DIGEST OF DECISIONS

Northern Mariana Islands Reporter Volumes 1-8

VOLUME I

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ADMINISTRATIVE LAW

Administrative Procedure Act

—Effective Date

The Trust Territory Administrative Procedure Act (APA), 17 TTC § 1 et seq., became the Commonwealth APA, 1 CMC § 9101 et seq., upon the adoption of the Commonwealth Code in 1984. It was not enacted upon the adoption of the Code, but was, instead, an existing law that continued (upon adoption of the Code) as prima facie evidence of the APA applicable in the Commonwealth. The law was retained with minimal modifications to conform it to the structure of the Commonwealth Code and the new names of the Commonwealth and its chief executive officer. As a continuation of existing Trust Territory law, rather than a new enactment, the APA's effective date was the date of its enactment by the Trust Territory government, July 1, 1974, and not January 1, 1984, the effective date of the Commonwealth Code. *Commonwealth v. Lizama*, 3 N.M.I. 400 (1992), aff'd, 27 F.3d 444 (9th Cir. 1994).

Agency Action

—**Agency Interpretation**

DC NMI 1988. Where Federal Maritime Commission reviewed, approved, and deemed a lease effective, court would not second guess Commission and determine de novo if it followed its own regulations. *A & E Pacific Construction Co., v. Saipan Stevedore Co., Inc.*, 3 CR 373, aff'd, 888 F.2d 68 (9th Cir. 1989).

DC 1988. Where Federal Maritime Commission determined that Ports Authority, a government agency was an entity envisioned as coming within federal law, and lease fell within its protection of federal law, and Commission is the expert on its regulations and there is no indication that it misinterpreted the regulations, there was no ground to upset that ruling. *A & E Pacific Construction Co., v. Saipan Stevedore Co., Inc.*, 3 CR 373, aff'd, 888 F.2d 68 (9th Cir. 1989).

DC NMI 1982. The agency's interpretation of its governing statute may not conflict with the language chosen by Congress. *Bauer v. McCoy*, 1 CR 248.

—**Appeals, Administrative**

(Applying NMI Administrative Procedure Act and common law)

Administrative law deals with non-autonomous agencies that exercise limited discretion through a predefined process. Such agencies have no inherent rights, and may only exercise the authority vested in them by constitution or statute. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 8

Agencies are given the authority to make discretionary decisions over a limited range of matters. As such, agencies often possess and exercise some degree of executive, legislative, and judicial power. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 10

Agency power is conferred by legislation or executive or judicial order and is properly viewed as a means of facilitating the exercise of the governmental power vested in that body which created the agency. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 10

Section 9112(b) of Title 1 of the Commonwealth Code cannot be understood to prohibit agencies from seeking judicial review of administrative rulings when that subsection is read in conjunction with 1 CMC § 9113. Whereas 1 CMC § 9112(b) restricts judicial review to a person suffering legal wrong, and 1 CMC § 9101(j) defines person as excluding an agency; 1 CMC § 9113 allows an aggrieved party to appeal the Superior Court's decision to the Supreme Court, and 1 CMC § 9101(i) defines party as including an agency. It would be inconsistent to read one section as prohibiting an agency from seeking judicial review of an administrative decision, while reading the next section as broadening an agency's ability to seek judicial recourse by allowing them to appeal to the Supreme Court. 1 CMC § 9101(i); 1 CMC § 9101(j); 1 CMC § 9112(b); 1 CMC § 9113. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 17

The legislature's intent, when it used the term person, in the Commonwealth Administrative Procedure Act, 1 CMC 9101, et seq., to define the class of entities entitled to seek judicial review was to broaden the class beyond the real parties in interest who participated in the administrative proceeding below. Had the legislature used the term *party* in 1 CMC § 9112(b), this would have restricted judicial review only to real parties in interest or those who successfully intervened in the administrative proceeding. By broadening this right to *persons* rather than *parties,* the legislature intended to allow those not involved in the agency decision but nevertheless adversely affected by the agency's

action to seek judicial review. For this reason, 1 CMC § 9112(b) should be read to include in the class of entities entitled to seek judicial review, agencies that were actual parties to the administrative proceeding. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 18

While 1 CMC § 9112(b) should be read to include in the class of entities entitled to seek judicial review, agencies that were actual parties to the administrative proceeding, it should not be read so broadly as to expand standing to agencies who were not in fact parties to the underlying administrative dispute. This limitation captures the legislature's intent when providing for judicial review of agency action: to keep the courts out of intra-agency disputes. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 19

Although an agency representative might present evidence and/or argue for a desired outcome at that agency's administrative proceeding, an agency is not a party to its own proceeding in the conventional sense. As a general rule an administrative agency has no partisan interests in its decisions. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 21

An administrative officer who made an original decision which was appealed to a higher administrative authority has no interest as a party which would entitle him to appeal from the overruling of his decision. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 22

The language of 1 CMC § 9112(b) grants standing for an agency to seek judicial review when that agency was not within the administrative body which enjoyed decision making authority. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 24

The Commonwealth Administrative Procedure Act, 1 CMC §§ 9101, et seq., allows two entities to appeal a decision: a person suffering a legal wrong, and a party to the administrative hearing. 1 CMC §§ 9101, et seq. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong)*, 2005 MP 6 ¶ 12

An aggrieved party to an administrative hearing, held pursuant to Commonwealth Administrative Procedure Act, 1 CMC §§ 9101, et seq., has a right to appeal to the Superior Court. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong)*, 2005 MP 6 ¶ 12

A department or agency does not have a right to appeal the outcome of an administrative hearing, held pursuant to Commonwealth Administrative Procedure Act, 1 CMC §§ 9101, et seq., as a person suffering a legal wrong because it is not, in fact, a "person" as defined by the Act. However, the department or agency does have a right to appeal under the Act by virtue of the fact that it was a party to the administrative hearing. The right to appeal granted by 1 CMC § 9113, is the right is to appeal a trial court's ruling to the Supreme Court. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong)*, 2005 MP 6 ¶ 13

The provisions of 1 CMC § 9113 and 1 CMC § 9112(b) create an unstable situation in that agencies which are parties to administrative hearings can seek an appeal from the trial court's ruling (on appeal of the administrative hearing decision), but cannot initially appeal to the trial court for judicial review of the administrative hearing decision. This construction of the statutes is untenable. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong)*, 2005 MP 6 ¶ 14

The legislature, in drafting 1 CMC §§ 9112(b) and 9113, could not have intended to restrict the appeals of parties at one level (appeal to the Superior Court allowed only to "persons" not including agencies) only to broaden them at another (appeals from the Superior Court's decisions allowed by "persons" or agencies which were parties to the hearing), especially when parties to an administrative hearing have traditionally had the right to appeal. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong)*, 2005 MP 6 ¶ 15

In defining the term person at 1 CMC § 9101(j) very broadly, the legislature intended to expand the right of judicial review of administrative proceedings and to allow standing to a nonparty, including entities that were not involved in the agency decision but were nevertheless adversely affected by the agency's action. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong)*, 2005 MP 6 ¶ 16

Despite the conflict in the terms between "party" and "person" contained in the Commonwealth Administrative Procedure Act, 1 CMC §§ 9101, et seq., the legislature did not intend to constrict the right of judicial review to exclude party-agencies; rather, it intended to restrict non-party agencies from intervening into disputes in which they might have an interest, but where they were not a party. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong)*, 2005 MP 6 ¶ 16

A department or agency, as a party to an administrative hearing, is entitled to judicial review under the Commonwealth Administrative Procedure Act, 1 CMC §§ 9101, et seq., however standing is not extended to departments or agencies which were not parties to the underlying administrative dispute. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong)*, 2005 MP 6 ¶ 17

A petition for judicial review of an agency action must set forth specific harm to establish standing but that harm may include a legal wrong or an action that resulted in the party being adversely affected or aggrieved. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong)*, 2005 MP 6 ¶ 19

An administrative hearing decision that interferes with a department's ability to follow the anti-discrimination mandate of the Constitution and laws and which thwarts its ability to follow the rules set forth in the Commonwealth Civil Service Act, 1 CMC §§ 8101, et seq., regarding the employer-employee relationship has caused harm and a legal wrong to the department. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong)*, 2005 MP 6 ¶ 21

An administrative hearing decision that requires a department to appoint a former employee to a new position in which he would not interact with female employees is without legal basis as it violates both Title VII of the Civil Right Act of 1964, as amended, 42 U.S.C. §§ 2000e, et seq. and Article 1, Section 6 of the CNMI Constitution, which provides protections to all employees, including current and prospective female employees, from unequal treatment including different treatment based on gender in the workplace. 42 U.S.C. §§ 2000e, et seq.; N.M.I. Const. art. I, § 6. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong)*, 2005 MP 6 ¶ 22

The trial court correctly concluded that judicial review of an administrative decision was proper where a department suffered a legal wrong and the trial court was concerned that the administrative decision violated Title VII of the Civil Right Act of 1964, as amended, 42 U.S.C. §§ 2000e, et seq. and Article 1, Section 6 of the Commonwealth Constitution. 42 U.S.C. §§ 2000e, et seq.; N.M.I. Const. art. I, § 6. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong)*, 2005 MP 6 ¶ 24

An appellant bears the burden of proof as the proponent of an order of the Supreme Court setting aside the trial court's affirmance of an agency decision. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong)*, 2005 MP 6 ¶ 31

An administrative decision failed to support its finding that an employee could be reinstated under the terms it specified, when it did not indicated the position that the employee could fill, or describe how a position could be created (without violating Federal or Commonwealth law) in which the reinstated employee would not interact with females. In this situation, the trial court would reverse the agency's conclusion of law that had no legal basis and was not supported by a substantial amount of evidence. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong)*, 2005 MP 6 ¶ 31

The term reinstatement means placing the employee in the same position he or she occupied before the adverse action was taken against him or her. It does not include ordering the employer to create an alternative position for the former employee. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong)*, 2005 MP 6 ¶ 32

The Civil Service Commission has the power to reinstate a terminated employee, but not to reorganize terminated employee's department or the entire operations of the department. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong),* 2005 MP 6 ¶ 32

In the Commonwealth, it is well-settled law that administrative decisions that are void when issued are not considered res judicata. *Flores v. Commonwealth*, 2004 MP 9 ¶ 13

Even if appellants were correct that a second title determination was void and they were deprived of notice, their claim was barred by the statute of limitations on actions for the recovery of land which requires commencement of the action within twenty years of its accrual. *Flores v. Commonwealth*, 2004 MP 9 ¶ 20

An agency's dismissal of an intra-agency appeal for failure to file in a timely fashion does not bar a reviewing court from examining the timeliness of the appeal. *Rivera v. Guerrero*, 4 N.M.I. 79 (1993).

The time limit for filing an intra-agency appeal is mandatory and jurisdictional. *Rivera v. Guerrero*, 4 N.M.I. 79 (1993).

A court lacks jurisdiction to review administrative decisions not timely appealed during the

administrative process. *Rivera v. Guerrero*, 4 N.M.I. 79 (1993).

——Particular Agencies

(Applying statutes and regulations concerning particular agencies)

Any action required by an agency will be transferred to its successive agency or agencies. Transfer orders were previously issued by the Department of Labor and Immigration, but are now issued and enforced by the Department of Labor. The Division of Immigration (within the Office of the Attorney General) handles deportations. The agencies must work together to insure notice is provided to transfer employees when the prospective transfer employer fails to comply with the transfer order, and to enforce the repatriation obligation that results. *Office of the Attorney Gen. v. Estel*, 2004 MP 24 ¶ 10

Ambiguity in statute permitting appeal of coastal resources management regulatory agency decision to Coastal Resources Management Office Appeals Board concerning commencement of thirty-day filing period was resolved by agency regulation interpreting period to run from date of issuance of decision. 2 CMC § 1541(b). *Nansay Micronesia Corp. v. Govendo*, 3 N.M.I. 12 (1992).

Since coastal resources management regulatory agency decision approving development permit was issued on March 13, 1990, party had until April 12, 1990, to file appeal to Coastal Resources Management Office (CRMO) Appeals Board under thirty-day filing period specified in 2 CMC § 1541(b). Party's filing of appeal on May 4, 1990, was thus untimely and CRMO Appeals Board had no jurisdiction to hear appeal. *Nansay Micronesia Corp. v. Govendo*, 3 N.M.I. 12 (1992).

Right to file appeal of coastal resources management regulatory agency decision approving development permit is governed by Coastal Resources Management Act of 1983 and regulations promulgated pursuant to Act. Interpretation of thirty-day filing period under 2 CMC § 1541(b) as mandatory and jurisdictional did not violate party's right to procedural due process. No due process right was implicated—party was not deprived of life, property right or cognizable liberty interest by court's interpretation of statute. 2 CMC § 1501 et seq. *Nansay Micronesia Corp. v. Govendo*, 3 N.M.I. 12 (1992).

Language in coastal resources management agency decision approving development permit providing that appeal of decision could be filed within thirty days of receipt of permit was contrary to clear language of agency regulations providing that appeal must be filed within thirty days of issuance of permit. The agency regulation was the law and prevailed over the language in the decision. *Nansay Micronesia Corp. v. Govendo*, 3 N.M.I. 12 (1992).

—Arbitrary and Capricious Action

Under Section 9112(f) of the Administrative Procedure Act, agency decisions are reviewed under the "arbitrary and capricious" standard. An agency action is arbitrary and capricious when it is willful and unreasonable without consideration or in disregard of facts or without determining principle. *Calvo v. NMI Scholarship Advisory Bd.*, 2009 MP 2 ¶ 10 (2009).

An agency action should be overturned only when the agency has relied on factors the Legislature has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Calvo v. NMI Scholarship Advisory Bd.*, 2009 MP 2 ¶ 10 (2009).

Agency actions are entitled to a presumption of regularity. Consequently, an agency is not required to justify an action or decision unless the presumption of regularity has been rebutted by evidence suggesting that the agency decision is arbitrary and capricious. *Calvo v. NMI Scholarship Advisory Bd.*, 2009 MP 2 ¶ 10 (2009).

The term "arbitrary and capricious" characterizes a decision or action taken by an administrative agency or inferior court meaning willful and unreasonable action without consideration or in disregard of facts or without determining principle. *In re Blankenship*, 3 N.M.I. 209 ¶ 15 (1992).

The standard of review for an appeal alleging an arbitrary and capricious action is similar to, if not the same as, the abuse of discretion standard. A court will review an action or decision alleged to be arbitrary and capricious to determine whether the action was reasonable and based on information sufficient to support the decision at the time it was made. *In re Blankenship*, 3 N.M.I. 209 ¶ 16 (1992).

—Burden of Proof

(Applying NMI Administrative Procedure Act and common law)

See also **Judicial Review – Burden of Proof**, this topic.

