

TITLE 57

JUDICIAL PROCEEDINGS

TITLE 57
JUDICIAL PROCEEDINGS

CHAPTER

1 JUDICIAL PROCESS AND PROCEDURE

2 – 5 [RESERVED]

6 CERTIFICATIONS AND APPEALS

7 JUDGMENTS

8 ENFORCEMENT OF JUDGMENTS

9 [RESERVED]

10 FEES, EXPENSES, AND COSTS

CHAPTER 1
JUDICIAL PROCESS AND PROCEDURE

Section

Part A [Reserved – Parties]

1-101 – 1-110 [Reserved]

Part B [Reserved – Interpleader]

1-111 – 1-120 [Reserved]

Part C Process

1-121 “Process” defined; issuance of process

1-125 Manner of service outside the state

1-122 Service and execution of process

1-126 Effect of service on default

1-123 Return of service or execution

1-127 Effect on other methods of service

1-124 Personal service outside the state

Part D Absent Defendants

1-128 Order to appear or plead

1-131 Judgment may be set aside

1-129 Personal service of order

1-132 – 1-140 [Reserved]

1-130 Procedure if absent defendant fails to appear
or plead

Part E [Reserved – Lis Pendens]

1-141 – 1-150 [Reserved]

Part F [Reserved – Abatement and Revival]

1-151 – 1-160 [Reserved]

PART A [RESERVED – PARTIES]

§§1-101 – 1-110. [RESERVED]

PART B [RESERVED – INTERPLEADER]

§§1-111 – 1-120. [RESERVED]

PART C PROCESS

§1-121. “Process” defined; issuance of process. —

(1) *Definition.* As used in this title and Title 4 Chapters 1 through 9, the term “process” shall include all forms of writs, warrants, summonses, citations, libels, and other orders used in judicial proceedings. “Process,” as used in this title and Title 4 Chapters 1 through 9, shall mean “civil and criminal process”; PROVIDED that with respect to criminal process, the Pohnpei Crimes Act, Title 61, as amended or superseded, and such other state laws as may provide for criminal process and procedures shall take precedence over this title and Title 4 Chapters 1 through 9.

(2) *Designation of private persons.* The court issuing any process in any proceeding may specially appoint and name in the process any person it deems suitable to execute or serve the process, except that a summons may not be served by a party or by a person who is less than 18 years of age.

(3) A private person to whom a process is directed for service or execution shall, upon acceptance of said process, be responsible for the proper execution or service of such process according to law. No private person shall be compelled by any court or official to accept a process directed to him for service or execution. The special appointments authorized by this section shall be used freely when this will effect a saving of time or expense.

Source: S.L. No. 3L-99-95 §5-1, 7/20/95

Note: Subsection (1) original reference was to S.L. No. 1L-3-85, which was superseded by Title 61.

§1-122. Service and execution of process — Every official who is made responsible by law for the service or execution of process and every private person who accepts the responsibility for the service or execution shall serve or execute such process as prescribed by law within a reasonable time after receipt of such process unless prevented from doing so by conditions beyond his control.

Source: S.L. No. 3L-99-95 §5-2, 7/20/95

§1-123. Return of service or execution. — Each police officer of the Division of Police and Security shall certify, and every other person, public or private, shall report under oath or affirm by endorsement on or attached to every process delivered to him for execution or service, the manner and the time of such execution or service or the reason for failure to make such execution or service. The process so endorsed, together with a statement of all fees and expenses charged, shall be returned without delay to the court or official by whom it was issued. In no event shall the process be returned later than the date specified by the issuing court or official.

Source: S.L. No. 3L-99-95 §5-3, 7/20/95

§1-124. Personal service outside the state. — Service of process may be made upon any person subject to the jurisdiction of the courts of this state under this title and Title 4 Chapters 1 through 9 by

personally serving the summons upon the defendant outside this state. Such service has the same force and effect as though service has been personally made within this state.

Source: S.L. No. 3L-99-95 §5-4, 7/20/95

§1-125. Manner of service outside the state. — Service of summons outside the state shall be made under this title and Title 4 Chapters 1 through 9 in like manner as service within this state by any officer or person authorized to make service of summons for an action before a court of competent jurisdiction in the place where the defendant is served. An affidavit of the server shall be filed with the court issuing said summons stating the time, manner, and place of service. The court may consider the affidavit or any competent proofs in determining whether service has been properly made.

Source: S.L. No. 3L-99-95 §5-5, 7/20/95

§1-126. Effect of service on default. — No default judgment shall be entered until the expiration of at least 30 days after service. A default judgment rendered on service made under this part may be set aside only on a showing which would be timely and sufficient to set aside a default judgment entered upon personal service within the state.

Source: S.L. No. 3L-99-95 §5-6, 7/20/95

§1-127. Effect on other methods of service. — Nothing contained in §§1-124 and 1-125 limits or affects the right to serve any process in any other manner now or hereafter provided by law.

Source: S.L. No. 3L-99-95 §5-7, 7/20/95

PART D ABSENT DEFENDANTS

§1-128. Order to appear or plead. — In any action in a court of this state for an annulment, divorce or adoption; or to enforce or remove any lien upon or claim to real or personal property within this state; or to adjudicate title to any interest in such property, where any defendant cannot be served within this state or does not voluntarily appear, the court may order the absent defendant to appear or plead by a certain date.

