# TITLE 7 CIVIL PROCEDURE

**LIST OF SECTIONS AFFECTED (WITH DATES)**
**SEPT. 1, 2007 – DEC. 31, 2010**
standard type: amended section; **bold** type: new or reenacted section;
~~strikeout~~ type: repealed section; underlined type: renumbered section; *italics* type: corrected section

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| 7 CMC | 2201(b)(4) | PL 16-51 | 7 | 1/15/10 |

# DIVISION 1: JURISDICTION AND PROCESS

## CHAPTER 1. JURISDICTION.

### § 1101. Application of Chapter.

**Case Annotations:** . . .

**JURISDICTION**

**Personal**

– **Long Arm Statute**
The Commonwealth's long-arm statute, 7 CMC § 1101, *et seq.,* subjects both residents and nonresidents to the Courts jurisdiction to the fullest extent allowable under the due process standards of the U.S. Constitution. The Due Process Clause of the Fourteenth Amendment to the United States Constitution imposes limitations on the power of a court to assert personal jurisdiction over a nonresident defendant. 7 CMC § 1101; U.S. Const. amend. XIV. *Bank of Saipan v. Superior Ct. (Attorney's Liab. Assurance Soc'y, Inc.)*, 2001 MP 5 ¶ 39, 6 N.M.I. 242, 251-2 (2001).

### § 1102. Acts Submitting to Jurisdiction.

**Case Annotations:**

**JURISDICTION**

**Generally**

– **Requisites**
The CNMI long-arm statute is coextensive with the minimum standards of due process as determined in the United States federal courts. 7 CMC § 1102. *Waibel v. Farber*, 2006 MP 15 ¶ 13, 7 N.M.I. 322, 326 (2006).

**Personal**

The Commonwealth's long-arm statute extends the court's jurisdiction to the extent permitted by the federal Constitution, regardless of citizenship or residency, when a cause of action arises from, among other things, the transaction of any business within the Commonwealth. 7 CMC § 1102(a). *Bank of Saipan v. Superior Ct. (Connell)*, 2001 MP 1 ¶ 22, 6 N.M.I. 179, 186 (2001).

In enacting Section 1102 of Title 7 of the Commonwealth Code, the Commonwealth Legislature intended that jurisdiction be coextensive with the minimum standards of due process as determined in the United States federal courts. 7 CMC § 1102(e). *Bank of Saipan v. Superior Ct. (Connell)*, 2001 MP 1 ¶ 22, 6 N.M.I. 179, 186 (2001).

## CHAPTER 2. SERVICE AND EXECUTION OF PROCESS.

### § 1205. Judicial Rules of Civil Procedure.

**Case Annotations:** *Santos v. Santos*, 2001 MP 12, 6 N.M.I. 295 (2001).

# DIVISION 2: ACTIONS AND SPECIAL PROCEEDINGS

## CHAPTER 1. ACTIONS FOR WRONGFUL DEATH.

### § 2101. Liability in Action for Wrongful Death; Proceedings.

**Case Annotations:** *Indalecio v. Yarofalir*, 2006 MP 18, 7 N.M.I. 341 (2006).

### § 2103. Damages; Settlement by Personal Representative.

**Case Annotations:**

**STATUTES**

**Interpretation and Construction**

– **Generally**
The term child in the CNMI wrongful death statute is read in accordance with its plain language meaning (and does not include an age requirement). 7 CMC § 2103(a). *Indalecio v. Yarofalir*, 2006 MP 18 ¶ 31, 7 N.M.I. 341, 349 (2006).