Unless otherwise provided by statute, the proponent of an administrative order or decision has the burden of proof. 1 CMC § 9109(i). *In re San Nicolas*, 1 N.M.I. 329 (1990).

Burden of proof in an adjudicatory proceeding is the burden of going forward with the evidence. *In re San Nicolas*, 1 N.M.I. 329 (1990).

CTC 1988. Where administrative rule states that the proponent of an order or decision has the burden of proof, the "burden of proof' means the burden of going forward with evidence. 1 CMC § 9109(i). *In re San Nicolas*, 3 CR 540.

CTC 1988. Where a review of the hearing transcript indicates that the Government provided sufficient evidence to sustain its burden of proof on all substantive issues, the reversal of the burden of proof at hearing on proposed adverse action against employee with regard to the procedural issues was harmless error. *In re San Nicolas*, 3 CR 540.

——Particular Cases

In adjudicatory proceeding involving termination of employment of civil service employee, it was not harmless error to reverse the burden of proof. *In re San Nicolas*, 1 N.M.I. 329 (1990).

—Determination of Ownership

See **DEEDS AND CONVEYANCES – Determination of Ownership**

—**Due Process**

See also **Judicial Review – Constitutional Questions**, this topic.

In an administrative proceeding where a person's life, liberty, or property is at stake, the Commonwealth Constitution requires, at a minimum, that the person be accorded meaningful notice and a meaningful opportunity to a hearing, appropriate to the nature of the case. N.M.I. Const, art. I, § 5. *Office of the Attorney Gen. v. Estel*, 2004 MP 20 ¶ 10

In an administrative proceeding where a person's life, liberty or property is at stake, N.M.I. Const. art. I, § 5 requires, at a minimum, that person be accorded meaningful notice and a meaningful opportunity to a hearing, appropriate to the nature of the case. *Office of the Attorney General v. Paran*, 4 N.M.I. 191 (1994).

To determine whether asserted environmental concerns raised in judicial review of agency action implicate due process rights, court applies test in which private interest is weighed with probable value of additional procedure and government's interest, with special weight given to private interest. Only then will court consider whether there was violation of due process. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

A fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

In an administrative proceeding where a person's life, liberty or property is at stake, N.M.I. Const. art. I, § 5 requires, at a minimum, that the person be accorded meaningful notice and an opportunity to a hearing, appropriate to the nature of the case. *Office of the Attorney General v. Rivera*, 3 N.M.I. 436 (1993).

In an administrative proceeding where a person's life, liberty or property is at stake, N.M.I. Const. art. I, § 5 requires, at a minimum, that the person be accorded meaningful notice and a meaningful opportunity to a hearing, appropriate to the nature of the case. *Office of the Attorney General v. Deala*, 3 N.M.I. 110 (1992).

——Particular Cases

Right to file appeal of coastal resources management regulatory agency decision approving development permit is governed by Coastal Resources Management Act of 1983 and regulations promulgated pursuant to Act. Interpretation of thirty-day filing period under 2 CMC § 1541(b) as mandatory and jurisdictional did not violate party's right to procedural due process. No due process right was implicated—party was not deprived of life, property right or cognizable liberty interest by court's interpretation of statute. 2 CMC § 1501 et seq. *Nansay Micronesia Corp. v. Govendo*, 3 N.M.I. 12 (1992).

—Employee Suspension

CTC 1988. Where the plaintiff had indicated to her employer that she would not follow orders and had previously created a situation in which two guards were left to oversee 38 inmates at the Department of Corrections, the record contained an adequate basis for the decision that it was not practicable to keep plaintiff on active duty as a corrections officer during her notice period. *In re San Nicolas*, 3 CR 540.

—Estoppel

See **ESTOPPEL – Government;** See also **ESTOPPEL – Applications, Particular – Government Action, Generally**

—Findings of Fact and Conclusions of Law

(Applying NMI Administrative Procedure Act and common law)

Responsibility and responsiveness are two distinct categories involved in bidding proposals. The term responsibility refers to a bidder's ability to perform the contract before an award is determined. The term responsiveness refers to whether the actual bid is in conformity with the material terms of an invitation for bids. *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶ 19

Where a bid was in conformity with the material terms of the invitation for bids, it was responsive. *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶ 24

Unlike appeal in which findings of fact are in dispute, any failure to comply with required procedure in appeal from adjudicatory proceeding solely involving disputed legal conclusions is arguably less prejudicial. In that circumstance, the agency review body is not obligated to show deference to the hearing officer's conclusions, nor is the reviewing court obligated to accord deference to the agency's conclusions. *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362 (1990).

1 CMC § 9110(b) requires hearing officer to do two things in proceeding requiring a recommended decision. First, he must provide parties with reasonable opportunity to submit proposed findings and conclusions. Hearing officer is not required to solicit proposals, but must notify parties of this opportunity at conclusion of evidentiary hearing. Second, after reviewing such proposals, he must issue recommended decision. *In re San Nicolas*, 1 N.M.I. 329 (1990).

Hearing officer's recommended decision should include a discussion of the proposed findings and conclusions submitted by parties, and the reasons they were followed, modified, or rejected. Officer should notify parties of their opportunity to submit exceptions, and reasons for exceptions, prior to agency's action on recommended decision. Notice can be in recommended decision. 1 CMC § 9110(b). *In re San Nicolas*, 1 N.M.I. 329 (1990).

CTC 1988. Statutory section that states that the parties are entitled to a reasonable opportunity to submit various proposals and recommendations before the decision, requires only that the parties be entitled to a reasonable opportunity to submit proposed findings and conclusions, not that the agency issuing the decision solicit them; even if the agency was required to solicit such proposals, however, the fact that it could choose to ignore any and all such proposals makes the failure to do so merely harmless error. 1 CMC § 9110(b). *In re San Nicolas*, 3 CR 540.

CTC 1988. The ultimate test as to the adequacy of the findings of fact of administrative agency is whether they are sufficiently comprehensive and pertinent to the issues so as to provide a basis for the decision and whether they are supported by evidence. 1 CMC § 91l0(c). *In re San Nicolas*, 3 CR 540.

CTC 1988. Specific findings need not be made on all facts at administrative hearing only on the ultimate facts necessary to reach a decision. 1 CMC § 9110(c). *In re San Nicolas*, 3 CR 540.

——Particular Cases

Failure of hearing officer in adjudicatory proceeding to submit recommended decision to agency was not harmless error where hearing was held for several days, with conflicting factual contentions and abundance of documentary evidence. 1 CMC § 9110. *In re San Nicolas*, 1 N.M.I. 329 (1990).

Agency's failure to solicit proposed findings, conclusions, exceptions and reasoning in compliance with 1 CMC § 9110(b) was not harmless error in lengthy hearing involving disputed facts and abundance of documentary evidence, where such proposals may have influenced hearing officer's decision. *In re San Nicolas*, 1 N.M.I. 329 (1990).

Record supported agency's determination that employee could be immediately suspended with pay) from active duty under state of emergency. *In re San Nicolas*, 1 N.M.I. 329 (1990).

Form of agency decision to dismiss employee did not violate 1 CMC § 9110(c) due to agency's failure to specifically state findings; reference to allegations in letter advising employee of proposed termination of employment was sufficient. *In re San Nicolas*, 1 N.M.I. 329 (1990).

—Harmless Error

See **Judicial Review – Harmless Error, this topic.**

—Hearings

(Applying NMI Administrative Procedure Act and common law)

Unless an evidentiary hearing is required by statute, an agency has considerable discretion in deciding how to proceed. I*n re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

——Hearing Officers

CTC 1988. Where a complete transcript of the proceedings before the hearing officer was available to the agency before the issuance of its decision, even if the hearing officer did not initially decide the case, error can only be termed harmless because hearing officer voted in favor of upholding plaintiff's termination. *In re San Nicolas*, 3 CR 540.

——Particular Agencies

(Applying statutes and regulations concerning particular agencies)

The hearing procedures of the Coastal Resources Management Office are informal. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

——Particular Cases

Failure of civil service commission members to attend entire hearing concerning proposed dismissal of employee and to each vote on decision to dismiss employee did not render decision invalid. 1 CMC § 8111. *In re San Nicolas*, 1 N.M.I. 329 (1990).

—Invalid Authority

——Particular Cases

In an administrative real property conveyance, Section 13 of Trust Territory Regulation No. 1 can be interpreted to give title officers some discretion to correct a conveyance that was made in error. *Flores v. Commonwealth*, 2004 MP 9 ¶ 15

On remand of action challenging validity of provisions in local gambling initiative enacted pursuant to N.M.I. Const. arts. IX and XXI, if trial court were to rule provisions or regulations adopted thereunder invalid, acts taken pursuant to invalid provisions or regulations would have to be addressed. Actions already taken and completed as of date of remand should be allowed to stand, so long as actions were taken in good faith, in accordance with initiative or regulations adopted thereunder. Opponent of initiative provisions had burden of proving by clear and convincing evidence that party took actions in bad faith or in blatant disregard of the initiative or Commonwealth-wide laws. If actions based on a stricken provision or regulation were pending or in progress on date of remand, trial court could prospectively order actions altered to conform with applicable law, so long as completed portion of action in progress was taken by party in good faith and in accordance with initiative or regulations adopted thereunder. 10 CMC § 2511 et seq. *Commonwealth v. Tinian Casino Gaming Control Comm'n*, 3 N.M.I. 134 (1992).

——Judicial Review

DC App. Div. 1985. Administrative determination of Trust Territory Land Commission will be upheld where sufficient evidence exists in the record to support determination. *Aldan v. Kaipat*, 2 CR 190, aff'd, 794 F.2d 1371 (9th Cir. 1986).

DC App. Div. 1983. Judicial review of decisions of administrative agencies should be limited to whether the agency's action was arbitrary or capricious, unreasonable, or an abuse of discretion. *Pangelinan v. Tudela*, 1 CR 708, aff'd, 733 F.2d 1341 (9th Cir. 1986).

DC App. Div. 1983. Land Team's determination of ownership, based on decedent's affidavit relinquishing property to appellant, and public knowledge that land belonged to appellant should not be disturbed absent a finding of insanity or incompetency at the time that decedent issued his affidavit. *Pangelinan v. Tudela*, 1 CR 708, aff'd, 733 F.2d 1341 (9th Cir. 1986).

DC NMI 1983. Agency discretion exception to APA review is unavailable where bases of challenge to agency action is Trusteeship Agreement which articulates direct and affirmative legal obligations. 5 U.S.C. §706(a)(l). *Temengil v. Trust Territory of the*

Pacific Islands, 1 CR 417, aff'd in part and rev'd in part, 881 F.2d 647 (9th Cir. 1989).

DC App. Div. 1982. Administrative adjudications enjoy a presumption of regularity. *In Re the Estate of Taisakan*, 1 CR 326.

DC App. Div. 1982. One who attacks an administrative adjudication bears the burden of rebutting the presumption of regularity by evidence of unfairness or prejudice in the proceedings. *In Re the Estate of Taisakan*, 1 CR 326.

DC App. Div. 1982. The presumption of regularity which attaches to administrative adjudications may be rebutted by competent and admissible evidence demonstrating that land title officers, either as a matter of policy, or in a particular instance, issued determinations regardless of the making of a partida. *In Re the Estate of Taisakan*, 1 CR 326.

DC NMI 1982. Non-discretionary action by the Secretary of Interior is reviewable under the Administrative Procedure Act. *Bauer v. McCoy*, 1 CR 248.

CTC 1988. In reviewing the actions of an agency in upholding the termination of plaintiff, the court reviews the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. 1 CMC §9112. *In re San Nicolas*, 3 CR 540.

CTC 1988. The court may set aside any agency action which is unsupported by substantial evidence. 1 CMC §9112(f)(2)(e). *In re San Nicolas*, 3 CR 540.

CTC 1988. As the findings of the agency are presumed correct, the employee challenging agency action has the burden of establishing some error or impropriety on the part of the agency which would constitute prejudicial error. *In re San Nicolas*, 3 CR 540.

CTC 1988. Agency action must be supported by substantial evidence. 1 CMC §9112(f)(2)(E). *In re San Nicolas*, 3 CR 540.

CTC 1988. Where plaintiff challenges agency action on appeal to court, plaintiff bears the burden of establishing that there was no substantial basis in evidence to sustain the findings and that failure to reverse the decision of agency would result in the miscarriage of justice. *In re San Nicolas*, 3 CR 540.

CTC 1986. Parties could not seek judicial review of Land Commission action that was favorable to them. 2 CMC §4249. *Matsumoto v. Akiyama*, 2 CR 887, aff'd, 3 CR 141 (DNMI App. Div. 1987).

CTC 1986. A competent court must pass on and set aside an administrative agency's action which is not in accordance with law and which is unlawful, illegal or invalid. *Seman v. Aldan*, 2 CR 916, aff'd, 3 CR 152 (DNMI App. Div. 1987).

CTC 1983. A court, reviewing the findings of the Board of Elections, cannot substitute its findings for the agency's but must give deference to the Board's decision. *Pablo v. Northern Marianas Board of Elections*, 1 CR 381.

—Jurisdiction

See also **Judicial Review - Jurisdiction**, this topic.

DC App. Div. 1987. If an administrative body is without jurisdiction, its acts are void. *Seman v. Aldan*, 3 CR 152.

DC App. Div. 1987. Where contestant did not file a challenge to the election results within seven (7) days after discovery of facts supporting contest, the Board of Elections was without jurisdiction to entertain the election contest. 1 CMC § 6423(b). *Seman v. Aldan*, 3 CR 152.

CTC 1986. If an administrative body such as the Board of Elections is without jurisdiction, its acts are void. *Seman v. Aldan*, 2 CR 916, aff'd, 3 CR 152 (DNMI App. Div. 1987).

CTC 1986. As an administrative agency, the Board of Elections is a tribunal of limited jurisdiction when considering an election contest and its jurisdiction is dependent entirely upon the terms of the statute reposing power in it, and if the jurisdictional time requirements of the statute are not met, it has no jurisdiction. *Seman v. Aldan*, 2 CR 916, aff'd, 3 CR 152 (DNMI App. Div. 1987).

CTC 1986. An administrative agency may not enlarge its powers by waiving a time limit which is jurisdictional or a prerequisite to the action taken. *Seman v. Aldan*, 2 CR 916, aff'd, 3 CR 152 (DNMI App. Div. 1987).

CTC 1986. If an administrative agency acts in excess of its statutory jurisdiction, power or authority, or limitations, court shall review the agency action and set aside any action in excess of its authority. *Seman*

v. Aldan, 2 CR 916, aff'd, 3 CR 152 (DNMI App. Div. 1987).

—Licensing

See **Licensing**, this topic.