Source: S.L. No. 3L-99-95 §6-1, 7/20/95

§1-129. Personal service of order. — An order to appear or plead may be served on the absent defendant personally, wherever found, or, in the case of property, upon the person or persons in possession or charge thereof, if any, or by mailing, postage prepaid, a copy of the order to the absent defendant at his last-known address. Where personal service is not practicable, the order shall be posted in one or more conspicuous places as the court may direct, for a period of not less than two weeks.

Source: S.L. No. 3L-99-95 §6-2, 7/20/95

§1-130. Procedure if absent defendant fails to appear or plead. — If an absent defendant does not appear or plead within the time allowed, the court may proceed as if the absent defendant had been served with process within the state, but any adjudication shall as regards the absent defendant without appearance, affect only the property or status which is the subject of the action.

Source: S.L. No. 3L-99-95 §6-3, 7/20/95

§1-131. Judgment may be set aside. — Any defendant not so personally notified to appear or plead may, at any time within one year after final judgment enter his appearance and thereupon the court shall set aside the judgment, and permit such defendant to plead, on payment of such costs as the court

deems best; PROVIDED, HOWEVER, that this right shall not extend to decrees of annulment, divorce or adoption.

Source: S.L. No. 3L-99-95 §6-4, 7/20/95

§§1-132 – 1-140. [RESERVED]

PART E [RESERVED – LIS PENDENS]

§§1-141 – 1-150. [RESERVED]

PART F [RESERVED – ABATEMENT AND REVIVAL]

§§1-151 – 1-160. [RESERVED]

**CHAPTERS 2 – 5
[RESERVED]**

CHAPTER 6 CERTIFICATIONS AND APPEALS

Section

6-101 Certification of cases and issues

6-102 Appeals

§6-101. Certification of cases and issues. —

(1) The courts of this state, other than the Pohnpei Supreme Court, may, upon their own motion, and shall, upon order of the Trial Division of the Supreme Court or the motion of any party to an action pending before it, certify to the Trial Division any issue of law or fact in any case pending before it. The Trial Division may decide the entire case or such issues as it deems appropriate, or remand the matter to the lower court for further hearing. Upon receiving an order of the Trial Division making the transfer of a case, the lower court in which the case was pending shall take no further action on the merits of the case, but may make orders of a temporary nature which justice may require and which are not inconsistent with the order of the Trial Division.

(2) Any such motion may be made for certification of issues or a case to the Supreme Court of the Federated States of Micronesia when the motion involves a substantial question requiring the interpretation of the Constitution of the Federated States of Micronesia, national law or national treaty.

Source: S.L. No. 3L-99-95 §15-1, 7/20/95

§6-102. Appeals. —

(1) *Appeals from the lower courts.* Unless otherwise prescribed by this title and Title 4 Chapters 1 through 9 or other law of Pohnpei, the Trial Division of the Pohnpei Supreme Court shall have jurisdiction over appeals in any case from the lower courts of the state; PROVIDED that such appeal is made within 30 days of the judgment or determination thereof or such longer period as is provided by law. On appeal, the Trial Division may at its discretion decide the matter solely on the record and the appeal documents, affirming, reversing or remanding the case to the lower court for further proceedings or it may grant a trial de novo within the Trial Division. Appeals to the Trial Division shall be heard by one justice. Trials de novo shall be heard by said division in the same manner as cases brought before the court under its original jurisdiction as provided in 4 PC 3-105.

(2) *Appeals from the Trial Division of the Pohnpei Supreme Court and the Court of Land Tenure.* The Appellate Division of the Pohnpei Supreme Court shall have jurisdiction over all appeals from the Trial Division of said court and Court of Land Tenure; PROVIDED that such appeal is made within 30 days of judgment or determination thereof or such longer period as is specified in 4 PC 6-104 or otherwise provided by law. Appeals to the Appellate Division shall be heard by a panel consisting of three justices of the Supreme Court not having heard the matter at the Trial Division level nor otherwise disqualified. The concurrence of two justices shall be necessary to a determination of any appeal by the Appellate Division, but a single justice may make all necessary orders concerning any appeal prior to the hearing and determination thereof, and may dismiss an appeal for want of jurisdiction, or failure to take or prosecute it in accordance with the applicable law or rules of procedure, or at the request of the appellant. The decision of the Appellate Division shall be final.

Source: S.L. No. 3L-99-95 §15-2, 7/20/95

JUDICIAL PROCEEDINGS

CHAPTER 7 JUDGMENTS

Section

Part A Declaratory Judgments

7-101 Declaratory judgments

Part B [Reserved – Judgments]

PART A DECLARATORY JUDGMENTS

§7-101. Declaratory judgments. — In a case of an actual controversy within its jurisdiction, a court of competent jurisdiction, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

Source: S.L. No. 3L-99-95 §13-1, 7/20/95

PART B [RESERVED – JUDGMENTS]