## CHAPTER 2. ACTIONS AGAINST THE COMMONWEALTH.

### Article 1. Government Liability Act.

### § 2201. Short Title and Definitions.

(a) [unchanged]
(b) *Definitions*. As used in this chapter:
(1) -(3) [unchanged]
(4) "Employee" means an officer, elected or appointed official, exempted service, excepted service, classified or unclassified employee, or servant of a public entity, whether or not compensated, but does not include an independent contractor of the Commonwealth. Employee includes former employees of the Commonwealth. Employee includes persons to whom 3 CMC § 2820 of the Commonwealth Healthcare Corporation Act of 2008 applies.
(5) -(8) [unchanged]

**Source:** . . . (b)(4) amended by PL 16-51 § 7 (January 15, 2010).

**Commission Comment:** The commission inserted proper code section references pursuant to 1 CMC § 3806(c). . . .

### § 2202. Limitation of Tort Liability.

**Case Annotations:** *Indalecio v. Yarofalir*, 2006 MP 18, 7 N.M.I. 341 (2006); *Manglona v. Commonwealth*, 2005 MP 15, 7 N.M.I. 192 (2005).

## Article 3. Other Actions Against the Commonwealth.

### § 2251. Other Actions Against the Commonwealth Government.

**Case Annotations:** *Manglona v. Commonwealth*, 2005 MP 15, 7 N.M.I. 192 (2005).

# CHAPTER 3. PUBLIC EMPLOYEE LEGAL DEFENSE AND INDEMNIFICATION ACT.

### § 2301. Short Title. [Repealed by PL 15-22.]

**Case Annotations:**

**PUBLIC OFFICERS AND EMPLOYEES**

**Public Office**

– **Indemnification**
The purpose of a statute such as Public Employee Legal Defense and Indemnification Act of 1986, 7 CMC § 2301, *et seq*., is to provide government employees with the resources to defend against lawsuits and pay money judgments incurred as a result of the discharge of their duties as public servants, so that, secure in the knowledge that they will not be driven to financial ruin because they have chosen public service, government employees will discharge their duties zealously. 7 CMC §§ 2301-2307. *Bisom v. Commonwealth*, 2002 MP 19 ¶ 33, 6 N.M.I. 475, 482 (2002).

The purpose of the Public Employee Legal Defense and Indemnification Act of 1986, 7 CMC § 2301, *et seq.,* is not to ensure that a wronged individual is compensated, but rather to offer protection to government employees. 7 CMC §§ 2301-2307. *Bisom v. Commonwealth*, 2002 MP 19 ¶ 34, 6 N.M.I. 475, 482-3 (2002).

### § 2302. Purpose. [Repealed by PL 15-22.]

**Case Annotations:** *Bisom v. Commonwealth*, 2002 MP 19, 6 N.M.I. 475 (2002).

### § 2304. Request for Defense; Payment of Defense, Settlement or Judgment; Implied Right of Indemnification; Findings Required. [Repealed by PL 15-22.]

**Case Annotations:**

**PUBLIC OFFICERS AND EMPLOYEES**

**Public Office**

– **Indemnification**
In 7 CMC § 2304(a), the legislature has placed a great emphasis on the requirement that an employee request defense and indemnity from the government by listing four conditions which must be met before the government will be required to provide a defense for, and indemnity of, an employee. 7 CMC § 2304(a). *Bisom v. Commonwealth*, 2002 MP 19 ¶ 45, 6 N.M.I. 475, 485 (2002).

## CHAPTER 4. OTHER ACTIONS OR SPECIAL PROCEEDINGS.

## Article 2. Declaratory Judgments.

### § 2421. Authority of Court to Render.

**Case Annotations:** . . .

**JURISDICTION**

**Superior Court**

– **Declaratory Judgments**
The Commonwealth Superior Court is authorized to grant declaratory judgments pursuant to 7 CMC § 2421. 7 CMC § 2421. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 25. 6 N.M.I. 575, 585 (2003).

## Article 4. Bad Checks Act of 1984.

### § 2441. Bounced Checks: Definitions.

**Case Annotations:** *Tenorio Enterprises, Inc. v. Uddin*, 2006 MP 22, 7 N.M.I. 365 (2006).

**STATUTES**

**Interpretation and Construction**

**– Plain Meaning**

**— Particular Statutes**

The Bad Checks Act of 1984, 7 CMC § 2441, *et seq.,* is ambiguous as to when the thirty-day notice period provided for by 7 CMC § 2442(a) begins, and that ambiguity was resolved by the Court on behalf of the maker of the bad check. The maker of a bad check has thirty days from the receipt of the demand letter in which to pay the amount owed. 7 CMC § 2441, *et seq. Town House, Inc. v. Saburo*, 2003 MP 2 ¶ 9, 6 N.M.I. 529, 531 (2002).