—Notice

(Applying NMI Administrative Procedure Act and common law)

See also **Agency Action – Due Process**, this topic.

——Particular Cases

NMI Land Commission's failure to follow statutory procedure for determining disputed claims to land, 2 CMC § 4241 et seq., was harmless error in case concerning alleged interest of beneficiary of Trust Territory land title determination who later submitted affidavit to Commission clearly disclaiming ownership interest in land at issue. Commission was not required to give beneficiary notice and opportunity to challenge the authenticity of his own affidavit; Commission's failure did not violate beneficiary's right to due process. *Pangelinan v. Tudela*, 3 N.M.I. 233 (1992).

Fact that agency's letter notifying employee of proposed termination of employment was not prepared by person trained to prepare such letters was harmless error, since employee was not prejudiced by such failure. *In re San Nicolas*, 1 N.M.I. 329 (1990).

Employee suspended (with pay) from active duty who was given thirty days' notice of proposed termination, with opportunity to request additional time to prepare response, had reasonable time to prepare response. *In re San Nicolas*, 1 N.M.I. 329 (1990).

Letters advising employee of proposed termination of employment and, subsequently, of dismissal were sufficient notice by agency of charges and proposed adverse action. Notice need not state with specificity how a particular charge violates a particular regulation. *In re San Nicolas*, 1 N.M.I. 329 (1990).

—Orders

CTC 1989. Provision of the administrative procedural act does not mandate that an agency must propose its order and then ask the parties for their comments, but rather that a party should be allowed a reasonable opportunity to present proposed findings and conclusions to the agency before any order is issued and it does not require agency to solicit them. 1 CMC §9110(b). *In the Matter of the Appeal of Camacho*, 3 CR 615.

—Pleading

Technical rules of pleading applicable in civil or criminal actions are not applicable to applications or pleadings filed with an administrative agency and liberality is to be indulged as to their form and substance. *In re San Nicolas*, 1 N.M.I. 329 (1990).

—Regulations

See **Regulations**, this topic.

—Time Limits

CTC 1988. Where letter of proposed adverse action clearly stated that plaintiff had 10 calendar days in which to reply and that this 10 day period could be extended if a written request was submitted stating the reason needed for additional time, but no reply or request for extension of time was received and the proposed action against plaintiff was affirmed, the 10 days was a reasonable time to respond to the letter. *In re San Nicolas*, 3 CR 540.

Judicial Review

—Burden of Proof

Generally, when a statutory provision is accompanied by legislatively-created exception, courts often times find that the format of the statute itself supports a burden shift. This commonly-accepted principle of judicial review translates to claims brought under the Open Government Act as well. When a plaintiff brings a claim under the OGA, he or she bears the initial burden of demonstrating that a document is a public record under 1 CMC § 9902(f). Next, agencies bear the burden to prove a particular statutory exemption applies under 1 CMC § 9918(a). The initial burden of establishing that a document is public lies with the plaintiff, the burden then shifts to the government to prove that a disclosure exemption applies, and finally the burden moves back onto the plaintiff to demonstrate that nondisclosure is clearly unnecessary to protect a vital government interest. *Sablan v. Fitial, et al*., 2009 MP 11 ¶ 18 (2009).

Administrative ownership determinations enjoy a presumption of regularity. A party challenging an administrative ownership determination bears the

burden of rebutting the presumption. *In re the Estate of De Castro*, 2009 MP 3 ¶ 24 (2009).

Agency actions under review are entitled to a presumption of regularity. This presumption may be rebutted by evidence suggesting that the agency decision is arbitrary and capricious. *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶ 15

In the context of a bid protest, a frustrated bidder must show that there was a significant error in the bidding process and that the error prejudiced its ability to prevail. *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶ 15

There is a presumption that an agency will follow its regulatory directives by invalidating any of its own actions that it finds to be illegal. *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶ 35

Members of an appeals committee are presumed to be impartial and fair. The burden of overcoming the presumption of impartiality rests on the party making the assertion of bias. The presumption can be overcome only with convincing evidence that a risk of actual bias or prejudgment is present. *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶ 35

Within the Commonwealth, as within federal jurisdictions, there is a strong presumption that the legislature intends judicial review of administrative action, and this presumption can be overcome only upon a showing of clear and convincing evidence of a contrary legislative intent. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 13

Given the potential for abuse when agencies assume the quasi-judicial power granted them through Commonwealth Administrative Procedure Act, 1 CMC 9101, et seq., and given the strong policy concerns of proving effective redress when such abuses occur, the presumption that the legislature intended to allow judicial review of agency action will only be overcome by clear and convincing evidence of a contrary legislative intent. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 13

Although the presumption favoring judicial review of administrative decisions is a heavy one, it is not insurmountable. Since the legislature is empowered to define the means by which administrative matters are decided, the legislature is likewise empowered to define the entities that may seek review of such decisions by the judicial branch. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 14

In order to overcome the presumption of the permissibility of judicial review of administrative decisions, there must be evidence, such as specific language in the statute or in the legislative history or implied by the statutory scheme, that tends to show clear legislative intent to bar judicial review. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 14

Any prohibitions against judicial review of administrative decisions should be construed narrowly. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 14

An appellant bears the burden of proof as the proponent of an order of the Supreme Court setting aside the trial court's affirmance of an agency decision. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong),* 2005 MP 6 ¶ 31

In judicial review of agency action, appellant seeking order setting aside trial court's affirmance of decision bears burden of proof. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

—Collateral Estoppel

With respect to administrative adjudications, neither collateral estoppel nor res judicata are rigidly applied. Both rules are qualified or rejected when their application would contravene an overriding public policy or result in a manifest injustice. *In re Estate of Ogumoro*, 4 N.M.I. 124 (1994).

—Constitutional Questions

See also **Agency Action - Due Process**, this topic; Constitutionality of Regulations, see **Regulations - Constitutional Questions**, this topic.

Nothing precludes or limits the court's ability to hear matters brought before it based on an agency's denial of a constitutionally or statutorily protected right. No administrative procedure may limit the jurisdiction of the court arising under the NMI Constitution. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 8

In judicial review of agency action, appellate court may consider an appellant's constitutional claims. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

For due process claims to be considered in judicial review of agency action, the proceeding must be one

to which such rights attach. Reviewing court must first determine if a due process interest is implicated. If so, court must then determine what procedures protect that interest sufficiently to satisfy due process. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

In judicial review of agency action, for a claim on constitutional due process grounds to be pursued it must at the very least be "colorable" to confer subject matter jurisdiction in an appellate court. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

—Constitutionality

See **Judicial Review – Constitutional Questions**, this topic; Regulations, see **Regulations – Constitutional Questions**, this topic.

—Exhaustion of Remedies

Parties are generally required to exhaust all administrative remedies before pursuing an action in court. The Northern Mariana Islands Administrative Procedure Act also requires final agency action before a party may appeal to the trial court. *Cody v. NMI Retirement Fund*, 2011 MP 16 ¶ 9 (2011).

Both exhaustion and final agency action are jurisdictional prerequisites to judicial review. Because exhaustion and finality are jurisdictional, the Court must address exhaustion and finality *sua sponte* if the parties fail to raise the issues themselves. *Cody v. NMI Retirement Fund*, 2011 MP 16 ¶ 10 (2011).

The doctrine of exhaustion of administrative remedies requires parties challenging agency actions and decisions to exhaust all administrative remedies before seeking judicial review. Parties need not exhaust every potential remedy available to them. Instead, parties must only exhaust all intra-agency appeals expressly mandated either by statute or by the agency's regulations. *Cody v. NMI Retirement Fund*, 2011 MP 16 ¶ 11 (2011).

The Northern Mariana Islands Administrative Code provides that any person aggrieved by a decision of the Administrator of the Retirement Fund shall appeal the decision to the Board by filing a written notice of appeal. The word 'shall' is unambiguous and means must. *Cody v. NMI Retirement Fund*, 2011 MP 16 ¶ 12 (2011).

There are certain broad sets of circumstances in which the interests of the individual weigh heavily against requiring administrative exhaustion. Exhaustion may not be required in circumstances where the exhaustion requirement would cause undue prejudice to a subsequent assertion of a court action. *Cody v. NMI Retirement Fund*, 2011 MP 16 ¶ 13 (2011).

A challenger of an agency action must exhaust all administrative remedies before pursuing a tort action in court. *Marianas Insurance Co. v. CPA*, 2007 MP 24 ¶ 9

Exhaustion of administrative remedies is a judicially-created doctrine requiring that challengers of agency actions and decisions exhaust all administrative remedies before seeking judicial review. Where relief is available from an administrative agency, a claimant must typically pursue that avenue of redress before proceeding to litigation. Until that recourse is exhausted, a lawsuit is premature and must be dismissed. *Marianas Insurance Co. v. CPA*, 2007 MP 24 ¶ 12

Exhaustion serves two important purposes. First, it protects administrative agency authority as it gives an agency an opportunity to correct its own mistakes with respect to the programs it administers before it is haled into court. Exhaustion also protects agency authority in that it discourages people from disregarding agency procedures. Second, exhaustion promotes judicial efficiency. Judicial economy is served by reducing court docket loads, in that a favorable decision for a claimant keeps the dispute out of the courts altogether. But agencies also play an important fact-finding role. When a claimant exercises the right to judicial review after exhausting the available administrative remedies, courts benefit from the existing administrative record. Likewise, judicial deference to administrative remedies promotes efficiency by ensuring a more uniform approach to issues within an agency's jurisdiction. *Marianas Insurance Co. v. CPA*, 2007 MP 24 ¶ 13

When exhausting administrative remedies, claimants must comply with an agency's deadlines and other critical procedural rules. Additionally, the exhaustion doctrine requires that claimants raise issues with the agency or lose the right to challenge those issues in court. *Marianas Insurance Co. v. CPA*, 2007 MP 24 ¶ 14

Judicial review provides a broad spectrum of appellate review of agency actions and encompasses any matter arising when an agency action is

challenged in court. *Marianas Insurance Co. v. CPA*, 2007 MP 24 ¶ 15

A challenger of an agency action, MICO could either seek redress of its grievances through the CPA, or it could find an exception to the exhaustion doctrine and file a tort action in civil court. We only tepidly embrace exceptions to the exhaustion doctrine. *Marianas Insurance Co. v. CPA*, 2007 MP 24 ¶ 20

The United States Supreme Court determined that most exceptions to the exhaustion doctrine fit into one of three categories. First, a claimant may circumvent the administrative process and go directly to court when the exhaustion requirement would cause undue prejudice to a subsequent assertion of a court action. Second, an agency's lack of authority or inability to provide adequate relief may prompt an exception. Third, an exception may arise when the adequacy of the administrative procedure itself is challenged, as opposed to the merits of a particular decision. *Marianas Insurance Co. v. CPA*, 2007 MP 24 ¶ 21

A plaintiff should not be expected to commence simultaneously two separate actions, premised on the same facts, in both state and federal courts, since duplicate proceedings are inefficient, awkward and laborious. *Marianas Insurance Co. v. CPA*, 2007 MP 24 ¶ 23

Where a party conceded that the trial court lacked subject matter jurisdiction to review an administrative determination of appeal of an administrative order, due to her failure to timely file the inter-agency appeal, she is estopped from denying that concession on appeal. *Angello v. Louis Vuitton Saipan, Inc.*, 2000 MP 17 ¶ 20

Plaintiff is not excused from exhausting administrative remedies even though plaintiff alleges that administrative official was involved in alleged wrongdoings and could not make a finding against himself since courts have to presume administrative official will follow the law or regulation and invalidate any of its own actions that it finds to be illegal. Only if it fails to do so may judicial review follow. *I.G.I. Gen. Contractor & Dev., Inc. v. Pub. Sch. Sys.*, 1999 MP 12 ¶ 21

As a general rule, the mere presence of a constitutional claim does not bar operation of the doctrine of exhaustion of administrative remedies. *I.G.I. Gen. Contractor & Dev., Inc. v. Pub. Sch. Sys.*, 1999 MP 12 ¶ 22

As a general rule, the mere presence of a constitutional claim does not bar operation of the doctrine of exhaustion of administrative remedies. *Rivera v. Guerrero*, 4 N.M.I. 79 (1993).

Courts have made exceptions to the doctrine of exhaustion of administrative remedies in instances where a plaintiff brings constitutional challenges to the validity of a statute or ordinance under which the agency acts, and demonstrates positively what the administrative decision would be, or that the administrative remedy would be inadequate or irreparably harmful, in his or her particular case. *Rivera v. Guerrero*, 4 N.M.I. 79 (1993).

Parties seeking review under NMI Administrative Procedure Act must first exhaust all intra-agency appeals expressly mandated either by statute or by agency's regulations. Such exhaustion requirements create jurisdictional prerequisites to proceeding to court. Where no statute or regulation mandates exhaustion of administrative remedies, a court may proceed to review agency's final decision under Administrative Procedure Act, and may not impose additional exhaustion requirements. 1 CMC § 9101 et seq. *Rivera v. Guerrero*, 4 N.M.I. 79 (1993).

—Extraordinary Writs

If it clearly appears that an agency is not enforcing its regulations, limited judicial review may be available by way of extraordinary writ. *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270 (1991).

Courts have inherent power to review the actions of administrative agencies by extraordinary writ. *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270 (1991).

It is generally accepted that an action in mandamus is proper to compel administrative agencies to exercise the powers entrusted to them, to perform ministerial acts and to enforce their rules and regulations. *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270 (1991).

— Finality

The NMI Administrative Procedure Act provides for judicial review of final agency actions. Under the Act, an aggrieved party must seek judicial review within thirty days of a final agency action. Two requirements must be satisfied for an agency action to be considered final. First, the action must mark the consummation of the agency's decision making

process—it must not be of a merely tentative or interlocutory nature. Second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow. *Cody v. NMI Retirement Fund*, 2011 MP 16 ¶ 18 (2011).

Because finality is a jurisdictional requirement, either a finding of finality or a finding of an applicable exception to finality is a pre-requisite to any appeal of an agency action. *Cody v. NMI Retirement Fund*, 2011 MP 16 ¶ 18 (2011).

Agency inaction may constitute a final action subject to judicial review when the agency inaction has the same impact upon the rights of the parties as a denial of relief. *Cody v. NMI Retirement Fund*, 2011 MP 16 ¶ 20 (2011).

When an agency's inaction is equivalent to a denial of relief, the inaction is sufficiently final so as to make judicial review of the Administrator's decision appropriate. *Cody v. NMI Retirement Fund*, 2011 MP 16 ¶ 22 (2011).

—Harmless Error

The doctrine of harmless error is applicable to review of administrative decisions. *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362 (1990).

It is always incumbent upon aggrieved party to demonstrate the prejudicial effect of procedural irregularities in administrative proceedings. *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362 (1990).