JUDICIAL PROCEEDINGS

CHAPTER 8 ENFORCEMENT OF JUDGMENTS

Section

<ul style="list-style-type: none"> 8-101 Money judgments 8-102 Judgments affecting land 8-103 Other judgments 8-104 Other methods of enforcement 8-105 Writs of attachment 8-106 Release and modification of orders 8-107 Writs of execution on personal property 8-108 Levying execution 8-109 Demand of payment; seizure of property 8-110 Contents of writ of execution 8-111 Liability for fees and charges 8-112 Transfer or disposition of property or debt prohibited; bank deposits 8-113 Surrender of property subject to levy; penalty 8-114 Notice of seizure 8-115 Release of levy 8-116 Notice of sale; contents; mailings; broadcasts 8-117 Requirement of sale 8-118 Sale of indivisible property 	<ul style="list-style-type: none"> 8-119 Redemption before sale 8-120 Minimum prices 8-121 Postponement of sale to another date or time 8-122 Redesignation of the place of sale 8-123 Completion of sale by officer other than one making the levy 8-124 Priority among execution creditors 8-125 Writs of execution on real property; levy and sale 8-126 Orders in aid of judgment; application 8-127 Hearing for orders in aid of judgment 8-128 Modification of orders in aid of judgment 8-129 Punishment of violations with respect to orders in aid of judgment 8-130 Stays of execution with respect to orders in aid of judgment 8-131 Application to other state courts with respect to orders in aid of judgment 8-132 Exemptions 8-133 Instances when chapter superseded
--	--

§8-101. Money judgments. — Every judgment for the payment of money shall bear interest at the rate of nine percent (9%) per annum from the date that it is entered. The process to enforce a judgment for the payment of money may be a writ of execution or an order in aid of judgment, as provided in this chapter.

Source: S.L. No. 3L-99-95 §11-1, 7/20/95

§8-102. Judgments affecting land. — A judgment adjudicating an interest in land, after the time for appeal therefrom has expired without notice of appeal being filed or after any appeal duly taken has been finally determined or after an order has been entered that an appeal shall not stay the judgment, shall operate the release or transfer the interest in land in accordance with the terms of the judgment, when a copy thereof, certified by the Clerk of the Pohnpei Supreme Court, or any judge of the Court of Land Tenure, or justice of the Supreme Court, is recorded in the Register of Titles and Interests in Land of the Court of Land Tenure.

Source: S.L. No. 3L-99-95 §11-2, 7/20/95

§8-103. Other judgments. — Judgment for any form of relief other than the payment of money, or the adjudication of an interest in land after the time for appeal therefrom has expired without notice of appeal being filed, or after any appeal duly taken has been finally determined, or after an order has been entered that the appeal shall not stay the judgment, may be enforced by contempt proceedings; PROVIDED that enforcement at such time is required to prevent irreparable injury or multiple damage to the interests of the winning party and is otherwise in the interests of justice. Upon a finding of contempt, the person against whom the judgment has been rendered may be fined or imprisoned at the discretion of the court until he or she complies with the judgment or is released by the court or has been imprisoned for six months, whichever happens first.

Source: S.L. No. 3L-99-95 §11-3, 7/20/95

§8-104. Other methods of enforcement. — Enforcement of judgments may also be effected if the Trial Division of the Pohnpei Supreme Court deems that justice requires and so orders by the appointment of a receiver or receivers, by taking possession of the property and disposing of it in accordance with the orders of the court, or by a civil action on the judgment, or in any other manner permissible under customary or common law.

Source: S.L. No. 3L-99-95 §11-4, 7/20/95

§8-105. Writs of attachment. —

(1) Writs of attachment may be issued only by the Trial Division of the Pohnpei Supreme Court for special cause shown, supported by statement under oath. Such writs when so issued shall authorize and require the police officer or any other person named therein to attach and safely keep so much of the personal property of the person or held by another for such person against whom the writ is issued as will be sufficient to satisfy the demand set forth in the action, including interests and costs. The police officer or other person named in the writ shall not attach any personal property that is exempt from attachment, nor any kinds or types of personal property that the court may specify in the writ.

(2) Debts payable to the defendant may be similarly attached by special order issued by the Trial Division, which shall exempt from the attachment so much of any salary or wages as the court deems necessary for the support of the person against whom the order is issued or his dependents.

Source: S.L. No. 3L-99-95 §11-5, 7/20/95

§8-106. Release and modification of orders. — The Trial Division of the Pohnpei Supreme Court, upon application of either party on its own motion, may make and, from time to time, modify such orders as it deems just for the release of property from attachment, or for the sale thereof if perishable, or if the owner of the property shall so request, and for the safekeeping of the proceeds of the sale.

Source: S.L. No. 3L-99-95 §11-6, 7/20/95

§8-107. Writs of execution on personal property. — Every court, at the request of the party recovering any civil judgment in that court for the payment of money, shall issue a writ of execution against the personal property of the party against whom the judgment has been rendered, except as provided in §8-132.

Source: S.L. No. 3L-99-95 §11-7, 7/20/95

§8-108. Levying execution. — Every police officer or other duly authorized person receiving a writ of execution on personal property issued by any court shall levy or cause a police officer to levy execution as specified in the following sections of this chapter.

Source: S.L. No. 3L-99-95 §11-8, 7/20/95

§8-109. Demand of payment; seizure of property. — The officer making the levy shall demand of the person against whom the execution is issued, if he is found within the local jurisdiction where the

levy is being attempted, that the person pay the execution or exhibit sufficient property subject to execution. If such person has property of a kind exempt from execution but to an amount exceeding the exemption, he shall select the portion of this property provided by law which he desires to retain under the exemption; PROVIDED that he makes this selection known promptly to the officer making the levy. Otherwise, the officer making the levy shall make the selection. If the person against whom the execution is issued does not pay the execution in full, including interest and costs and expenses thereof, the officer making the levy shall take into possession non-exempt property of the person or held for the person against whom the execution is issued that is sufficient in the officer's opinion to cover the amount of the execution. He shall take first any property under attachment in the action in which the execution was issued; next property, if any, indicated by the person against whom the execution was issued. The officer may, if he thinks best, remove the property to a safe place, or place a caretaker in charge of it. The officer shall make a list of the property levied upon it.