By placing an upper limit on the amount of treble damages available pursuant to the Bad Checks Act of 1984, 7 CMC § 2441, *et seq.,* the legislature has evidenced its concern that the drafters of dishonored checks shouldn't pay too steep a penalty. Thus, the just and equitable resolution of the ambiguity concerning the total damages available would be to offer the greatest protection to the maker of the dishonored check. 7 CMC § 2441, *et seq. Town House, Inc. v. Saburo*, 2003 MP 2 ¶ 14, 6 N.M.I. 529, 532 (2002).

The Bad Checks Act of 1984, 7 CMC § 2441, *et seq.,* allows a plaintiff to recover either (1) the amount owing on the check plus interest at 12% per year or other damages claimed or (2) damages of treble the face amount of the check. 7 CMC § 2441, *et seq. Town House, Inc. v. Saburo*, 2003 MP 2 ¶ 17, 6 N.M.I. 529, 533 (2002).

### § 2442. Bounced Checks: Treble Damage and Attorney's Fees.

**Case Annotations:** *Tenorio Enterprises, Inc. v. Uddin,* 2006 MP 22, 7 N.M.I. 365 (2006).

## CHAPTER 5. LIMITATION OF ACTIONS.

### § 2502. Limitation of Twenty Years.

**Case Annotations:** *Villanueva v. Tinian Shipping and Transp., Inc.*, 2005 MP 12, 7 N.M.I. 182 (2005); *Teregeyo v. Fejeran*, 2004 MP 18, 7 N.M.I. 80 (2004); *Flores v. Commonwealth*, 2004 MP 9, 7 N.M.I. 45 (2004).

### § 2503. Limitation of Two Years.

**Case Annotations:** *Villanueva v. Tinian Shipping and Transp., Inc.*, 2005 MP 12, 7 N.M.I. 182 (2005); *Oden v. Northern Mariana College*, 2003 MP 13, 6 N.M.I. 601 (2003).

**CONSTITUTION (NMI)**

**Illegal Search and Seizure**

– **Statute of Limitations**
The statutory mandate of 7 CMC § 2503 is that all tort claims, including those for violation of the right against unreasonable searches and seizures, premised on Article I, Section 3(c) of the N.M.I. Constitution, must be commenced within the two-year limitations period. 7 CMC § 2503; N.M.I. Const. art. I, 3(c). *Zhang Gui Juan v. Commonwealth*, 2001 MP 18 ¶ 29, 6 N.M.I. 322, 330 (2001).

**STATUTE OF LIMITATIONS**

**Applicability**

– **Particular Cases**
Section 2503(d) of Title 7 of the Commonwealth Code provides that actions for injury to one caused by the wrongful act or neglect of another shall be commenced within two years after the cause of action accrues. 7 CMC § 2503(d). *Bank of Saipan v. Carlsmith Ball Wichman Case & Ishiki*, 1999 MP 20 ¶ 10, 6 N.M.I. 40, 42 (1999).

### § 2504. Actions By or Against the Estate of a Deceased Person.

**Case Annotations:** *Villanueva v. Tinian Shipping and Transp., Inc.*, 2005 MP 12, 7 N.M.I. 182 (2005).

### § 2505. Limitation of Six Years.

**Case Annotations:** *Century Ins. Co. Ltd. v. TAC Int'l Constructors, Inc.*, 2006 MP 10, 7 N.M.I. 297 (2006).

**STATUTES**

**Interpretation and Construction**

– **Legislative Intent**
Claims for legal malpractice and related claims are governed by the six-year statute of limitations pursuant to 7 CMC § 2505. *Bank of Saipan v. Carlsmith Ball Wichman Case & Ishiki*, 1999 MP 20 ¶19, 6 N.M.I. 40, 44 (1999).