Doctrine of harmless error is applicable to review of decisions in adjudicatory proceedings. Generally, application of the doctrine makes sense only where the agency's determination as to one issue fails to meet the appropriate review standard but that failure is insufficient to adversely affect the whole decision. *In re San Nicolas*, 1 N.M.I. 329 (1990).

—Jurisdiction

Particular agencies, see **Judicial Review – Jurisdiction – Particular Agencies**, this topic. Constitutional claims, see **Judicial Review – Constitutional Questions**, this topic.

This Court has jurisdiction over this appeal pursuant to 1 CMC § 9113, which grants aggrieved parties standing to appeal Superior Court decisions reviewing administrative matters. *Cody v. NMI Retirement Fund*, 2011 MP 16 ¶ 8 (2011).

——Generally

To the extent that a court is authorized to review an administrative act, there is superimposed upon the enforcement of legislative policy through administrative control a different process from that out of which the administrative action under review ensued. The technical rules derived from the interrelationship of judicial tribunals forming a hierarchical system are taken out of their environment when mechanically applied to determine the extent to which Legislative power, exercised through a delegated agency, can be controlled within the limited scope of judicial power conferred under the Constitution. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 11

Commonwealth administrative decisions are not subject to judicial review as a matter of right. Instead, judicial review, like all aspects of administrative procedure in the CNMI, is governed by the Commonwealth Administrative Procedure Act, 1 CMC 9101, et seq. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 12

The N.M.I. Supreme Court has jurisdiction, pursuant to 1 CMC §9113, over the appeal of a trial court's decision to uphold the Department of Labor and Immigration's denial of a claim for lost wages and transfer relief. 1 CMC §9113. *Ramos v. Magusa, Inc.*, 2002 MP 25 ¶ 1

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, and pursuant to 1 CMC §3102(a), the N.M.I. Supreme Court has jurisdiction over the appeal of a trial court's decision to uphold the Department of Labor and Immigration's denial of a claim for lost wages and transfer relief. N.M..I. Const. art. IV, § 3, 1 CMC § 3102(a). *Ramos v. Magusa, Inc.*, 2002 MP 25 ¶ 1

The N.M.I. Supreme Court has jurisdiction, pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, and pursuant to 1 CMC §3102(a), over the appeal of a trial court's denial of claims for workers' compensation benefits. N.M.I. Const. art IV, § 3, 1 CMC § 3102(a). *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 1

A court has no jurisdiction to review administrative decisions unless timely appealed during the administrative process. *Pac. Saipan Technical Contractors v. Rahman*, 2000 MP 14 ¶ 14

NMI Supreme Court had jurisdiction, pursuant to 1 CMC § 3102(a), over appeal from Superior Court declaratory ruling regarding responsibility for employee medical expenses. *American Construction, Inc. v. Salgado*, 1997 MP 26 ¶ 1

NMI Supreme Court had jurisdiction, pursuant to 1 CMC § 3102(a), over appeal from Superior Court decision affirming the order of the Secretary of Labor and Immigration which denied transfer relief to employees. *Defunturum v. Saipan Mfrs., Inc.*, 1997 MP 21¶ 1

NMI Supreme Court had jurisdiction under 1 CMC § 3102(a) to review Superior Court judgment that reversed in part a decision of the Director of Labor under the Nonresident Workers' Act, 3 CMC § 4411 et seq. *Limon v. Camacho*, 1996 MP 18 ¶ 1

Where a statute establishes an administrative adjudicatory scheme, a court will look to the statute to determine the scope, if any, of judicial review of the agency's actions. 1 CMC § 9112(c). *Songao v. Commonwealth*, 4 N.M.I. 186 (1994).

A court lacks jurisdiction to review administrative decisions not timely appealed during the administrative process. *Rivera v. Guerrero*, 4 N.M.I. 79 (1993).

NMI Administrative Procedure Act provides for judicial review of agency action made reviewable by statute and final agency action for which there is no other adequate remedy in court. Aggrieved party may seek such review within thirty days after agency issues its final decision about the matter in question. 1 CMC § 9112. *Rivera v. Guerrero*, 4 N.M.I. 79 (1993).

NMI Supreme Court had jurisdiction, pursuant to general jurisdictional statute, over appeal of trial court dismissal of action challenging administrative agency decision. 1 CMC § 3102(a). *Rivera v. Guerrero*, 4 N.M.I. 79 (1993).

Local laws and constitution of a forum consign a court jurisdiction over an administrative agency action. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

Courts are not free to assume judicial review authority over administrative agency action that has not been conferred on them by statute or the constitution. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

The Administrative Procedure Act, 1 CMC § 9101 et seq., and specific statutes permitting judicial review of administrative agency decisions either work in conjunction or the specific statute excludes applicability of the Administrative Procedure Act. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

Judicial review may be precluded by statute, and this preclusion may be of a form of review as well. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

The mere failure to provide specially by statute for judicial review of decisions of administrative agencies is no evidence of intent to withhold review. Preclusion of judicial review may not be inferred except where there is a clear showing that the legislature intended it. *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270 (1991).

Actions of NMI administrative agencies are reviewed in accordance with Commonwealth Administrative Procedure Act, 1 CMC § 9101 et seq. *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362 (1990).

NMI agency actions are reviewed pursuant to the NMI Administrative Procedure Act. 1 CMC § 9101 et seq. *In re San Nicolas*, 1 N.M.I. 329 (1990).

1 CMC § 9112(f) requires a reviewing court to decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of an agency action. *Tenorio v. Superior Ct.*, 1 N.M.I. 1 (1989).

——Particular Agencies

The scope of judicial review of the actions of administrative agencies varies with the subject matter of the review or the function of the agency and such variations are best left to a case-by-case analysis. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 9

NMI Superior Court has been consigned jurisdiction to review decision of Coastal Resource Management Office Board of Appeals. 2 CMC § 1541(b). *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

NMI Supreme Court had jurisdiction to review Coastal Resource Management Office Appeals Board decision initially appealed to NMI Superior Court pursuant to Supreme Court's appellate jurisdiction over Superior Court judgments and orders. 1 CMC §

3102. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

—Mootness

See **COURTS – Justiciability – Mootness**

—Presumptions

See **Judicial Review – Constitutional Quesitons,** this topic; See also **Presumptions**, this topic.

—Regulations

See **Regulations**, this topic.

—Res Judicata

Determination of ownership, see **DEEDS AND CONVEYANCES - Determination of Ownership - Res Judicata**

Administrative ownership determinations are quasi-judicial in nature. When an administrative ownership determination is not appealed within the statutorily-required time frame, the determination becomes a final administrative decision and acquires res judicata effect. Administrative res judicata bars an action that has already been the subject of a final administrative decision. *In re the Estate of De Castro*, 2009 MP 3 ¶ 24 (2009).

Once an administrative decision enjoys res judicata effect, it may only be set aside if one of following criteria satisfied: (1) the administrative decision was void when issued; (2) the record supporting the agency's decision is patently inadequate; (3) according the decision res judicata effect would contravene an overriding public policy; or (4) according the decision res judicata effect would result in manifest injustice. *In re the Estate of De Castro*, 2009 MP 3 ¶ 24 (2009).

An administrative ownership determination does not carry administrative res judicata effect as to which individuals within the class of persons at issue were the owners of the property. Rather, the determination as to which individual within the relevant class of persons was the actual owner of the property was a determination that was properly within the province of the courts. *In re the Estate of De Castro*, 2009 MP 3 ¶ 26 (2009).

Administrative proceedings which are not appealed within the designated time for appeal become final under the principle of administrative res judicata. *Flores v. Commonwealth*, 2004 MP 9 ¶ 11

In the Commonwealth, it is well-settled law that administrative decisions that are void when issued are not considered res judicata. *Flores v. Commonwealth*, 2004 MP 9 ¶ 13

The doctrine of administrative res judicata bars an action that has already been the subject of a final administrative decision. *Estate of Muna v. Commonwealth*, 2000 MP 2 ¶ 10

An administrative adjudication may be set aside under narrow exceptions if it was void when issued; the record supporting the agency's decision is patently inadequate; or if according the decision res judicata effect would contravene an overriding public policy or result in manifest injustice. *Estate of Muna v. Commonwealth*, 2000 MP 2 ¶ 10

Administrative adjudications enjoy a presumption of regularity. *Estate of Muna v. Commonwealth*, 2000 MP 2 ¶ 13

One who attacks an administrative adjudication bears the burden of rebutting the presumption of regularity by evidence of unfairness or prejudice in the proceedings. The burden of rebutting the presumption is a heavy one. *Estate of Muna v. Commonwealth*, 2000 MP 2 ¶ 13

A quasi-judicial determination, such as a Trust Territory administrative title determination, will not be given a res judicata effect if it is void when issued; or the record is patently inadequate to support the agency's decision; or if according the ruling res judicata effect would contravene an overriding public policy or result in manifest injustice. *In re Estate of De Leon Guerrero v. Quitugua*, 2000 MP 1 ¶ 20

Generally, the doctrine of administrative res judicata bars an action which has been the subject of a final administrative decision. *Arriola v. Arriola*, 1999 MP 13 ¶ 27

Title determinations should ordinarily be accorded res judicata effect. However, they may be set aside only if the title was void when issued, or the record is patently inadequate to support the agency's decision. Title determinations may also be set aside if, according to the rules the res judicata effect, they contravene an overriding public policy, or result in a manifest injustice. *Arriola v. Arriola*, 1999 MP 13 ¶ 27

Generally, the doctrine of administrative res judicata bars an action which has been the subject of a final administrative decision. Under narrow exceptions, an administrative adjudication, such as a land title determination, may be set aside if it was (1) void when issued, or (2) the record is patently inadequate to support the agency's decision, or if according the ruling res judicata effect would (3) contravene an overriding public policy or (4) result in manifest injustice. *In re Estate of Ogumoro*, 4 N.M.I. 124 (1994).

Administrative decisions are not judicial decisions, and policy of according res judicata effect to administrative rulings which appear final must be tempered with fairness and equity. *In re Estate of Ogumoro*, 4 N.M.I. 124 (1994).

With respect to administrative adjudications, neither collateral estoppel nor res judicata are rigidly applied. Both rules are qualified or rejected when their application would contravene an overriding public policy or result in a manifest injustice. *In re Estate of Ogumoro*, 4 N.M.I. 124 (1994).

When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate time to litigate, the courts have not hesitated to apply res judicata to enforce repose. *In re Estate of Dela Cruz*, 2 N.M.I. 1 (1991).

After it has become final, a quasi-judicial administrative ruling such as a Trust Territory title determination should ordinarily be given res judicata effect, and may not be set aside unless it was (1) void when issued, or (2) the record is patently inadequate to support the agency's decision, or if according the ruling res judicata effect would (3) contravene an overriding public policy or (4) result in a manifest injustice. *In re Estate of Dela Cruz*, 2 N.M.I. 1 (1991).

Res judicata of administrative decisions does not acquire the rigid formality of judicial proceedings. Where the record is patently inadequate to support the findings an agency made, application of res judicata is tantamount to a denial of due process. Fairness in the administrative process is more important than finality of administrative judgments. *In re Estate of Dela Cruz*, 2 N.M.I. 1 (1991).

—Standard of Review

(Applying NMI Administrative Procedure Act and common law)

In reviewing a public entity's denial of an OGA request, the judiciary is required to liberally construe provisions favoring disclosure of public records, and to strictly construe provisions providing for exceptions to the disclosure requirement. 1 CMC § 9901. *Sablan v. Fitial, et al.*, 2009 MP 11 ¶ 7 (2009).

Whether the trial court incorrectly placed the burden of proof on a particular party is a legal question, which is reviewed de novo. Additionally, where the record consists of solely documentary evidence, the standard of review of a trial court's public disclosure ruling is de novo. *Sablan v. Fitial, et al.*, 2009 MP 11 ¶ 12 (2009).

The standard for judicial review of agency actions requires that reviewing courts give deference to agency decisions. *Marianas Insurance Co. v. CPA*, 2007 MP 24 ¶ 8

We review *de novo* the judicial review of an agency action. *Marianas Insurance Co. v. CPA*, 2007 MP 24 ¶ 8

Review of a Superior Court decision reviewing an agency action is *de novo*, yet bound by the constraints of the Administrative Procedure Act. The appellate court does not give deference to a lower court's findings because its review of agency actions is done with the identical guidelines followed by the lower court under the Administrative Procedure Act. *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶ 12

The Administrative Procedure Act provides that appeals from final judgments of the Commonwealth Superior Court regarding agency actions shall be taken as in other civil cases. A court reviewing the actions of an administrative agency must follow the Administrative Procedure Act. *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶ 13

Under the Administrative Procedure Act, the court defers to agency decisions. Agency decisions are reviewed on the basis of an "arbitrary and capricious" standard. *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶ 14

Arbitrary action has been defined in this jurisdiction as characterization of a decision or action taken by an administrative agency or inferior court meaning willful and unreasonable action without consideration or in disregard of facts or without determining principle. Additionally, entirely failing to consider an important aspect of a claim will also render an

agency action arbitrary and capricious. *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶ 14

The scope of review under the arbitrary and capricious standard is narrow and a court is not to substitute its judgment for that of an agency. Agency action should be overturned only when the agency has relied on factors the Legislature has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶ 14

Responsibility determinations are overturned only if there are allegations of fraud or bad faith. Government agencies have broad discretion in making responsibility determinations; contracting officers are not required to provide written explanations for their actions in determining responsibility. *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶ 20

There was no arbitrary and capricious conduct where CPA sought professional technical advice from the very start of the Bid Invite process, solicited bids through a Bid Invite that required bidders to meet specific qualifications as to both responsibility and responsiveness, allowed a protest to the bidding process, produced a clear and rational multi-page written decision upholding the award, and provided an appeal process to the CPA Appeals Committee. *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶ 31

The N.M.I. Supreme Court reviews *de novo* a trial court's review of an agency action. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong),* 2005 MP 6 ¶ 9

The N.M.I. Supreme Court reviews *de novo* an administrative agency's action. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong),* 2005 MP 6 ¶ 9

The N.M.I. Supreme Court reviews *de novo* the Superior Court's application of a standard of review. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong),* 2005 MP 6 ¶ 9

Substantial evidence is such relevant evidence as reasonable minds might accept as adequate to support a conclusion. The possibility of drawing two inconsistent conclusions does not prevent a finding from being supported by substantial evidence. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong),* 2005 MP 6 ¶ 25

Even if factual findings are not at issue, such as where parties have stipulated as to the facts, a court may review an appeal of an agency action using the substantial evidence standard of 1 CMC § 9112(f)(2)(v). *Department of Pub. Safety v. Civil Serv. Comm'n (Chong),* 2005 MP 6 ¶ 26