Source: S.L. No. 3L-99-95 §11-9, 7/20/95

§8-110. Contents of writ of execution. — A writ of execution shall:

(1) Bear on its face a statement of the authority for its issuance and service, compel compliance with its terms, and shall be signed by the justice or judge so issuing the writ;

(2) Identify the judgment debtor whose liability for satisfaction of judgment sought to be enforced, the amount thereof, and the date or approximate date on which the payment became due;

(3) Order the person on whom it is served to reveal all property in his possession, custody or control that belongs to the judgment debtor and the extent of his own interest therein; and to reveal the amount and kind of property of judgment debtor that is, to the best of his knowledge, in the possession, custody or control of others;

(4) Order the person on whom it is served to surrender the property forthwith but may allow him to agree in writing to surrender the property or the proceeds therefrom on a certain date in the future when the judgment debtor's right to it would otherwise mature; and

(5) State on its face the penalties of the contempt of court as provided in 4 PC 2-106 for willful failure by any person upon whom it is served to comply with its terms.

Source: S.L. No. 3L-99-95 §11-10, 7/20/95

§8-111. Liability for fees and charges. — A reasonable fee for the services of the police officers directly involved with the levy and execution, plus the actual charges and expenses incurred for said levy and execution are the obligation of the judgment debtor and may be collected from him by virtue of the execution or in any other manner provided in this title and Title 4 Chapters 1 through 9 or by other lawful procedure.

Source: S.L. No. 3L-99-95 §11-11, 7/20/95

§8-112. Transfer or disposition of property or debt prohibited; bank deposits. —

(1) After receiving the execution, the person so notified may not transfer or otherwise dispose of the money, property or debts in his possession, custody or control, unless the execution creditor consents to a transfer or other disposition.

(2) If the execution prevents the transfer or other disposition of a deposit in bank or other credits or personal property in the possession or under the control of a bank or, the notice must be delivered or mailed to the branch office in this state. If a bank withholds any deposit or other credits or personal property required to be withheld in which the judgment debtor and another person or persons have an interest or holds in the name of a party or parties in which it is ultimately determined that the judgment debtor does not have an interest, the bank shall not be liable therefor to any of such persons unless the deposit or other credits or personal property is released or transferred to the judgment debtor.

Source: S.L. No. 3L-99-95 §11-12, 7/20/95

§8-113. Surrender of property subject to levy; penalty. —

(1) Any person in possession or control of personal property subject to levy under this chapter shall, upon receipt of the warrant relating thereto, immediately surrender the property or discharge the obligation to the judgment creditor; but not that part of the property that is already the subject of a bona fide attachment, execution, levy or other similar process. Such levy is further subject to the redemption provisions provided in §8-119.

(2) Any person who receives an execution and wrongfully fails or refuses to comply therewith shall be liable in his own person and estate to the judgment creditor in a sum equal to the value of the property not so surrendered or paid over, but not exceeding the amount for the collection of which such levy has been made, together with penalties and interest on such sum from the date of such levy plus the costs of the execution.

(3) The term “person,” as used in this section, includes the personal liability of an officer or employee of a corporation or a member or employee of a partnership, who, as such officer, employee or member, is under a duty to surrender the property or to discharge the obligation.

Source: S.L. No. 3L-99-95 §11-13, 7/20/95

§8-114. Notice of seizure. — As soon as practicable after the levy, the officer charged with the execution and sale shall notify the judgment debtor of the amount and kind of property seized and of the total amount demanded in satisfaction of judgment.

Source: S.L. No. 3L-99-95 §11-14, 7/20/95

§8-115. Release of levy. — The execution creditor may request the officer charged with the execution and sale to release the levy upon all or part of the property if the execution creditor, in his discretion, determines that such action will facilitate the collection of the liability, but the release shall not operate to prevent any subsequent levy.

Source: S.L. No. 3L-99-95 §11-15, 7/20/95

§8-116. Notice of sale; contents; mailings; broadcasts. —

(1) As soon as practicable after the levy and seizure of the property, the officer charged with the execution and sale shall decide on a date subject to the terms of §8-117, time and place for the sale of the property, shall make a diligent inquiry as to the identity and whereabouts of the owner of the property and persons having an interest therein, and shall notify the owner and such persons of the time and place for the sale.

(2) Notice of the sale must be given to the judgment debtor in writing at least ten days before the date set for the sale in the following manner:

(a) The notice must be enclosed in an envelope addressed to the judgment debtor at his last-known residence or place of business in this state. Postage must be prepaid.

(b) The time, date, and place of the sale, the property to be sold, and other terms and conditions of the sale must also be broadcast over the public radio station at least three times on separate days. The third broadcast must be at least ten days before the date set for the sale.

(3) The written notice must also contain a description of the property to be sold, a statement of the amount due, including interest, penalties, and costs, the name of the judgment debtor, and a statement that unless the amount due plus interest, penalties, and costs are paid on or before the time fixed in the notice for the sale, the property, or so much of it as is necessary, will be sold in accordance with law and the notice.

(4) The fact that any person entitled thereto does not receive the notice provided for in this section does not affect the validity of the sale.

Source: S.L. No. 3L-99-95 §11-16, 7/20/95

§8-117. Requirement of sale. — No sale of imperishable property shall be held until after the expiration of 30 days from the date of the levy thereon. Perishable property may be sold immediately after seizure without broadcast or notice of sale. The officer charged with the execution and sale shall make special efforts to give notice of the sale to persons with a particular interest in special property and shall, apart from the requirements stated above, advertise the sale in a manner appropriate to the kind of property to be sold.