**STATUTES OF LIMITATION**

**Applicability**

– **Particular Cases**
Pursuant to section 2505 of Title 7 of the Commonwealth Code, the statute of limitations for a tax collection action, brought pursuant to 4 CMC § 1813, is six years. 7 CMC § 2505; 4 CMC § 1813. *Villanueva v. Tinian Shipping and Transp., Inc.*, 2005 MP 12, 7 N.M.I. 182 (2005).

### § 2506. Disabilities.

**Case Annotations:** *Zhang Gui Juan v. Commonwealth*, 2001 MP 19, 6 N.M.I. 330 (2001).

## CHAPTER 6. SURVIVAL OF ACTIONS.

### § 2601. Survival of Claims After Death of Tortfeasor or Other Person Liable.

**Case Annotations:** *Indalecio v. Yarofalir*, 2006 MP 18, 7 N.M.I. 341 (2006).

# DIVISION 3: TRIAL

## CHAPTER 1. JURIES AND JURY TRIAL.

### § 3101. Right to Trial by Jury.

**Case Annotations:** *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26, 7 N.M.I. 388 (2006); *Commonwealth v. Arriola*, 2002 MP 8, 6 N.M.I. 412 (2002).

**CIVIL PROCEDURE**

**Juries: Demand for Jury Trial**

– **Generally**
In order to effectuate a demand for jury pursuant to Com. R. Civ. P. 38, which preserves right to trial by jury as given by statute, a litigant must satisfy provisions of statute giving right to jury trial in certain cases by raising factual issues that fall within statutory categories and paying required fee. 7 CMC § 3101. *Deleon Guerrero v. Nabors*, 4 N.M.I. 31 (1993).

— **Particular Cases**
In action for breach of contract and fraud in sale of property, after one of two plaintiffs filed demand for jury trial but failed to pay jury trial fee, if court had notified parties that fee had not been paid, either plaintiff could have paid it, or, if they no longer wished a jury trial, defendant could have paid it if defendant wished to proceed with a jury trial. *Deleon Guerrero v. Nabors*, 4 N.M.I. 31 (1993).

– **Waiver or Withdrawal**

— **Particular Cases**
Defendant in action for breach of contract and fraud in property sale was entitled to rely upon plaintiff's demand for jury trial despite plaintiff's failure to pay jury trial fee and subsequent withdrawal of demand. By requiring parties to file and serve jury instructions after demand, trial court effectively designated action as jury action, implying that jury trial had been properly demanded as provided in Com. R. Civ. P. 38, despite lack of fee payment. Trial court's reliance upon demand for jury trial rendered its subsequent denial of defendant's request for jury inequitable. 7 CMC § 3101. *Deleon Guerrero v. Nabors*, 4 N.M.I. 31 (1993).

In action for breach of contract and fraud in property sale, plaintiff should have obtained defendant's consent when withdrawing plaintiff's demand for jury trial. Com. R. Civ. P. 38. *Deleon Guerrero v. Nabors*, 4 N.M.I. 31 (1993).

**CONSTITUTION (N.M.I.)**

**Due Process**

– **Fundamental Rights**
The CNMI Legislature has discretion to decide whether a trial under local law will be held before a jury, and pursuant to 7 CMC § 3101(a), a defendant is entitled to a jury trial when the punishment includes a term of more than five years imprisonment and/or a criminal fine greater than $2,000. 7 CMC § 3101(a). *Commonwealth v. Jong Hun Lee*, 2005 MP 19 ¶ 21, 7 N.M.I. 221, 226 (2005).

**Equal Protection**

– **Generally**
Section 3201 of Title 6 of the Commonwealth Code does not violate equal protection simply because it provides that the amount of the criminal fine for violation will be three times the value of the payment received, and thus some defendants accused of bribery will be entitled to a jury trial pursuant to 7 CMC § 3101(a) while others will not. 6 CMC § 3201; 7 CMC § 3101(a). *Commonwealth v. Jong Hun Lee*, 2005 MP 19 ¶ 23, 7 N.M.I. 221, 226 (2005).

**CONSTITUTIONAL LAW**

**Jury Trial, Right to**
No waiver of the Sixth Amendment right to a jury trial is necessary in a case in which a defendant is not entitled to a jury trial under Commonwealth law and where a bench trial is proper based on the charges against the defendant. 7 CMC § 3101(a). *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 27, 6 N.M.I. 361, 368 (2002).