Substantial evidence must support a reasonable conclusion as to a question of law in an administrative hearing. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong),* 2005 MP 6 ¶ 28

A trial court acts properly when it sets aside an agency action based on conclusions of law it found to be unsupported by substantial evidence. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong),* 2005 MP 6 ¶ 29

An administrative decision failed to support its finding that an employee could be reinstated under the terms it specified, when it did not indicated the position that the employee could fill, or describe how a position could be created (without violating Federal or Commonwealth law) in which the reinstated employee would not interact with females. In this situation, the trial court would reverse the agency's conclusion of law that had no legal basis and was not supported by a substantial amount of evidence. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong),* 2005 MP 6 ¶ 31

In judicial review of agency action, under the substantial evidence standard of review, the appellate court must uphold an administrative decision which is reasonable in light of the facts in the record opposing the agency position as well as those supporting it. *Ramos v. Magusa, Inc.*, 2002 MP 25 ¶ 13

The N.M.I. Supreme Court's review of the superior court's review of the agency action is de novo. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 3

The Supreme Court need give no special deference to the trial court's conclusion that an agency's decision was based upon substantial evidence, but it will affirm if it concludes that the trial court did not err in finding substantial evidence supporting the agency's decision, and if the agency did not misapply the law. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 3

Courts will not normally disturb the discretionary decision of a public officer, absent a showing of an

abuse of discretion, an arbitrary decision or fraud. *Benavente v. Marianas Pub. Land Corp.*, 2000 MP 13 ¶ 24

NMI Supreme Court reviews trial court's review of agency action de novo. *American Construction, Inc. v. Salgado*, 1997 MP 26 ¶ 2

NMI Supreme Court's review of NMI Superior Court's review of administrative agency action is de novo. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

NMI Supreme Court's review of NMI Superior Court's application of a standard of review in appeal of administrative agency action is de novo. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

Generally, unless otherwise provided statutorily, the review of a formal hearing is for substantial evidence and the review of an informal hearing is for arbitrariness. However, even if the process mandated is informal, the court may apply a higher standard such as reasonableness where prescribed. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

In judicial review of agency action, the substantial evidence standard for a finding of fact means that the decision must be reasonable after consideration of the facts in the record opposing the agency position as well as supporting it and the reviewing court is to uphold the agency finding even if supported by something less than the weight of evidence. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

In judicial review of agency action, questions of law under the substantial evidence or "reasonableness" standard are examined to determine if the agency's conclusions are reasonable based on the information package used by the agency in making the decision. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

Arbitrary and capricious standard of judicial review of agency action is encompassed by substantial evidence standard of judicial review. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

An agency ruling is arbitrary and capricious if the agency has entirely failed to consider an important aspect of the problem. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

The term "arbitrary and capricious" characterizes a decision or action taken by an administrative agency or inferior court meaning willful and unreasonable action without consideration or in disregard of facts or without determining principle. *In re Blankenship*, 3 N.M.I. 209 (1992).

The standards for judicial review of agency action are set forth in 1 CMC § 9112(f). *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362 (1990).

Appellate court's review of trial court's review of agency action is de novo. *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362 (1990).

Administrative agency's decision in adjudicatory proceeding reviewed de novo. *In re San Nicolas*, 1 N.M.I. 329 (1990).

Appellate court's review of trial court's review of agency action is de novo. *In re San Nicolas*, 1 N.M.I. 329 (1990).

——Particular Agencies

(Applying statutes and regulations concerning particular agencies)

NMI Supreme Court reviews de novo Superior Court's determination of whether the decision of the Director of Labor was based upon substantial evidence. *Barte v. Saipan Ice, Inc.*, 1997 MP 17 ¶ 4

NMI Supreme Court reviews de novo the Superior Court's determination of whether the decision of the Director of Labor was based upon substantial evidence. *Limon v. Camacho*, 1996 MP 18 ¶ 2

NMI Supreme Court reviews de novo the Superior Court's determination of whether the Director of Labor misapplied the law. *Limon v. Camacho*, 1996 MP 18 ¶ 2

Factual determinations by the Director of Labor must be reviewed under the "substantial evidence" standard of review in 1 CMC § 9112(f)(2)(v), not under the "arbitrary and capricious" standard established by 1 CMC § 9112(f)(2)(i). *Limon v. Camacho*, 1996 MP 18 ¶ 22

In 2 CMC § 1541(b), providing that standard for judicial review of final decisions of the Coastal Resources Management Office Appeals Board is whether decision is supported by substantial evidence on record made before Board, taken as a whole, and that the facts in question are not subject to trial de novo, legislature specifically mandated standard of review not applicable under Administrative

Procedure Act, 1 CMC § 9101 et seq. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

——Particular Cases

In assessing whether a scholarship board's interpretation of 3 CMC § 1342 is arbitrary and capricious, the Supreme Court must evaluate whether the scholarship board, in promulgating its regulations, entirely failed to consider an important aspect of the problem, or offered an explanation for its decision that runs counter to the evidence before the agency. *Calvo v. NMI Scholarship Advisory Bd.*, 2009 MP 2 ¶ 20 (2009).

Under the arbitrary and capricious standard of review, the Supreme Court will uphold an administrative agency's interpretation of a statute it is charged with enforcing, so long as the interpretation complies with the statute's plain language. *Calvo v. NMI Scholarship Advisory Bd.*, 2009 MP 2 ¶ 20 (2009).

It was not an abuse of discretion where CPA accepted a bid that was later corrected to provide additional required equipment with no change to the original bid price. *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶ 29

NMI Supreme Court's review of Coastal Resource Management Office Appeals Board decision would be limited to assessing propriety of NMI Superior Court's ruling that substantial evidence supported Board's decision. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

While NMI Supreme Court would not give special deference to NMI Superior Court's conclusion that Coastal Resource Management Office Appeals Board decision was based upon substantial evidence, Supreme Court would affirm ruling if it concluded that court did not err in decision and board did not misapply the law. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

In appeal of Coastal Resource Management Office Appeals Board decision affirming agency's grant of development permit, NMI Superior Court was confined to determining whether there was substantial evidence before Board supporting its affirmance of agency's decision to grant permit. 2 CMC § 1541(b). *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

—Statutes of Limitation

Pursuant to 1 CMC § 9112(b), a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action, is entitled to judicial review of the action within 30 days thereafter in the Commonwealth Superior Court. Furthermore, agency action includes an agency's failure to act. 1 CMC § 9101(c). *Tano Group, Inc. v. Dep't of Publ. Works, et al.*, 2009 MP 18 ¶ 23 (2009).

——Particular Agencies

(Applying statutes and regulations concerning particular agencies)

In administrative law, the statute of limitations period begins to run when an agency issues a final agency action. Two requirements must be satisfied for an agency action to be considered final. First, the action must mark the consummation of the agency's decisionmaking process - -it must not be of a merely tentative or interlocutory nature. Second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow. *Marianas Insurance Co. v. CPA*, 2007 MP 24 ¶ 27

Any person with actual or constructive notice of a Land Commission property determination and an interest in the property has 120 days thereafter to seek judicial review of the determination. 2 CMC § 4249. *Estate of Muna v. Commonwealth*, 2000 MP ¶ 9

Hearing Officer's approval of settlement agreement was a final order appealable within 15 days under 3 CMC § 4445. Because the matter was settled voluntarily and no evidentiary hearing was held, there was no need for the Hearing Officer to render administrative findings, decisions, or orders and 3 CMC § 4444(d) did not apply. *Defunturum v. Saipan Mfrs., Inc.*, 1997 MP 21 ¶ 11

——Particular Cases

Action challenging Tinian Cockfighting Board's award of exclusive franchise to licensee was not barred by 10 CMC § 2413(c), establishing thirty-day limitation for filing action challenging Board decision regarding cockfighting dispute. Action did not involve a cockfighting dispute; rather, plaintiff sought to compel Board to issue license to him or, in the alternative, for damages. Thus, thirty-day limitation did not apply. *Aquino v. Tinian Cockfighting Bd.*, 3 N.M.I. 284 (1992).

Licensing

—Constitutional Questions

In equal protection analysis under the U.S. Constitution, restrictions placed on admission to professions need only be rationally related to a legitimate state interest. *In re Blankenship*, 3 N.M.I. 209 (1992).

——Particular Cases

Cockfighting franchise license awarded by Tinian Cockfighting Board was property right of which licensee could not be deprived without due process of law. N.M.I. Const. art. I, § 5. *Aquino v. Tinian Cockfighting Bd.*, 3 N.M.I. 284 (1992).

—Gambling

See **GAMBLING – Licensing**

Notice

DC App. Div. 1983. Where decedent had notice of and attended hearings at which he relinquished his rights to land, there was sufficient notice to his heirs, who had only an inchoate right in his lands. *Pangelinan v. Tudela*, 1 CR 708, *aff'd*, 733 F.2d 1341 (9th Cir. 1986).

CTC 1988. Where 11 paragraphs that provide the basis of the proposed adverse action contained all pertinent facts necessary to apprise plaintiff of the specific reasons for the proposed action, allegations contained in the letter of proposed adverse action were not too general to preclude any response and plaintiff had the opportunity to seek further explanation of the reasons for the proposed adverse action against her. *In re San Nicolas*, 3 CR 540.

Pleading

See **Agency Action – Pleading**, this topic.

Presumptions

DC App. Div. 1982. Claims of ownership, filed with an agency, which are not administrative adjudications founded upon notice and hearing, are not accorded any presumption of validity. *In Re the Estate of Taisakan*, 1 CR 326.

Private Enforcement Actions

Actions relating to constitutional guarantee of clean and healthful environment, see **ENVIRONMENT – Actions**.

—Particular Agencies

Statute within NMI Coastal Resources Management Act, 2 CMC § 1501 et seq., permits private actions to compel Coastal Resources Management Office to perform duties "specifically imposed" by the Act. According to the plain meaning of "specifically," a litigant may compel performance of only those duties that are explicitly or definitely set forth in the Act—i.e., statutory duties. 2 CMC § 1542. *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270 (1991).

2 CMC § 1542 does not grant interested persons the right to compel the NMI Coastal Resources Management Office to enforce major siting regulations if a construction proposal falls within criteria specified in the regulations. If the NMI Legislature had intended to grant interested persons the right to bring a private action to compel the agency to perform regulatory duties, it would not have chosen language that clearly indicates that such persons may only compel performance of statutory duties "specifically imposed" by the Coastal Resources Management Act, 2 CMC § 1501 et seq. *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270 (1991).

Regulations

—Adoption

(Applying common law and NMI Administrative Procedure Act)

The Workers' Compensation Commission may make any rule needed to administer the workers' compensation system, under the authority granted by 4 CMC § 9351, unless the legislature has specifically provided otherwise. 4 CMC § 9351. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 24

Under 1 CMC § 9105(a) (formerly 17 TTC § 5(1)) an agency is required to file an administrative rule after it has been promulgated and adopted pursuant to 1 CMC §§ 9102 and 9104(a) or (b) (formerly 17 TTC §§ 2 and 4(1) or (2)). 1 CMC § 9105(a) does not require filing for the purpose of effectuating the rule. Failure to file an adopted rule or regulation does not automatically make the rule or regulation void. *Commonwealth v. Lizama*, 3 N.M.I. 400 (1992), aff'd, 27 F.3d 444 (9th Cir. 1994).

Although 1 CMC § 9102(c) and (d) require that a rule be filed with the NMI Registrar of Corporations and the Governor before it may be enforced against any person, filing with the Registrar is no different from filing with the Governo-r for purposes of public inspection of rule, given the physical proximity of the offices. Filing with NMI Governor is no longer necessary. *Commonwealth v. Lizama*, 3 N.M.I. 400 (1992), aff'd, 27 F.3d 444 (9th Cir. 1994).

——Particular Cases

Since NMI Department of Finance regulation authorizing searches by customs officers at border was validly promulgated and adopted in 1983 pursuant to Trust Territory Administrative Procedure Act (APA), 17 TTC § 1 et seq., a law that continued in force (following adoption of the Commonwealth Code in 1984) as the Commonwealth APA, 1 CMC § 9101 et seq., it was not necessary for agency to republish and refile the regulation after adoption of the Commonwealth Code in 1984 to prevent regulation from becoming void. *Commonwealth v. Lizama*, 3 N.M.I. 400 (1992), aff'd, 27 F.3d 444 (9th Cir. 1994).

—Agency Interpretation

CTC 1986. Great deference will be given to an agency' interpretation of an administrative rule, but a court need not accept the agency's interpretation if it is clearly erroneous or the interpretation is inconsistent with the regulation. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 777, aff'd in part and rev'd in part, 3 CR 731 (DNMI App. Div. 1989).

CTC 1986. Where employee of the Department of Commerce and Labor apparently interpreted banking regulations as allowing existing banks to have eighteen months to either obtain deposit insurance or the capital and paid in surplus required by the regulations, and where testimony does not reveal any review, discretion, or understanding of the regulations, this interpretation was neither reasonable nor consistent with the terms of the regulations and was clearly erroneous. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 777, aff'd in part and rev'd in part, 3 CR 731 (DNMI App. Div. 1989).

CTC 1986. If a regulation or provision is certain, unambiguous and obligatory, an agency cannot just "interpret" it to reach another result. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 777, aff'd in part and rev'd in part, 3 CR 731 (DNMI App. Div. 1989).

—Compliance

CTC 1988. Although generally, an agency must follow its own regulations, in some circumstances agencies may depart from their own regulations. *In re San Nicolas*, 3 CR 540.

CTC 1988. Despite the fact that letter of proposed adverse action was not drafted by someone specifically trained in the requirements of processing an adverse action, as required by agency procedural guidelines, error was not prejudicial where letter of proposed adverse action complied with the rules and regulations in all respects and there was no allegations that any lack of technical training resulted in any prejudice to complaining party. *In re San Nicolas*, 3 CR 540.

CTC 1988. Plaintiff was timely informed of the particular sections of the regulations involved in the adverse action against her, even though none of the 11 paragraphs of reasons specifically refer to any of the enumerated regulations, because plaintiff was timely informed of exactly which regulatory provisions she was alleged to have violated. 1 CMC §9109(a)(3). *In re San Nicolas*, 3 CR 540.

—Conflict with Agency Decision

It is axiomatic that an agency must comply with its own rules. *Benavente v. Marianas Pub. Land Corp.*, 2000 MP 13 ¶ 31

——Particular Cases

Language in coastal resources management agency decision approving development permit providing that appeal of decision could be filed within thirty days of receipt of permit was contrary to clear language of agency regulations providing that appeal must be filed within thirty days of issuance of permit. The agency regulation was the law and prevailed over the language in the decision. *Nansay Micronesia Corp. v. Govendo*, 3 N.M.I. 12 (1992).

—Constitutional Questions

See also **Judicial Review – Constitutional Questions**, this topic.

