits otherwise, a petition for rehearing must not exceed 15 pages.

Notes

[1] Section (a). The language and organization of the rule are amended for stylistic reasons and to aid in readability. No substantive changes are intended.

[2] Section (b). The rule no longer requires filing multiple copies of a petition for rehearing. Electronic filing renders multiple copies unnecessary.

Rule 41. Mandate: Contents; Issuance and Effective Date; Stay

(a) Contents. Unless the Court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the Court's opinion, if any, and any direction about costs.

(b) When Issued. The Court's mandate must issue 7 calendar days after the time to file a petition for rehearing has expired, or 7 calendar days after entry of an order denying a timely petition for rehearing, motion for stay of mandate, or petition for attorney's fees, whichever is later. The Court may shorten or extend the time.

(c) Effective Date. The mandate is effective when issued.

(d) Staying the Mandate**.**

(1) On Petition for Rehearing or Motion. The timely filing of a petition for rehearing or motion for stay of mandate stays the mandate until disposition of the petition or motion, unless the Court orders otherwise.

(2) Pending Petition for Certiorari.

(A) A party may move to stay the mandate pending the filing of a petition for a writ of certiorari in the United States Supreme Court. The motion must be served on all parties and must show that the certiorari petition would present a substantial question and that there is good cause for a stay.

(B) The stay must not exceed 90 days, unless the period is extended for good cause or unless the party who obtained the stay files a petition for the writ and so notifies the Clerk in writing within the period of the stay. In that case, the stay shall continue until the United States Supreme Court's final disposition.

(C) The Court may require a bond or other security as a condition to granting or continuing a stay of the mandate.

(D) The Court should generally issue the mandate immediately when a copy of a United States Supreme Court order denying the petition for writ of certiorari is filed.

(3) On Petition for Attorney's Fees. The timely filing of a petition for attorney's fees stays the mandate until disposition of the petition, unless the Court orders otherwise.

Notes

[1] Section (b). The current language shortens the time between the entry of judgment and the mandate. Instead of the previous 30 days, the mandate will now typically issue 21 days after the entry of judgment (7 days after the 14-day time limit to file a petition for rehearing expires). Alternatively, the mandate may issue more than 21 days after the entry of judgment if it was stayed pursuant to a petition for rehearing. In that event, the mandate issues 7 calendar days after an order denying a petition for rehearing, or a motion to stay the mandate, whichever is later. Because the mandate issues after 7 "calendar days," intermediate Saturdays, Sundays, and legal holidays are counted. See Rule 26(a)(2).

Rule 42. Voluntary Dismissal

(a) Dismissal in the Superior Court. Before an appeal has been docketed by the Clerk, the Superior Court may dismiss the appeal on the filing of a stipulation signed by all parties or on the appellant's motion with notice to all parties.

(b) Dismissal in this Court. The Clerk may dismiss a docketed appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. But no mandate or other process may issue without a Court order. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the court.

(c) Voluntary Dismissals in Criminal Appeals. Motions or stipulations for voluntary dismissals of criminal appeals shall, if made or joined in by counsel for appellant, be accompanied by appellant's written consent thereto, or counsel's explanation of why appellant's consent was not obtained.

Rule 42-1. Dismissal and Sanctions for Failure to Prosecute

(a) Notice and Dismissal by Clerk. The Clerk may dismiss an appeal for failure to prosecute if an appellant fails to file a timely record, pay the docket fee, file a timely brief, or otherwise comply with rules applicable to processing the appeal for hearing, in accordance with the following procedures:

(1) The Clerk shall notify the appellant that the appeal will be dismissed for failure to prosecute unless the appellant remedies the noncompliance within 14 days.

(2) If the appellant moves the Court for additional time to remedy the noncompliance, the Clerk shall not dismiss the appeal while the motion is pending.

(3) If the appellant has not remedied the noncompliance after 14 days, or if the Court denies the appellant's motion for additional time after the 14 days have passed, the Clerk shall immediately dismiss the appeal.

(b) Dismissal by Court; Sanctions. In all instances of failure to prosecute an appeal as required, the Court may do either or both of the following:

(1) Dismiss the appeal;

(2) Take such other action as it deems appropriate, including imposition of disciplinary and monetary sanctions on those responsible for prosecution of the appeal.

Notes

[1] This rule is based on Ninth Circuit Rule 42-1 and Eleventh Circuit Rule 42-1(b). It is largely the same as Rule 42(c) (1992), except the Clerk has the power to dismiss in limited instances and provided certain procedures are followed.

[2] Section (a). The Clerk may enter an order dismissing an appeal for failure to prosecute, provided proper notice and an opportunity to remedy the noncompliance is provided. This improves efficiency because a full three-justice panel, which frequently requires pro tem appointments, is no longer necessary for dismissal.

[3] Section (b). This section provides that the Court, regardless of whether the Clerk enters an order dismissing an appeal, may dismiss it or sanction responsible parties.

Rule 43. Substitution of Parties

(a) Death of a Party**.**

(1) After Notice of Appeal Is Filed. If the death of a party occurs after a notice of appeal has been filed or while a proceeding is pending in this Court, the decedent's personal representative may be substituted as a party on motion filed with the Clerk by the representative in accordance with Rule 25. If the decedent has no representative, any party may suggest the death on the record, and the Court may then direct appropriate proceedings.