Source: S.L. No. 3L-99-95 §11-17, 7/20/95

§8-118. Sale of indivisible property. — If any property of the judgment debtor subject to levy cannot be reasonably divided so as to enable the officer charged with the execution and sale to sell a part thereof to raise the whole amount owed plus expenses, the whole of the judgment debtor's interest in the property shall be sold. The sale is, however, subject to redemption before sale according to §8-119.

Source: S.L. No. 3L-99-95 §11-18, 7/20/95

§8-119. Redemption before sale. —

(1) The levy and sale shall not be made, or the levy and sale shall be terminated and released if the judgment debtor pays the entire amount due, furnishes security or makes other arrangements for payment that are acceptable to the execution creditor. Upon making such payment or arrangements, the officer charged with the execution and sale shall restore the property to the judgment debtor or other appropriate person, and all further proceedings in connection with the levy and sale of the property shall cease from the time of the payment or signing of an agreement with the execution creditor.

(2) Any person who has sufficient interest in the property levied to entitle him to redeem it from sale and who pays the amount due and accomplishes the redemption, shall have a lien against the property in the amount paid and may file a notice thereof with the Clerk of the Pohnpei Supreme Court and may foreclose the lien as provided by law. The nature of the interest required to exercise this right of redemption shall be established in the rules of the Supreme Court.

Source: S.L. No. 3L-99-95 §11-19, 7/20/95

§8-120. Minimum prices. — Before the sale, the execution creditor shall determine a minimum price for which the property shall be sold, and if no person offers the minimum price at the sale, the property shall not be sold but the sale shall be readvertised and held at a later time. In determining the minimum price, the execution creditor shall take into account the expenses of conducting the levy and sale.

Source: S.L. No. 3L-99-95 §11-20, 7/20/95

§8-121. Postponement of sale to another date or time. — Whenever it is impossible to perform the sale at the appointed date and time or whenever a request in writing signed by the judgment debtor and execution creditor for a postponement of the sale to an agreed date and hour is given to the officer conducting the sale under execution, such officer shall thereupon, by public declaration, postpone the sale to the day and hour so fixed in such request and at the place originally fixed by the person for the sale. In the case of postponements, notice of each thereof must be given by public declaration by the person conducting the sale at the time and place last appointed for the sale. No other notice of postponed sale need be given.

Source: S.L. No. 3L-99-95 §11-21, 7/20/95

§8-122. Redesignation of the place of sale. — Whenever it is impossible to perform the sale at the appointed place or whenever a request in writing signed by the judgment debtor and execution creditor for redesignation of the place of sale to another agreed upon place is given to the person conducting

the sale, the officer conducting the sale at the redesignated location shall give notice of the sale at the new location in the same manner as notice of sale as prescribed in §8-116.

Source: S.L. No. 3L-99-95 §11-23, 7/20/95

Note: Due to an error in S.L. No. 3L-99-95 original numbering there is no §11-22.

§8-123. Completion of sale by officer other than one making the levy. — If a police officer or other duly authorized person starts to levy execution and for any reason is prevented from or fails to complete the matter, any police officer named in the writ of execution as modified by the court may complete the levy, sale, and payment of proceeds as provided in this chapter.

Source: S.L. No. 3L-99-95 §11-24, 7/20/95

§8-124. Priority among execution creditors. — Where two or more executions or orders of attachment are issued against the same judgment debtor and delivered to the same enforcement officers, they shall be satisfied out of the personal property or debt levied upon by the officer conducting the sale in the order in which they are delivered. Where two or more executions or orders of attachment are issued against the same judgment debtor and delivered to different enforcement officers, and personal property or debt is levied upon within the jurisdiction of all the officers, the proceeds shall first be applied in satisfaction of the execution or orders of attachment delivered to the officer who levied, and thereafter shall be applied in satisfaction of the executions or orders of attachment delivered to those of other officers who, before the proceeds are distributed, make a demand upon the officer who levied, in the order of such demands. An execution or order of attachment returned by an officer before a levy or delivered to him after the proceeds of a levy have been distributed shall not be satisfied out of those proceeds.

Source: S.L. No. 3L-99-95 §11-25, 7/20/95

§8-125. Writs of execution on real property; levy and sale. — The Trial Division of the Pohnpei Supreme Court shall have exclusive jurisdiction to issue writs of execution against real property situated within this state. If a judgment of any court of this state for the payment of money has not been fully satisfied for ten years following the entry of final judgment by the court, the Trial Division, at the request of the party seeking recovery of the civil judgment, shall issue a writ of execution against such real property of the party against whom the judgment has been rendered as the court deems sufficient to cover the unpaid judgment debt along with such interest, costs, and expenses as may be due; PROVIDED that execution may not be levied upon real property exempted from execution as specified in §8-132 or as otherwise exempted by law. In the event of execution, the property shall be levied upon and sold in the manner provided by the rules of the Supreme Court consistent with the requirements for the sale of real property for the satisfaction of a debt secured by a mortgage under Title 41 Chapter 6, as amended or superseded.