# CHAPTER 2. FEES AND COSTS; DISPOSITION OF FINES.

## Article 1. Fees and Costs.

### § 3205. Proceedings When Persons Unable to Pay Fees.

**Case Annotations:** *Francis v. Welly*, 1999 MP 26, 6 N.M.I. 64 (1999).

# CHAPTER 4. APPLICABLE LAW.

### § 3401. Applicability of Common Law.

**Case Annotations:** *Demapan v. Bank of Guam*, 2006 MP 16, 7 N.M.I. 331 (2006); *Aplus Co. Ltd.v. Niizeki Int'l Saipan Co. Ltd.*, 2006 MP 13, 7 N.M.I. 313 (2006); *Sullivan v. Tarope*, 2006 MP 11, 7 N.M.I. 303 (2006); *Century Ins. Co. Ltd. v. TAC Int'l Constructors, Inc.*, 2006 MP 10, 7 N.M.I. 297 (2006); *Reyes v. Reyes*, 2004 MP 1, 7 N.M.I. 1 (2004); *PAC United Corp. (CNMI) v. Guam Concrete Builders*, 2002 MP 15, 6 N.M.I. 446 (2002); *Isla Fin. Servs. v. Sablan*, 2001 MP 21, 6 N.M.I. 338 (2001); *Bank of Saipan v. Superior Ct. (Attorney's Liab. Assurance Soc'y, Inc.)*, 2001 MP 5, 6 N.M.I. 242 (2001); *Saipan Lau Lau Dev., Inc., v. Superior Ct. (San Nicolas)*, 2000 MP 16, 6 N.M.I. 158 (2000); *Santos v. Santos*, 2000 MP 9, 6 N.M.I. 113 (2000); *In re Estate of De Leon Guerrero v. Quitugua*, 2000 MP 1, 6 N.M.I. 67 (2000); . . .

**APPELLATE PROCEDURE**

**Rules**

**– Generally**
Neither Com. R. App. P. Rule 21 nor any other Commonwealth rule or statute addresses the time in which a party may file a mandamus petition, so the Court turns to the common law for guidance as provided in 7 CMC § 3401. It is generally recognized in jurisdictions that lack a rule or statute regarding the timeliness of petitions for writs of mandamus that the equitable doctrine of laches governs. *Bank of Saipan v. Martens*, 2007 MP 5 ¶ 6, 7 N.M.I. 419, 421 (2007).

**CONTRACTS**

**Interpretation and Construction**

**– Generally**
In the absence of available common law, 7 CMC § 3401 allows the use of the Restatements to aid a court. Under the Restatement, interpretation of contracts deals with the meaning given to the language and other conduct by the parties rather than with the meaning established by law. It is clear to us that barring course of performance evidence when there is no contractual ambiguity is the appropriate law to apply in our developing Commonwealth. *CPA v. Tinian Shipping Co.*, 2007 MP 22 ¶ 16, 7 N.M.I. 496, 499 (2007).

**Unenforceable Contracts**
In the absence of CNMI statutory authority governing the enforceability of contracts, pursuant to 7 CMC § 3401, the court must look to the common law as expressed in the Restatement Second of Contracts (1981). 7 CMC § 3401; Restatement Second of Contracts (1981). *Isla Fin. Servs. v. Sablan*, 2001 MP 21 ¶ 12, 6 N.M.I. 338, 341 (2001).

**COURTS**

**Common Law**

**– Generally**
In reviews of defamation actions, the Court's decisions have consistently found the Restatement (Second) of Torts controlling. However, 7 CMC § 3401 makes Restatement provisions applicable only when, and to the extent, written law or local customary law is silent. Section 3401 requires cautious application; courts must be vigil, since a survey of local law is necessary before resorting to the Restatement, and conscientious, since a court called upon to apply and pick and choose from the Restatement's large body of laws in fact legislates. *Tan v. Younis*, 2007 MP 11 ¶ 14, 7 N.M.I. 436, 442 (2007).