(2) Before Notice of Appeal Is Filed – Potential Appellant. If the death of a party entitled to appeal occurs before the filing of a notice of appeal, the decedent's personal representative – or,

if there is no personal representative, the decedent's attorney of record – may file a notice of appeal within the time allowed by these rules. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

(3) Before Notice of Appeal Is Filed – Potential Appellee. If the death of a party against whom an appeal may be taken occurs after entry of a judgment or order in the Superior Court, but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

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

(c) Public Officer: Identification; Substitution**.**

(1) Identification of Party. A public officer who is a party to an appeal or other proceeding in an official capacity may be described as a party by the public officer's official title rather than by name. However, the Court may require the public officer's name to be added.

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

Rule 44. Case Involving a Constitutional Question When the Commonwealth is Not a Party

(a) [Reserved]

(b) Constitutional Challenge to Commonwealth Statute. If a party questions the constitutionality of a Commonwealth statute or regulation in a proceeding in which the Commonwealth or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the Clerk immediately upon the filing of the record or as soon as the question is raised in the Court. The Clerk must then certify that fact to the Commonwealth Attorney General.

Rule 45. Clerk's Duties

(a) General Provisions**.**

(1) Qualifications. The Clerk, and every deputy clerk, must take an oath of office attesting that he or she will execute the duties of his or her office in accordance with the law and the rules set forth herein.

(2) When Court Is Open. The Clerk's office with the Clerk or a deputy in attendance must be open during business hours on all days except Saturdays, Sundays, legal holidays, and under circumstances of impossibility or dire emergency such as war, terrorism, typhoon, tsunami, or other natural disaster.

(b) Records.

(1) The Docket. The Clerk must maintain a docket and an index of all docketed cases in the manner prescribed by the Court. The Clerk must record all papers filed with the Clerk and all process, orders, and judgments.

(2) Calendar. Under the Court's direction, the Clerk must prepare a calendar of cases awaiting argument. In placing cases on the calendar for argument, the Clerk may give preference to appeals in criminal cases and to other proceedings and appeals entitled to preference by law.

(3) Other Records. The Clerk must keep other books and records as required by the Court.

(c) Notice of an Order of Judgment. Upon the entry of an order or judgment, the Clerk must immediately serve a notice of entry on each party, with a copy of any applicable opinion, and must note the date of service on the docket. Service on a party represented by counsel must be made on counsel.

(d) Custody of Records and Papers. The Clerk has custody of the Court's records and papers. Unless the Court orders or instructs otherwise, the Clerk must not permit an original record or paper to be taken from the Clerk's office. Upon disposition of the case, original papers constituting the record on appeal or review must be returned to the court or agency from which they were received. The Clerk must preserve a copy of any brief, appendix, or other paper that has been filed.

Rule 45-1. Clerk's Authority

(a) Practice of Law. Neither the Clerk nor any deputy clerk may practice as an attorney or counselor in any court while in office, except that the Clerk or any deputy clerk may represent the NMI Judicial Branch provided that the Court approves of such representation.

(b) Grant or Deny Motions. The Clerk may grant or deny motions as provided by Rule 27-4. The Clerk may act on other motions as authorized by the Court in a particular case.

(c) Notice of Noncompliance.

(1) The Clerk may notify a party whose document, act, or inaction fails to conform to these rules that such noncompliance should be remedied by a specified date. The notice must also state that if the noncompliance is not remedied by the specified date, the matter will be referred to the Court for further action.

(2) If the Clerk refers such noncompliance to the Court, the Court may take any action it deems appropriate, including sanctioning the responsible party or counsel. The Court may also dismiss the case, but dismissal is disfavored unless the party, rather than counsel, is responsible for the noncompliance.

Rule 46. [Reserved]

Rule 47. Court Rules

(a) The Supreme Court may adopt amendments not inconsistent with these Rules or contrary to law that are necessary for efficient administration of justice. Such amendments may include rule comments, clarifications, forms, and clerical corrections.

(b) Procedure When There Is No Controlling Law. This Court may regulate practice in a particular case in any manner consistent with Commonwealth law and these rules. No sanction or other disadvantage may be imposed for noncompliance with any requirement not set forth in Commonwealth law or these rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

Rule 48. Special Master

(a) Appointment; Powers. The Court may appoint a special master to hold hearings, if necessary, and to recommend factual findings and dispositions in matters ancillary to proceedings in the Court. Unless an order referring a matter to a master specifies or limits the master's powers, those powers include, but are not limited to, the following:

(1) Regulating all aspects of a hearing;

(2) Taking all appropriate action for the efficient performance of the special master's duties under the order;

(3) Requiring the production of evidence on all matters included in the reference; and

(4) Administering oaths and eliciting testimony from witnesses and parties.

(b) Compensation. If the special master is not a judge or court employee, the Court must determine the special master's compensation and whether the cost of such compensation is to be charged to any party.

Rule 49. [Reserved]

Rule 50. [Reserved]

Rule 51. [Reserved]