Source: S.L. No. 3L-99-95 §11-26, 7/20/95

§8-126. Orders in aid of judgment; application. — At any time after a finding for the payment of money by one party to another, and before any judgment based thereon has been satisfied in full, either party may apply to the court for an order in aid of judgment. Thereupon the court, after notice to the opposite party, shall hold a hearing on the question of the judgment debtor's ability to pay and determine the fastest manner in which the debtor can reasonably pay a judgment based on the finding. In making this determination, the court shall allow the debtor to retain such property and such portion of his income as may be necessary to provide the reasonable living requirements of the debtor and his dependents, including fulfillment of any obligations he may have to any clan, lineage or other similar group, in return for which obligations he, or his dependents, receives any necessary part of the food, goods, shelter or services required for their living.

Source: S.L. No. 3L-99-95 §11-27, 7/20/95

§8-127. Hearing for orders in aid of judgment. —

(1) At the hearing provided in §8-126, the judgment debtor may be examined orally before the court, or the court may refer the examination to a single judge of the court or to a master to take evidence and report his findings. In either case, any evidence properly bearing on the question may be introduced by either party or by the court, the single justice, judge or master, in the same manner as at the trial of a civil action. Upon having heard the evidence or having received the report of the single justice, judge or master, the court shall make such order in aid of judgment as is just for the payment of any judgment on the finding.

(2) This order in aid of judgment may provide for the transfer of particular assets at a price determined by the court, or for the sale of particular assets and payment of the net proceeds to the judgment creditor, or for payments, in specified installments on particular dates or at specified intervals, or for any other method of payment which the court deems just.

Source: S.L. No. 3L-99-95 §11-28, 7/20/95

§8-128. Modification of orders in aid of judgment. — Any order in aid of judgment made under this chapter may be modified by the court as justice may require, at any time, upon application of either party and notice to the other, or on the court's own motion.

Source: S.L. No. 3L-99-95 §11-29, 7/20/95

§8-129. Punishment of violations with respect to orders in aid of judgment. — If any judgment debtor fails without good cause to comply with any order in aid of judgment made under this chapter, he may be adjudged in contempt as in a civil matter, as provided in §8-103.

Source: S.L. No. 3L-99-95 §11-30, 7/20/95

§8-130. Stays of execution with respect to orders in aid of judgment. —

(1) After an application for an order in aid of judgment has been filed in any action, no writ of execution shall be issued therein except under an order in aid of judgment as provided in this chapter or by special order of the court for cause shown.

(2) If a writ of execution is outstanding, a judgment creditor applying for an order in aid of judgment shall file the writ of execution with his application, and a judgment debtor applying for an order in aid of judgment may request a stay of execution which may be granted by the court on such terms, if any, as it deems just.

Source: S.L. No. 3L-99-95 §11-31, 7/20/95

§8-131. Application to other state courts with respect to orders in aid of judgment. — A judgment creditor who has obtained an execution may, instead of applying to the court in which the action was tried, apply for an order in aid of judgment to another court of competent jurisdiction within the Pohnpei Judiciary, in whose jurisdiction the judgment debtor lives or has his usual place of business or employment. The court to which application is made shall then proceed with notice to the opposite party, hearing, determination, and the issuance of such order in aid of judgment as it deems just, as provided in this chapter.

Source: S.L. No. 3L-99-95 §11-32, 7/20/95

§8-132. Exemptions. — The following described property shall be exempt from attachment and execution:

(1) *Personal and household goods.* All necessary household furniture, cooking and eating utensils, and all necessary wearing apparel, bedding, and provisions for household use sufficient for four months.

(2) *Necessities for trade or occupation.* All tools, implements, utensils, work animals, and vehicles that are not used for personal transportation, and equipment necessary to enable the person against whom the attachment or execution is issued to carry on his usual occupation.

(3) *Interests in land.*

(a) All interests in land within the state of Pohnpei held by natural persons, inclusive of equitable and leasehold interests; except where such interests can be shown to have been acquired to avoid attachment or execution with respect to the cause of action to which the attachment or execution is ordered or where attachment or execution against such interests in land is specifically permitted under a real property mortgage statute or real property deed of trust statute for the state of Pohnpei; and

(b) Such other interests in land held by such other entities or organizations as may be otherwise specifically exempted from attachment or execution, or both, by state statute.

Source: S.L. No. 3L-99-95 §11-33, 7/20/95

§8-133. Instances when chapter superseded. — Whenever this chapter is in conflict with a state statute specifically providing for procedures for the enforcement of a judgment with respect to a particular form or class of action, the said statute shall supersede this chapter to the extent of the conflict.

Source: S.L. No. 3L-99-95 §11-34, 7/20/95

CHAPTER 9 [RESERVED]

CHAPTER 10 FEES, EXPENSES, AND COSTS

Section

10-101 Schedule of service fees and expenses	10-106 Proceedings when persons are unable to pay fees or expenses
10-102 Witness fees and expenses for travel	10-107 Additional costs may be taxed
10-103 Witness fees for subsistence	10-108 Allocation of costs
10-104 Effect of failure to tender sufficient witness fees and expenses	10-109 Apportionment of costs
10-105 Schedule of court fees	10-110 Receipt and disposition of fees and expenses by the state

§10-101. Schedule of service fees and expenses. — Each police officer or person authorized to execute or serve process, other than a member of the state police executing or serving a process in criminal or civil contempt proceedings, or in juvenile delinquency proceedings, shall be entitled to collect the following fees and expenses for duties performed by him:

(1) For serving any form of process, \$5 plus the actual costs of inter-island air or sea transportation and nine cents per mile for any travel actually performed on the island of service. For purposes of this subsection, the lagoon islands of Pohnpei Island shall be deemed a part thereof. Any process delivered by any police officer shall be sent by that officer to a police officer who is located where it can be served more quickly or with less travel.