The CNMI has a statute which directs the court to look in the absence of written or local law toward the common law as expressed in the restatement of law approved by the American Law Institute and to the extent not so expressed as generally understood and applied in the United States. 7 CMC § 3401. *Demapan v. Bank of Guam*, 2006 MP 16 ¶ 12, 7 N.M.I. 331, 333 (2006).

Where a contract contains no provision relating to remedial measures, then because there exists no contrary statutory or customary law in the C.N.M.I., the court is required by the mandate of 7 CMC § 3401 to apply the common law as enunciated in the American Law Institute's Restatements of the Law. *Manglona v. Commonwealth*, 2005 MP 15 ¶ 19, 7 N.M.I. 192, 198 (2005).

Under 7 CMC § 3401, the common law of the United States applies in the Commonwealth, absent any written law to the contrary. *Paulis v. Superior Ct.*, 2004 MP 10 ¶ 34, 7 N.M.I. 48, 53 (2004).

. . .

# DIVISION 4: JUDGMENTS; ENFORCEMENT OF JUDGMENTS

# CHAPTER 1. GENERAL PROVISIONS.

## § 4101. Money Judgments.

**Case Annotations:** *Estate of Muna v. Commonwealth*, 2007 MP 16, 7 N.M.I. 473 (2007); *Matsunaga v. Matsunaga*, 2006 MP 25, 7 N.M.I. 379 (2006); *Manglona v. Commonwealth*, 2005 MP 15, 7 N.M.I. 192 (2005).

**STATUTES**

**Interpretation and Construction**

– **Plain Meaning**
7 CMC §4101 is unambiguous when it states "[e]very judgment for the payment of money shall bear interest at the rate of nine percent a year from the date it is entered." *NMHC v. Flores*, 2006 MP 23 ¶ 5, 7 N.M.I. 370, 371 (2006).

7 CMC §4101 requires all money judgments to bear interest regardless of the reason precipitating the judgment. *NMHC v. Flores*, 2006 MP 23 ¶ 9, 7 N.M.I. 370, 372 (2006).

# CHAPTER 2. ATTACHMENTS; EXECUTION; ORDERS IN AID OF JUDGEMENT.

## § 4206. Orders in Aid of Judgment; Hearings.

**Case Annotations:** *Paulis v. Superior Ct.*, 2004 MP 10, 7 N.M.I. 48 (2004).

## § 4207. Orders in Aid of Judgment; Modification of Orders.

**Case Annotations:** *Kaainoa v. Cabrera*, 2003 MP 18, 6 N.M.I. 634 (2003); *Highsmith & O'Mallan, P.C. v. Leon Guerrero*, 2003 MP 4, 6 N.M.I. 539 (2003).

## § 4208. Orders in Aid of Judgment; Punishment of Violations.

**Case Annotations:** *Kaainoa v. Cabrera*, 2003 MP 18, 6 N.M.I. 634 (2003).

**COURTS**

**Common Law**

– **Generally**
7 CMC § 4208 explicitly authorizes imprisonment for non-compliance with an order in aid of judgment. *Paulis v. Superior Ct.*, 2004 MP 10 ¶ 35, 7 N.M.I. 48, 54 (2004).

**Contempt**

– **Civil**
— **Particular Cases**
A contempt order sentencing a debtor to jail for a fixed amount of time of not more than 6 months and containing an automatic purge clause whereby the debtor may avoid jail by complying with the order in aid of judgment is civil, not criminal, in nature. 7 CMC § 4208. *Paulis v. Superior Ct.*, 2004 MP 10 ¶ 32, 7 N.M.I. 48, 53 (2004).

### § 4209. Orders in Aid of Judgment; Stay of Execution.

**Case Annotations:** *Saipan Lau Lau Dev., Inc., v. Superior Ct. (San Nicolas)*, 2000 MP 16, 6 N.M.I. 158 (2000).

## CHAPTER 4. UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT.

### § 4401. Short Title.

**Case Annotations:** *Sullivan v. Tarope*, 2006 MP 11, 7 N.M.I. 303 (2006).