Court will not act as a super legislature and strike down a statute or a regulation merely because it could

have been better written. *King v. Board of Elections*, 2 N.M.I. 398 (1991).

It is settled law that courts have the power to review the constitutionality of regulations promulgated by government agencies. *Tenorio v. Superior Ct.*, 1 N.M.I. 1 (1989).

Administrative regulations are presumed to be constitutionally valid, unless a clear violation is shown. *Tenorio v. Superior Ct.*, 1 N.M.I. 1 (1989).

——Particular Cases

Superior Court's decision to invalidate NMI Board of Elections regulations concerning certification of initiative to ballot because no provision was made for proportional increase in the number of qualified voter signatures to match increase in number of voters between initial cut-off date and date of final submission of petitions was clearly erroneous. N.M.I. Const. art. XIII, § 4(a). *Tenorio v. Superior Ct.*, 1 N.M.I. 1 (1989).

Superior Court's substitution of its ideas concerning proper standards in place of regulatory standards adopted by agencies delegated authority by legislature and NMI Constitution to promulgate regulations was impermissible intrusion into executive branch agency's rule-making authority. *Tenorio v. Superior Ct.*, 1 N.M.I. 1 (1989).

NMI Board of Election regulations concerning certification of initiative measure for ballot based on number of registered voters at time of cut-off date were neither inherently nor expressly unconstitutional. N.M.I. Const. art. XVIII, § 4(a). *Tenorio v. Superior Ct.*, 1 N.M.I. 1 (1989).

—Hierarchy of Laws

For purposes of statutory construction, rules issued by courts with statutory grants of authority are comparable to administrative regulations with their relative standing in the hierarchy of law. Thus, prior to 1997, when the C.N.M.I. Supreme Court was transformed from a statutory court into a constitutional judiciary, the C.N.M.I. court rules were trumped when in direct conflict with a duly enacted statute. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 12

—Interpretation and Construction

Generally, if a record is public, it must be disclosed. However, certain types of documents, while public, are exempt from the disclosure requirement to promote certain governmental objectives. The "pending litigation" exemption, which exempts records from public disclosure that would not be available to another party under the rules of pretrial discovery for causes pending in the courts. Agencies bear the burden to prove a particular statutory exemption applies under 1 CMC § 9918(a). *Sablan v. Fitial, et al.*, 2009 MP 11 ¶ 10 (2009).

After establishing that an exemption applies, the reviewing body then applies 1 CMC § 9918(c), which acts as an exception to the disclosure exemption. This provision states that, even though a document may be exempt from the disclosure requirement, inspection and copying of the documents "may be permitted if the Commonwealth Superior Court finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital government function." 1 CMC § 9918(c). In implementing this exception, the legislature recognized that certain public records might be protected under one of the disclosure exemptions, even though there is no real need to protect them from disclosure. Pursuant to 1 CMC § 9918(c), documents of this nature must still be disclosed. *Sablan v. Fitial, et al.*, 2009 MP 11 ¶ 11 (2009).

When construing statutes, rules or regulations, the court will use the plain meaning of words. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 22

Courts generally do not disregard words or phrases when construing statutes or administrative regulations. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 23

When one interpretation of a statute or regulation obviously could have been conveyed more clearly with different phrasing, the fact that the authors avoided that phrasing suggests, all other things being equal, that they in fact intended a different interpretation. *Manglona v. Commonwealth*, 2002 MP 7 ¶ 24

It is not appropriate to read into the C.N.M.I. Procurement Regulations the additional affirmative requirement that the Governor include his signature on all contracts, when the Regulations' drafters clearly knew what language to use, had they wished to include that requirement. C.N.M.I. Procurement Regulations, 12 Com. Reg. 7,274 (Sept. 15, 1990) (adopted at 12 Com. Reg. 7,436 (Oct. 15, 1990)). *Manglona v. Commonwealth*, 2002 MP 7 ¶ 24

——Particular Cases

The C.N.M.I. Procurement Regulations make clear that real property leases are subject to its provisions, and it is not appropriate for the court to read the C.N.M.I. Procurement Regulations in a way which would deny its clearly stated purpose. C.N.M.I. Procurement Regulations, 12 Com. Reg. 7,274 (Sept. 15, 1990) (adopted at 12 Com. Reg. 7,436 (Oct. 15, 1990)). *Manglona v. Commonwealth*, 2002 MP 7 ¶ 20

In dealing with a government agency, it is the applicable rules and regulations that determine the point at which a contract is enforceable. If the rules that were promulgated to accomplish the land exchange were not followed, a reviewing court will be hesitant to allow the exchange to take place. *Benavente v. Marianas Pub. Land Corp.*, 2000 MP 13 ¶ 32

—Statutory Authority

Where statute directed Department of Finance to rely on the Internal Revenue Code in defining terms and agency's definition of "business" contradicted the U.S. Supreme Court's interpretation of the term, definition was inconsistent with legislature's directive and could not stand to take income from the interest and dividends of a private couple as gross receipts. 4 CMC §§ 1301, et seq. *Pellegrino v. Commonwealth*, 1999 MP 10 ¶ 20

DC NMI 1982. Regulations issued under statutory authorization must be consistent with the statute in order to be valid. *Bauer v. McCoy*, 1 CR 248.

Rules

See **Regulations**, this topic.

Workers' Compensation Regulations

—Generally

Section 9329 of Title 4 of the Commonwealth Code creates a statutory presumption that a worker's claim comes within the purview of the workers' compensation statutes. This is a clear expression of the legislature's intention to provide coverage in "close cases." 4 CMC § 9329. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 29

—Twenty-four Hour Rule

The twenty-four hour, rule which provides that employees on official travel are covered by worker's compensation twenty-four hours per day, set forth in the Workers' Compensation Commission Rules and Regulations at section 3.102 remains an enforceable part of the regulations today. Workers' Compensation Commission Rules and Regulations, 12 Com. Reg. 6,717 (Jan. 15, 1990) adopted at 12 Com. Reg. 7,447 (Nov. 15, 1990) and renumbered at 14 Com. Reg. 9,076 (Mar. 15, 1992) adopted at 15 Com. Reg. 10,578 (Apr. 15, 1993) § 3.102. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 18

Section 3.102 of the Workers' Compensation Commission Rules and Regulations does not create an irrebuttable presumption that any injury sustained by a traveling employee is automatically compensable under the Commonwealth's workers' compensation statutes. Workers' Compensation Commission Rules and Regulations, 12 Com. Reg. 6,717 (Jan. 15, 1990) adopted at 12 Com. Reg. 7,447 (Nov. 15, 1990) and renumbered at 14 Com. Reg. 9,076 (Mar. 15, 1992) adopted at 15 Com. Reg. 10,578 (Apr. 15, 1993) § 3.102. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 21

The plain meaning of "on the job" is "at work, while working." *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 22

Section 3.102 of the Workers' Compensation Commission Rules and Regulations authorizes payment to a traveling employee in the same manner as an employee who is injured at work, while working. Workers' Compensation Commission Rules and Regulations, 12 Com. Reg. 6,717 (Jan. 15, 1990) adopted at 12 Com. Reg. 7,447 (Nov. 15, 1990) and renumbered at 14 Com. Reg. 9,076 (Mar. 15, 1992) adopted at 15 Com. Reg. 10,578 (Apr. 15, 1993) § 3.102. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 22

Section 3.102 of the Workers' Compensation Commission Rules and Regulations creates a presumption that any injury sustained by an employee on travel status is compensable. Workers' Compensation Commission Rules and Regulations, 12 Com. Reg. 6,717 (Jan. 15, 1990) adopted at 12 Com. Reg. 7,447 (Nov. 15, 1990) and renumbered at 14 Com. Reg. 9,076 (Mar. 15, 1992) adopted at 15 Com. Reg. 10,578 (Apr. 15, 1993) § 3.102. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 23

Any portion of section 3.102 of the Workers' Compensation Commission Rules and Regulations that purports to authorize payment for injuries which do not arise out of and in the course of employment,

is ultra vires and null. Workers' Compensation Commission Rules and Regulations, 12 Com. Reg. 6,717 (Jan. 15, 1990) adopted at 12 Com. Reg. 7,447 (Nov. 15, 1990) and renumbered at 14 Com. Reg. 9,076 (Mar. 15, 1992) adopted at 15 Com. Reg. 10,578 (Apr. 15, 1993) § 3.102. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 25

An accident arises out of employment when there is a causal relationship between the injury and the employment. This does not mean the injury must be caused by the employment; rather, the employment is a condition, out of which the event arises that produces the injury. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 26

The traveling employee is generally considered to be within the scope of his employment throughout his sojourn: employees whose work entails travel away from the employer's premises are held in the majority of jurisdictions to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown. Thus, injuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home are usually held compensable. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 28

The C.N.M.I. adopts the majority rule that a traveling employee is generally considered to be in the course of his or her employment continuously during the duration of the entire trip, except when there is a distinct departure on a personal errand. Therefore, the injury or death of a traveling employee occurring while reasonably engaged in a reasonable recreational or social activity arises out of and in the course of that employee's employment. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 29

Section 9329 of Title 4 of the Commonwealth Code creates a statutory presumption that a worker's claim comes within the purview of the workers' compensation statutes. This is a clear expression of the legislature's intention to provide coverage in "close cases." 4 CMC § 9329. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 29

Where a worker was not injured on a personal vacation that was merely tacked onto the beginning or end of a business trip, but injured while on official travel status, their claim will fall within the purview of the workers' compensation coverage. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 40

Where a worker leaves a tour to purchase something for his or her child and is injured the claim would not fall within the purview of the workers' compensation coverage, while a worker injured while relaxing at a nightclub during the course of a business trip would be covered. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 40

The test as to whether specific activities are considered to be within the scope of employment or purely personal activities is the reasonableness of such activities. An employee on travel may satisfy physical needs including relaxation. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 41

It is reasonable to expect conference participants to socialize outside the confines of the conference. To dance with colleagues while on travel is to engage in a reasonable activity. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 42

ADMIRALTY

Attachment

—Prior Liens

DC NMI 1983. Although a sale of a marine vessel by a Court proceeding in rem and properly exercising maritime jurisdiction frees the vessel from all prior liens, the same is not true of an action in personam where the ship is merely attached as security for a personal judgment; in the latter case the title to the vessel is no better than similar title to any other species of property and does not possess the particular maritime virtue of being "good against the world." *Saipan Construction and Salvage, Inc. v. M/V "Saipan Lady"*, 1 CR 831.

DC NMI 1983. Where claimant invoked the local jurisdiction of the Court, and did not proceed in rem against the vessel but rather attached the vessel pursuant to a duly authorized writ of attachment and then sold it pursuant to a writ of execution, the purchaser of the vessel, and his subsequent assignees, took the ship subject to prior liens in accordance with the applicable laws on execution sales. *Saipan Construction and Salvage, Inc. v. M/V "Saipan Lady"*, 1 CR 831

Conflict of Laws

DC App. Div. 1984. Maritime substantive law applies in causes of action measurable by standards of maritime law, even those actions brought in state courts. *Oceania Line, Inc. v. Herman's Modem Bakery*, 1 CR 1050

APPEAL AND ERROR

Doctrine of Deviation

DC App. Div. 1984. The doctrine of deviation, where deviation is defined to be a voluntary departure without necessity or reasonable cause from the regular and usual course of the voyage, allows cargo interests to void the contract of carriage under certain conditions. *Oceania Line, Inc. v. Herman's Modem Bakery*, 1 CR 1050.

Jurisdiction

—Generally

DC App. Div. 1984. A contract relating to a ship in its use as such, or to commerce, or navigation on navigable waters, is subject to maritime law and the case is one of admiralty jurisdiction. *Oceania Line, Inc. v. Herman's Modem Bakery*, 1 CR 1050.

DC App. Div. 1984. Federal maritime law allows for concurrent jurisdiction of maritime matters by state and local courts, but nowhere does it provide, nor is there room for, the application of local laws to maritime matters. *Oceania Line, Inc. v. Herman's Modem Bakery*, 1 CR 1050

DC NMI 1983. Where insurance company's claim for insurance premiums did not create a maritime lien and because there is no federal statute which otherwise authorizes the action, it necessarily follows that the Court did not have subject matter jurisdiction over the in rem claim against the vessel in a previous proceeding brought by the insurance company and the insurance company thus did not hold a valid judgment against the vessel. *Saipan Construction and Salvage, Inc. v. M/V "Saipan Lady"*, 1 CR 831.

DC NMI 1983. Where Court was acting without proper admiralty jurisdiction for plaintiff to proceed in rem against a ship, but it appears on the face of the record to have had in personam jurisdiction over defendant, plaintiff held a valid attachment writ on defendant's interests in the vessel. *Saipan Construction and Salvage, Inc. v. M/V "Saipan Lady"*, 1 CR 831.

—In Rem Proceeding

DC NMI 1983. An in rem proceeding against a ship is the distinctive remedy of an admiralty court and is administered exclusively by a federal court; a plaintiff may only proceed in rem in federal court either where the action is to enforce a maritime lien or where otherwise so allowed by a statute of the United States. Fed.R.Civ.P. Supp. Rule C(1). *Saipan Construction and Salvage, Inc. v. M/V "Saipan Lady"*, 1 CR 831.

Maritime Liens

DC NMI 1983. Under principles of insurance law and under the Maritime Lien Act, claims of an insurer for unpaid premiums do not give rise to a maritime lien. Federal Maritime Lien Act, 46 U.S.C. §§971 et seq. *Saipan Construction and Salvage, Inc. v. M/V "Saipan Lady"*, 1 CR 831.

Statute of Limitation

DC App. Div. 1984. Where the bills of lading at issue contained express statements that the plaintiff's responsibilities were subject to the provisions of the Carriage of Goods at Sea Act, the one-year statute of limitations in that act applied and not the local statute of limitations. 46 U.S.C. §1303 (6). Oceania *Line, Inc. v. Herman's Modem Bakery*, 1 CR 1050.

AGENCY

Agent Liability

CTC 1987. Where it is concluded that sister of decedent had no authority to execute resignation and withdrawal forms of decedent from government retirement fund, sister is liable for the return of the withdrawn funds. *Matagolai v. Pangelinan*, 2 CR 1120, aff'd in part and rev'd in part, 3 CR 591 (DNMI App. Div. 1988).

— Intentional Torts

In the CNMI, scope of employment is governed by the Restatement of Agency. The rules of the common law as expressed in the Restatements of the Law as approved by the American Law Institute serve as the applicable rules of decision, in the absence of written or local customary law to the contrary. *Kabir v. Barcinas*, 2009 MP 19 ¶ 45 (2009).