(2) For levying a writ of execution and making a sale thereunder, the fees shall be as provided generally for the service of process in Subsection (1) of this section, plus \$10 for conducting the sale, and five cents for every dollar collected up to \$50, and two cents for every dollar collected over \$50.

(3) In addition to the above, the police officer shall be allowed his actual, reasonable, and necessary expenses for caring for any property seized under an attachment or levy of execution; PROVIDED, HOWEVER, that no caretaker or watchman shall be allowed in excess of \$3 for each 12 hours of service.

(4) Except as prescribed by §10-106 or when the process is issued on behalf of the Pohnpei Government or an officer or agency thereof, any police officer or other person authorized to serve or execute process, may require the person requesting him to act to prepay his fees and estimated expenses or give reasonable security therefor before serving or executing any process.

Source: S.L. No. 3L-99-95 §10-1, 7/20/95

§10-102. Witness fees and expenses for travel. —

(1) Except as otherwise provided in this chapter and unless suitable transportation is otherwise provided to him, every person attending as a witness in any judicial proceeding shall:

(a) If he resides on another island, be entitled to the cost of sea or air transportation to the island where the proceeding is to occur; and

(b) While on the island on which the proceeding is to occur, be entitled to receive nine cents per mile for going from and returning to his place of residence or usual place of business or employment on the island where the proceeding is to occur, whichever is nearer to the place where he is to appear as a witness.

(c) For purposes of this section, the lagoon islands of Pohnpei Island shall be deemed a part thereof.

(2) If transportation on the island on which the proceeding is to occur is not available to the witness and must be attained from a taxi or other commercial carrier, the witness shall be entitled to the generally accepted prevailing charge for such transportation, in place of the nine cents per mile, for

the part of his travel for which such travel is reasonably needed and this charge shall be considered as part of his mileage.

(3) If part, but not all, of his transoceanic and local transportation is provided without expense to him, the witness shall only be entitled to receive transportation costs for the part of his travel for which transportation is not provided to him without expense. Except as otherwise provided in §10-106(4), these costs shall be paid by the party on whose behalf the witness is called or summoned, for each trip the witness is reasonably required to make.

(4) If the witness is summoned, the transportation costs for one round trip, inclusive of transoceanic and local travel, shall be tendered to him at the time the witness summons is served, and the transportation costs for any further trips required shall be tendered in advance of each trip, except when the witness summons is issued on behalf of the state or an officer or agency thereof under §10-106.

Source: S.L. No. 3L-99-95 §10-2, 7/20/95

§10-103. Witness fees for subsistence. — If any case in which a witness has attended or been summoned to attend a proceeding before any court and it is necessary for him to remain in attendance for more than one day at a point so far removed from his residence or usual place of business or employment as to prohibit his return thereto from day-to-day, the court before whom he has attended or been summoned may determine the amount reasonably needed to cover the witness' subsistence per day while in attendance, and this sum shall be tendered to the witness in advance by the party on whose behalf the witness was called or summoned, except when the summons is issued under §10-106 or where suitable subsistence is provided without expense to the witness.

Source: S.L. No. 3L-99-95 §10-3, 7/20/95

§10-104. Effect of failure to tender sufficient witness fees and expenses. — The failure to tender the sums specified in §§10-102 and 10-103 for transportation costs or subsistence, or any part of either or both, however, shall not exempt the witness from complying with the summons if he has the means to comply. Any question as to the sufficiency of the amount tendered shall be brought promptly to the attention of the court or official before whom appearance is required, and the same is hereby authorized to make such order as to payment of the witness fees and expenses as is just.

Source: S.L. No. 3L-99-95 §10-4, 7/20/95

§10-105. Schedule of court fees. — Unless otherwise prescribed by statute, each court of the Pohnpei Judiciary shall charge and collect the following fees with regard to work handled by it:

(1) *Filing fees in civil actions.*

- (a) For the filing of a complaint in any court of the state, other than the Pohnpei Supreme Court – \$5;
- (b) For filing of a complaint in the Trial Division of the Supreme Court – \$10;
- (c) For trial in any court of the state other than the Supreme Court – \$10;
- (d) For trial before the Trial Division of the Supreme Court (inclusive of new trials from appeals from inferior courts of the state) – \$25;
- (e) For filing a notice of appeal for new trial from any court of the state to the Trial Division of the Supreme Court – \$10;
- (f) For filing a notice of appeal to the Appellate Division of the Supreme Court – \$25; and
- (g) For hearing before the Appellate Division of the Supreme Court – \$50.

(2) *Authority for reduced fees for small claims actions.* The Supreme Court may, in their court rules, provide for the discounting or reduced fee levels for the charges prescribed by Subsection (1) of this section for filings related to small claims actions brought before the Supreme Court or inferior courts of the state, or both.

(3) *Copy of records.* For a copy of any record, or other paper in the custody of the court, except as provided in Subsection (4) of this section, inclusive of a comparison thereof and for certifying it to be a true copy, there shall be a charge of \$2, plus 25 cents for each page in addition to the first page.

(4) *Transcripts of evidence and notes of hearings.* For a certified transcript of evidence and notes of hearings in a case on appeal to the Appellate Division of the Supreme Court in either criminal or civil cases, there shall be a charge of \$1 per page, or part thereof.

(5) *Recording of land documents.* For the recording of all land documents evidencing ownership, possessory rights or encumbrances on land, or evidencing the transfer of title or interests therein (where permissible under statute), there shall be a charge of \$5, except that there shall be no charge where the state is the grantor.

Source: S.L. No. 3L-99-95 §10-5, 7/20/95

§10-106. Proceedings when persons are unable to pay fees or expenses. —

(1) Any court may authorize the commencement, prosecution or defense of any case, action or proceeding, civil or criminal, or any appeal therein, without prepayment of fees or expenses for serving of process, witness fees or expenses or filing fees, or giving security therefor by a permanent resident of the state or anyone accused of a criminal offense who makes a statement under oath as to his inability to pay for such fees or expenses as prescribed by Subsection (2) of this section.

(2) The court before whom any civil or criminal case, action or proceeding, or appeal therefrom is pending or a judge thereof, may order at any time that service or filing be provided, and that witness summons be issued and served, without payment of fees or expenses, upon request of the party who cannot pay the fees or expenses. The request shall be supported by a statement under oath in which the party shall state that service or filing is needed to be made and, where appropriate, the name and address of each witness and the testimony which he is expected by the party to give if summoned, and shall show that the service or filing is required in the case and/or that the evidence of the witness is material to the party's case, that the party cannot go safely to trial without the required service, filing or witness and that the party is actually unable to pay the fees or expenses. If the court or judge orders the service or filing to be carried without payment of the requisite fees or expenses or the witness summons to be issued without prepayment of fees or expenses, the fees or expenses shall be paid as follows:

(a) In criminal matters, fees and expenses shall be paid in the manner in which similar fees and expenses are paid for cases, actions or proceedings and appeals therefrom brought on behalf of the government.

(b) In civil matters, fees and expenses shall be paid from a special fund established within the judiciary in the manner prescribed by Subsection (5) of this section.

(3) The officers of the court and designated police officers shall issue and serve all process, and perform all duties in such cases without prepayment of fees or expenses or the giving of security therefor. Witnesses shall attend as in other cases.

(4) The court may dismiss a civil case, action or proceeding if the statement of the plaintiff that he is unable to pay fees or expenses is untrue, and may order the payment of all fees and expenses along with interest by any person in such proceedings whose statement is found to be untrue, such actions to be in addition to all other sanctions which may be prescribed by the court.

(5) There is hereby established within the Pohnpei Judiciary a special contingency fund to be known as the "Indigent Fund" for the payment of requisite fees and expenses for which the court has excused the payment by parties in civil matters unable to pay pursuant to this section.

(a) There is hereby authorized for appropriation from the general fund of the Treasury a sum or sums to be determined annually in the Comprehensive Budget Act for the continuous funding of the Indigent Fund. The Indigent Fund shall be administered and expended by the Chief Justice of the Pohnpei Supreme Court solely for the purposes stated in this subsection. All appropriations to the fund shall remain available therein until fully expended. The Chief

Justice shall incorporate in his annual financial report to the Legislature a full accounting of the use of this fund for the previous year.

(b) In the event that assets in the Indigent Fund are insufficient to meet all demands therefor in a fiscal year, payments therefrom shall be apportioned among the recipients thereof; PROVIDED that all obligations to pay fees and expenses to non-government persons and entities shall be met before any withdrawals are made to satisfy the payment of any fees or expenses owing the Pohnpei Government or any officer thereof acting in his official capacity. A claim for the payment of fees or expenses from the Indigent Fund shall be valid for five years.

Source: S.L. No. 3L-99-95 §10-6, 7/20/95

§10-107. Additional costs may be taxed. — The court may allow and tax any additional items of cost or actual disbursement, other than fees of counsel, which it deems just and finds have been necessarily incurred for services which were actually and necessarily performed.

Source: S.L. No. 3L-99-95 §10-7, 7/20/95

§10-108. Allocation of costs. — All fees and expenses paid or incurred under this chapter for service of process, witness fees and expenses or filing fees, by any party prevailing in any matter other than a criminal proceeding, shall be taxed as part of the costs against the losing party or parties unless the court shall otherwise order; PROVIDED that:

(1) No fees or expenses paid to a witness who is a party in interest and is called and examined on his own behalf or others jointly interested with him shall be allowed or taxed as costs;

(2) No costs or expenses paid to or on behalf of a witness for transportation into the state from a destination outside of the state shall be allowed or be taxed as costs unless authority therefor is granted by the presiding justice or judge at the time the summons for said witness to appear is issued; and

(3) No fees or expenses shall be allowed or taxed as costs against the state of Pohnpei.

Source: S.L. No. 3L-99-95 §10-8, 7/20/95

§10-109. Apportionment of costs. — Where there is more than one prevailing or losing party, costs may be apportioned by the court as it deems just.

Source: S.L. No. 3L-99-95 §10-9, 7/20/95

§10-110. Receipt and disposition of fees and expenses by the state. —

(1) The Pohnpei Supreme Court shall, in its rules of procedure, provide for the procedures for making payments of fees and expenses under this chapter and shall designate officers of the judiciary branch, the Department of Public Safety, the Office of the Attorney General, and other agencies and offices of the Pohnpei Government authorized to receive payment on behalf of those entities and offices.

(2) Each officer and employee of the Pohnpei Government receiving any monies pursuant to this chapter shall provide for the prompt payment thereof to the general fund of the Treasury.

Source: S.L. No. 3L-99-95 §10-10, 7/20/95

(Next page is Title 58 divider)