Although § 7.07 of the Restatement (Third) of Agency does not specifically mention intentional torts, courts have set forth the following factors to determine whether an employee's intentional tort falls within the scope of employment: (1) the conduct was similar to that which the employee was hired to perform; (2) the action occurred substantially within the authorized spatial and temporal limits of employment; (3) the action was in furtherance of the employer's business; and (4) the conduct, though

unauthorized, was expectable in view of the employee's duties. *Kabir v. Barcinas*, 2009 MP 19 ¶ 46 (2009).

Barring unusual circumstances, sexual assault and battery is not within the scope of employment under CNMI law. *Kabir v. Barcinas*, 2009 MP 19 ¶ 46 (2009).

Land Transaction

CTC 1986. One who takes title to property which she agrees to hold for the benefit and subject to the control of another is an agent-trustee, but the rules of agency do not apply to the relationship after a lease is executed and put in force because the party no longer holds title subject to the control of the lessees but holds fee simple title subject to the written lease terms. *Aldan-Pierce v. Mafnas*, 2 CR 855, aff'd, 3 CR 326 (DNMI App. Div. 1988).

Power of Attorney

Pursuant to the Restatement (Third) of Agency § 1.01, the execution of a power of attorney imposes fiduciary obligations on the person acting as the attorney-in-fact. *Salas v. Mafnas*, 2010 MP 9 ¶ 20 (2010).

CTC 1987. The general terms and words of a power of attorney are to be restricted by their context, and the authority given is to be construed strictly so as to exclude the exercise of any power that is not warranted either by the terms actually used or as a necessary means of executing the authority given. *Matagolai v. Pangelinan*, 2 CR 1120, aff'd in part and rev'd in part, 3 CR 591 (DNMI App. Div. 1988).

CTC 1987. Where at the time of the execution of general power of attorney by decedent to sister, there had been no discussion or conversation between decedent and sister about changing beneficiaries on life insurance policy, and the only purpose of the power of attorney was to apply for advance annual and sick leave, and the power of attorney, although general in nature, did not give specific authority to do what sister did, sister had no authority to change the beneficiaries on life insurance policy. *Matagolai v. Pangelinan*, 2 CR 1120, aff'd in part and rev'd in part, 3 CR 591 (DNMI App. Div. 1988).

Reliance of Third Parties

CTC 1987. When a proposed act of an agent is obviously detrimental to the principal's interest, it is unreasonable for a third party to rely upon anything but express and specific authority to do the act. *Matagolai v. Pangelinan*, 2 CR 1120, aff'd in part and rev'd in part, 3 CR 591 (DNMI App. Div. 1988)

CTC 1987. When a proposed act of an agent is obviously detrimental to the principal's interest, there is a duty of the third person to inquire and ascertain the character and extent of the agency, because even a general agent has no implied authority to bind his principal by acts unusual to agencies of like character, or beyond the usual scope of such agencies; and when the agent attempts to bind his principal by extraordinary acts, the one dealing with the agent is put on notice and required to ascertain from some authoritative source whether the agent had the power to bind the principal thereby. *Matagolai v. Pangelinan*, 2 CR 1120, aff'd in part and rev'd in part, 3 CR 591 (DNMI App. Div. 1988).

Termination

CTC 1986. An agency relationship terminates, once a party, as the agent, accomplishes the authorized acts. *Aldan-Pierce v. Mafnas*, 2 CR 855, aff'd, 3 CR 326 (DNMI App. Div. 1988).

AIRLINES

Departure Charges

DC NMI 1983. Section of the Federal Aviation Act that prohibited the levy of a head tax on persons traveling in air commerce did not prohibit the Commonwealth airport authority from assessing a reasonable departure facility service charge even though calculated on a per passenger basis. 49 U.S.C. §1513(a). *Island Aviation, Inc. v. Mariana Islands Airport Authority*, 1 CR 353.

Reservations

CTC 1983. Conditions of contract in airline ticket providing that no agent of the carrier has authority to alter, modify, or waive any provision of the contract do not affect claim that airline's agents bound airline by confirming reservations, because contractual provision is not a limitation on the ministerial task of making, confirming or reconfirming reservations. *White v. Republic of Nauru*, 1 CR 342.

CTC 1983. Where passenger was verbally told no less than four different times that his flight was confirmed, passenger was entitled to damages when airline willfully failed to recognize those reservations. *White v. Republic of Nauru*, 1 CR 342.

APPEAL AND ERROR

Affirmance

DC App. Div. 1985. An appellate court may affirm the district court on any basis fairly presented by the record that, as a matter of law, sustains the judgment. *CNMI v. Taitano*, 2 CR 356.

Amicus Curiae

Amicus will not be permitted to create, extend or enlarge issues presented on appeal unless a party also properly raises such issues on appeal. The court examines an amicus brief solely for whatever aid it provides in analyzing the legal questions before the court. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

DC App. Div. 1988. An amicus curiae does not have a right to appeal an adverse decision. *In re the Matter Duncan*, 3 CR 454, aff'd, 3 CR 587 (DNMI App. Div. 1988).

—Particular Cases

NMI Supreme Court would decline to address constitutional issues raised by amicus curiae on appeal where issues were not raised by the parties in the trial court or on appeal. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

Clearly Erroneous Ruling

A ruling is clearly erroneous as a matter of law where the N.M.I. Supreme Court is firmly convinced that the lower court has erred in deciding a legal question. *Bank of Saipan v. Superior Court (Connell)*, 2001 MP 1 ¶19

A lower court's order need not be "clearly" erroneous in supervisory mandamus cases where the writ petition raises an important question of law of first impression, the answer to which would have a substantial impact on the administration of the lower courts. *Bank of Saipan v. Superior Court (Connell)*, 2001 MP 1 ¶19

Consumer Protection

In determining whether the trial court correctly applied the law to the facts when it found a party violated the Consumer Protection Act, the N.M.I. Supreme Court examines the record in the light most favorable to the prevailing party, taking account of all inferences in its favor that may be drawn from the facts. *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 20

Criminal Conviction

—Generally

DC App. Div. 1985. Insofar as the trial court's conviction of the defendant of disturbing the peace found sufficient support in the record, it is of no consequence that the trial court also convicted him on the alternative theory of aiding and abetting a disturbance of the peace. *CNMI v. Taitano*, 2 CR 356.

DC App. Div. 1983. Even if it was error to allow an expert witness' testimony on the subject of Rape Trauma Syndrome, it was not prejudicial error warranting a reversal of defendant's conviction since the court was of the firm belief that even without this testimony the jury would have found defendant guilty beyond a reasonable doubt. *CNMI v. Wabol*, 1 CR 782.

—Standard of Review

DC App. Div. 1985. On appeal of a conviction, the court must review the evidence, taking into account reasonable inferences which may be drawn from it, in a light most favorable to the government; findings will not be reversed unless clearly erroneous. *CNMI v. Rivera*, 2 CR 226.

DC App. Div. 1985. The test on appeal of a criminal conviction is whether any rational trier of fact, viewing the evidence in a light most favorable to the government, could have found the essential elements beyond a reasonable doubt. *CNMI v. Rivera*, 2 CR 226.

DC App. Div. 1985. It is not the province of the court of appeals to reassess the credibility of witnesses and trial court's determination that the testimony of witness to beating incident was "credible and trustworthy" must be accepted. *CNMI v. Taitano*, 2 CR 356.

—Sufficiency of Evidence

DC App. Div. 1985. The standard of review to be applied to defendant's challenge to the sufficiency of the evidence is whether there is substantial evidence to support the conviction. *CNMI v. Taitano*. 2 CR 356.

DC App. Div. 1985. A conviction is supported by sufficient evidence if, reviewing the evidence in the light most favorable to the government, any rational

trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *CNMI v. Taitano*, 2 CR 356.

DC App. Div. 1985. The same test for review of sufficiency of the evidence supporting a conviction is applied in both jury and bench trials. *CNMI v. Taitano*, 2 CR 356

DC App. Div. 1985. Conviction was not against the overwhelming weight of the evidence where trial court found prosecution witness' testimony credible and none of the three defense witnesses, unlike prosecution witness, was at the scene of the crime for the entire relevant time with adequate view. *CNMI v. Taitano*, 2 CR 356.

DC App. Div. 1985. Defendant who challenges a conviction solely on sufficiency of the evidence bears a heavy burden of proof. *CNMI v. Rivera*, 2 CR 226.

DC App. Div. 1985. Where the victim testified consistently to the events leading to the assault and to the defendant's threats and use of the weapon, and where his testimony reveals no physical impossibility and is not inherently incredible, and where his account is corroborated by two other witnesses, there is sufficient evidence to sustain the conviction. *CNMI v. Rivera*, 2 CR 226.

DC App. Div. 1983. For the defendant to prevail on a challenge to a conviction based on insufficiency of the evidence, it must appear that after viewing the evidence and the inferences to be made therefrom in the light most favorable to the verdict, reasonable minds could not believe him to be guilty beyond a reasonable doubt. *CNMI v. Wabol*, 1 CR 782.

DC App. Div. 1983. The testimony of the victim, together with the corroborating evidence, is sufficient to sustain the defendant's conviction where, although the testimony of the victim is conflicting in some respects, it was consistent as to what happened, and actions of the defendant during the attempt are corroborated by the testimony of witnesses who saw the victim immediately before and after the incident, by the testimony of the physician who interviewed, examined, and treated the victim that same afternoon, and by the testimony of a prison mate of the defendant. *CNMI v. Wabol*, 1 CR 782.

Determination and Disposition

—Constitutional Grounds

NMI Supreme Court is required to decide cases on non-constitutional grounds wherever possible. *Office of the Attorney General v. Honrado*, 1996 MP 15 ¶ 9

DC App. Div. 1983. Appellate courts have the responsibility to dispose of an appeal on as narrow and few constitutional grounds as possible. *CNMI v. Atalig*, 1 CR 552, rev'd, 723 F.2d 682 (9th Cir.) cert. denied, 467 U.S. 1244 (1984).

—Declaratory Relief

——Particular Cases

In appeal of encroachment action, NMI Supreme Court would grant declaratory relief resolving boundary dispute and quieting title to property despite party's failure to plead quiet title claim in complaint. Although party's complaint incorrectly alleged only an encroachment claim not supported by the evidence, underlying boundary dispute was litigated and should have been addressed by trial court. In addition, record clearly established that parties intended to quiet title. Under circumstances, remanding case to allow complainant to amend complaint to assert quiet title claim and obtain ruling concerning boundary dispute would unjustifiably raise form over substance and waste judicial resources. *Estate of Taisacan v. Hattori*, 4 N.M.I. 26 (1993).

Party's failure to technically plead quiet title claim for relief did not preclude NMI Supreme Court from granting declaratory relief on appeal resolving boundary dispute between parties and quieting title to property. *Estate of Taisacan v. Hattori*, 4 N.M.I. 26 (1993).

—Mandate

See **APPELLATE PROCEDURE – Mandate**

—Remand

——Particular Cases

NMI Supreme Court would reverse trial court's award of attorney's fees to contract promisee based on erroneous interpretation of lapsed option contract and remand for entry of award of attorney's fees in favor of promisor, with no interest. On remand, trial court could consider arguments with respect to offset merited by promisor's return of promisee's earnest money. *Wabol v. Camacho*, 4 N.M.I. 388 (1996).

To cure government's breach of plea agreement during sentencing hearing, NMI Supreme Court would vacate sentence and remand case for resentencing before different trial judge and specific performance of the literal terms of the plea agreement. *Commonwealth v. Duenas*, 4 N.M.I. 377 (1996).

Where trial court sentenced defendant convicted of delivery of controlled substance under 6 CMC § 2142 to prison term, and record did not disclose whether court erroneously interpreted sentencing statute to prescribe mandatory prison term, NMI Supreme Court would remand for clarification and, if necessary, resentencing. 6 CMC § 2141(b)(1). *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

In appeal involving issue of whether, having proven paternity, a child born out of wedlock may inherit under Chamorro custom, because NMI Supreme Court was unable to determine existence of custom from record, court would reverse judgment and remand for taking of further evidence, if warranted, and ruling concerning issue. *Willbanks v. Stein*, 4 N.M.I. 205 (1994).

After remand for "new hearing consistent" with NMI Supreme Court opinion, probate court had discretion, which it properly exercised, to allow parties to introduce and rebut hearsay testimony earlier excluded. On subsequent appeal in which appellants alleged that probate court erred in failing to hold new trial on remand, because (1) repeat of testimony given at first hearing would have been redundant, (2) appellants made no offer of proof as to any evidence which they were precluded from introducing, and (3) appellants did not show that they were prejudiced by limited hearing on remand, probate court did not abuse its discretion; hearing on remand was adequate. *In re Estate of Barcinas*, 4 N.M.I. 149 (1994).

NMI Supreme Court would remand wrongful death action to trial court to enter judgment against corporate and individual defendants, jointly and severally, and to determine whether remaining defendant was "alter ego" of corporate defendant. *Ito v. Macro Energy, Inc.*, 4 N.M.I. 46 (1993).

NMI Supreme Court would remand appeal from de facto quiet title action to Northern Marianas Land Commission with instructions to amend certificate of title to correspond to boundary determined on appeal. *Estate of Taisacan v. Hattori*, 4 N.M.I. 26 (1993).

NMI District Court Appellate Division lacked jurisdiction to issue remand order to NMI Superior Court, enforcing Appellate Division decision issued in 1987, after Appellate Division received mandate, in 1992, from Ninth Circuit Court of Appeals affirming 1987 decision. Because NMI Superior Court improperly resumed jurisdiction based on Appellate Division mandate, NMI Supreme Court would issue writ of mandamus vacating Superior Court order issued pursuant to improper resumption of jurisdiction. *Villacrusis v. Superior Ct.*, 3 N.M.I. 546 (1993).

Trial court erred in sanctioning attorney without giving him opportunity for hearing concerning his failure to have parties ready for trial or to advise court in advance that defendants would need continuance to obtain new counsel. On remand, unless court found after hearing that attorney acted recklessly, willfully or in bad faith, sanction could not be imposed. *Sonoda v. Villagomez*, 3 N.M.I. 535 (1993).

Because trial court erred in sentencing criminal oral copulation offender to three years imprisonment followed by five years probation, exceeding maximum punishment term of five years imprisonment (including probation) for offense, 6 CMC § 1307(b), appellate court had no recourse but to set aside sentence and remand for resentencing. *Commonwealth v. Oden*, 3 N.M.I. 186 (1992), aff'd, 19 F.3d 26 (9th Cir. 1994).

On remand of action challenging validity of provisions in local gambling initiative enacted pursuant to N.M.I. Const. arts. IX and XXI, if trial court were to rule provisions or regulations adopted thereunder invalid, acts taken pursuant to invalid provisions or regulations would have to be addressed. Actions already taken and completed as of date of remand should be allowed to stand, so long as actions were taken in good faith, in accordance with initiative or regulations adopted thereunder. Opponent of initiative provisions had burden of proving by clear and convincing evidence that party took actions in bad faith or in blatant disregard of the initiative or Commonwealth-wide laws. If actions based on a stricken provision or regulation were pending or in progress on date of remand, trial court could prospectively order actions altered to conform with applicable law, so long as completed portion of action in progress was taken by party in good faith and in accordance with initiative or regulations adopted thereunder. 10 CMC § 2511 et seq. Common*wealth v. Tinian Casino Gaming Control Comm'n*, 3 N.M.I. 134 (1992).

In appeal from trial court ruling recognizing prescriptive easement, trial court's failure to set forth specific findings of fact as to each element of prescriptive easement left NMI Supreme Court with no alternative to remand for specific findings as to each element. Com. R. Civ. P. 52(a). *Olopai v. Fitial*, 3 N.M.I. 101 (1992).

Since trial court judge who heard action involving claim of prescriptive easement was no longer with court, if trial court, on remand, could not make required specific findings of fact from the trial record, trial court directed to conduct a new trial. *Olopai v. Fitial*, 3 N.M.I. 101 (1992).

NMI Supreme Court would remand appeal of attorney disciplinary action to Superior Court for determination of amount of fee improperly accepted by attorney on behalf of one client for work already being performed for another client. *In re Discipline of Lizama*, 2 N.M.I. 360 (1991).

In decision reversing ruling that party lacked standing to bring action challenging Superior Court judge's right to hold office of Presiding Judge (on basis that judge was never appointed and confirmed to the office) as a taxpayer suit pursuant to N.M.I. Const. art. X, § 9, NMI Supreme Court would not remand for ruling on the merits because: (1) the material facts were not in dispute; (2) the question depended wholly on the construction of statutes; and (3) the trial court had already implicitly ruled on the merits and dismissed the action with prejudice. *Mafnas v. Commonwealth*, 2 N.M.I. 248 (1991).

In appeal of probate ruling that administrator was entitled to two-thirds of property in question and claimant was entitled to remaining third, because NMI Supreme Court was unable to determine from record whether partida had been performed, action was remanded to trial court for further fact finding and resolution of issues, including issue of whether partida had been performed. Once issues were determined, trial court was to certify its findings to Supreme Court. *In re Estate of Ayuyu*, 2 N.M.I. 243 (1991).

—Remittitur of Damage Award

See **DAMAGES – Assessment by Jury – Remittitur**

Disqualification of Judges

Apparent violations of 1 CMC § 3308 warrant appropriate appellate review because judicial ethics serve to ensure that all persons who come before the bench are treated fairly, without bias or partiality or the appearance thereof. *Commonwealth v. Kaipat*, 1996 MP 20 ¶ 16

Equitable Remedies

DC App. Div. 1981. Appellate court will not interfere with trial court's resolution of problem in the exercise of its equity power, absent an abuse of discretion, where court returned to plaintiff his investment in land, excluding profits and gave to defendant profits and return of land. *Hemlani v. Villagomez*, 1 CR 203.

Evidence at Trial

The N.M.I. Supreme Court may not reweigh evidence presented to the trial court. 1 CMC § 3101. *Arriola v. Arriola*, 1999 MP 13 ¶ 18

Evidence Not Admitted Below

—Generally

The Supreme Court cannot consider evidence not admitted by the trial court. *Commonwealth Dev. Auth. v. Camacho, et al.*, 2010 MP 19 ¶ 25 (2010).

When a party appeals from a default judgment without first moving to vacate the judgment, and thereby foregoes the opportunity to supplement the record, the Supreme Court cannot then consider any new evidentiary document regardless of its impact or importance. The failure to raise certain defenses specifically may waive those defenses for the purposes of appealing the underlying judgment, and the Court will only consider matters that are part of the record or questions of law. *Commonwealth Dev. Auth. v. Camacho, et al.*, 2010 MP 19 ¶ 25 (2010).

New facts, first presented to the court in a pleading for a Motion for Reconsideration and then in an appeal, cannot be considered in the appeal. *Century Ins. Co., Ltd. v. TAC Int'l Constructors, Inc*., 2006 MP 10 ¶ 2

The Supreme Court may not take new or additional evidence; however, a party may obtain relief in the trial court even where the appellate court has jurisdiction of the appeal. *Office of the Attorney Gen. v. Senido*, 2004 MP 6 ¶ 12

It is inappropriate for NMI Supreme Court to consider evidence on appeal that was not admitted below. 1 CMC § 3103. *Pangelinan v. Itaman*, 4 N.M.I. 114 (1994).

Expert Testimony

DC App. Div. 1983. Whether a witness may testify as an expert is a determination which is within the sound discretion of the trial court and will not be overturned unless there is an abuse of discretion. *CNMI v. Wabol*, 1 CR 782.

Harmless Error

—Administrative Agency Decisions

See **ADMINISTRATIVE LAW – Judicial Review – Harmless Error**

—Generally

Practicality demands that a reviewing court permit a trial judge to correct an earlier misstatement of law. To hold otherwise would undermine a judge's ability to effectively conduct court proceedings. *In Re the Estate of Malite*, 2011 MP 4 ¶ 34 (2011).

If the trial court applied the wrong legal standard, then the Supreme Court will examine the trial court's ruling for harmless error. *Commonwealth v. Hossain*, 2010 MP 21 ¶ 9 (2010).

A trial court decision should be affirmed if the result is correct, even though the court relied upon a wrong ground or the judgment complained of contains an inaccurate or erroneous declaration of law. This rule applies equally to situations in which the trial court properly applied the law but failed to cite an authority for its application of that law. *Salas v. Mafnas*, 2010 MP 9 ¶ 44 (2010).

Erroneous jury instructions that omit an element of an offense are subject to a harmless error analysis. The Commonwealth Rules of Criminal Procedure set forth the harmless error standard and provide that "[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded." Com. R. Crim. P. 52(a). *Commonwealth v. Demapan*, 2008 MP 16 ¶ 45 (2008).

The test for determining whether a trial court error is harmless is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 45 (2008).

The admission of an involuntary statement at trial is not subject to a plain error analysis, but a harmless error analysis. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded. The harmless error concept was developed by appellate courts to embody and implement the truism that no litigant is assured a perfect trial, only a fair one. The harmless error doctrine serves a very useful purpose insofar as it blocks setting aside convictions for small errors or defects that have little, if any, likelihood of having changed the result of the trial. *Commonwealth v. Mettao*, 2008 MP 7 ¶ 26 (2008).

A harmless error standard applies to allegations of insufficient notice in supervised release revocation proceedings. *Commonwealth v. Daikichy*, 2007 MP 27 ¶ 5 (2007).

The failure to specifically identify the statute under which a probation violation was charged was harmless error. *Commonwealth v. Daikichy*, 2007 MP 27 ¶ 16 (2007).

While errors do occur in contested trials, a litigant is assured of a fair trial, not a perfect one. The concept of "harmless error" assures that minor errors which are non-critical to the outcome of a trial will not result in a reversal. Accordingly, an appellate court may excise evidence which has been improperly admitted at trial and examine the untainted evidence to determine whether the same result would occur. *Matsunaga v. Matsunaga*, 2006 MP 25 ¶ 38

Constitutional errors do not require a reversal *per se*. There may be some constitutional errors that are so unimportant and insignificant that they may be deemed harmless. *Commonwealth v. Rabauliman*, 2004 MP 16 ¶ 4

The Court will apply a harmless error standard when there is a Fifth Amendment violation. *Commonwealth v. Rabauliman*, 2004 MP 16 ¶ 6

The standard of review for harmless error in the CNMI is identical to that of the U.S. Supreme Court announced in *United States v. Hasting*, 461 U.S. 499 (1983). The question the reviewing court must ask in determining whether a constitutional error is harmless is whether, absent the prosecutor's allusion to the failure of the defense to proffer evidence, is it clear beyond a reasonable doubt that the jury would

have returned a verdict of guilty? *Commonwealth v. Rabauliman,* 2004 MP 16 ¶ 8

The appellate court may not re-weigh the evidence presented at trial; the court may only review the record under the harmless error standard. *Commonwealth v. Rabauliman,* 2004 MP 16 ¶ 10

A reviewing court must consider the entire record before it prior to reversing a conviction for constitutional errors that may be harmless. *Commonwealth v. Rabauliman,* 2004 MP 16 ¶ 11

The Court will not exert its supervisory powers to reverse a conviction when the error is harmless because the conviction would have been obtained notwithstanding the constitutional error. *Commonwealth v. Rabauliman,* 2004 MP 16 ¶ 14

The harmless error rule of *Chapman* and *Hasting* may not be avoided by an assertion of supervisory power simply to justify a reversal of criminal convictions. *Commonwealth v. Rabauliman,* 2004 MP 16 ¶ 16

If an objection to an improper statement by a prosecutor at trial is timely, the Court will apply a harmless error test to determine whether it is more probable than not that the prosecutor's conduct materially affected the fairness of the trial. *Commonwealth v. Rabauliman,* 2004 MP 12 ¶ 40

No litigant is assured a perfect trial, only a fair one. Since some errors inevitably occur during trial, it is impossible to administer a judicial system in which every error, no matter how minor or non-critical to the outcome, would automatically trigger a new trial, let alone a reversal. Therefore, the doctrine of harmless error enables a reviewing court to remove the evidence objected to and review the remaining evidence to determine whether the same result would assuredly follow. *Commonwealth v. Rabauliman,* 2004 MP 12 ¶ 41

In reviewing a question of the propriety of a prosecutor's statements, the Court's harmless error analysis consists of two parts. First, the Court will determine whether the statements, taken in context, affect a substantial right. If so, the Court will next review the record to determine whether the error was harmless beyond a reasonable doubt. *Commonwealth v. Rabauliman,* 2004 MP 12 ¶ 42

Harmless error is a concept developed by appellate courts to embody and implement the truism that no litigant is assured of a perfect trial, but only a fair one. Since some errors will almost inevitably occur in the pressure cooker that typifies virtually every contested trial, it would be impossible to administer a judicial system in which every trial court error, no matter how minor or how noncritical to the outcome, would automatically trigger a new trial, let alone a reversal. Accordingly, when applied to evidence that has been improperly admitted at trial, the doctrine of harmless error enables a reviewing court to excise the evidence subject to the objection and then examine the untainted evidence to see whether the same result would assuredly follow. *Commonwealth v. Lucas*, 2003 MP 9 ¶ 13

NMI Superior Court may affirm trial court decision on any ground that is supported in the record. *Sablan v. Tenorio,* 4 N.M.I. 351 (1996).

An appellate court has an obligation to determine if the trial court judgment or order is correct even if the court relied upon the wrong ground or reasoning. *Ferreira v. Borja*, 2 N.M.I. 514 (1992), vacated, 1 F.3d 960 (9th Cir. 1993).

A trial court decision should be affirmed if the result is correct, even though the court relied upon a wrong ground or the judgment or order complained of contains an inaccurate or erroneous declaration of law. *In re Estate of Dela Cruz,* 2 N.M.I. 1 (1991).

—Particular Cases

Where it is clear beyond a reasonable doubt that the improper admission of a hearsay statement constituted a harmless error, reversal is unnecessary. *Commonwealth v. Attao,* 2005 MP 8 ¶ 24

Physical evidence presented by the prosecution, testimony of a neutral witness and the statements made by the defendant supported a finding that a reasonable jury would find the defendant guilty beyond a reasonable doubt. *Commonwealth v. Rabauliman,* 2004 MP 16 ¶ 10

—Plea Agreements

The harmless error rule does not apply to the law of contractual plea agreements. *Commonwealth v. Duenas,* 4 N.M.I. 377 (1996).

Interlocutory Appeal

See **CIVIL PROCEDURE – Interlocutory Appeal**

Intervention

DC App. Div. 1988. An intervenor is a real party in interest who has a vested right to appeal an adverse decision. *In re the Matter Duncan*, 3 CR 454, aff'd, 3 CR 587 (DNMI App. Div. 1988).

Invited Error

Doctrine of invited error is applicable where an appellant has either failed to take exception to trial court's rulings or taken position on appellate review inconsistent with that taken in trial court. *In re Estate of Tudela*, 4 N.M.I. 1 (1993), appeal dismissed, 43 F.3d 1479 (9th Cir. 1994).

Issues Not Presented Below

—Constitutional Questions

When a defendant fails to object at trial, we can only consider the question of voluntariness of his statements on appeal if (1) it is one of law not relying on any factual record; (2) a new theory or issue has arisen because of a change in law while the appeal is pending; or (3) plain error occurred and an injustice might otherwise result unless we consider the issue. *Commonwealth v. Mettao*, 2008 MP 7 ¶ 24 (2008).

Reversing a trial court decision under the plain error rule is appropriate only when necessary to safeguard the integrity and reputation of the judicial process or to forestall a miscarriage of justice. *Commonwealth v. Mettao*, 2008 MP 7 ¶ 25 (2008).

——Particular Cases

Constitutional challenge to trial court's application of Restatement provisions would not be considered for first time in appeal of defamation and false light invasion of privacy action because appellants advanced no reason why issues should be entertained for first time on appeal and trial court's application of provisions was not plain error. *Bolalin v. Guam Publications, Inc.*, 4 N.M.I. 176 (1994).

Where defendant in criminal prosecution did not know of jury's ex parte communication with judge during its deliberations, and did not raise issue below, NMI Supreme Court would nonetheless consider issue of whether communication prejudiced defendant in violation of his constitutional rights. *Commonwealth v. Esteves*, 3 N.M.I. 447 (1993).

As an issue of law, not involving issues of fact, constitutional challenge to validity of criminal statute raised for first time on appeal could be considered; NMI Supreme Court would, however, decline to do so because defendant lacked standing to raise issue. *Commonwealth v. Oden*, 3 N.M.I. 186 (1992), aff'd, 19 F.3d 26 (9th Cir. 1994).

NMI Supreme Court would decline to address constitutional issues raised by amicus curiae on appeal where issues were not raised by the parties in the trial court or on appeal. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

Because claim concerning constitutionality of mental illness commitment statute was one of law not relying on any factual record, NMI Supreme Court would consider claim despite fact that issue was not raised in trial court. *In re Seman*, 3 N.M.I. 57 (1992).

Although claim that N.M.I. Const. art. XII violated U.S. Constitutional equal protection guarantee was not raised at trial, claim would be considered on appeal under exception relating to issue of law not relying upon any factual record. *Ferreira v. Borja*, 2 N.M.I. 514 (1992), vacated, 1 F.3d 960 (9th Cir. 1993).

—Disqualification of Judges

Because 1 CMC § 3308(a) and (b)(1) place upon the judge the obligation to identify the existence of grounds for recusal, rather than requiring recusal only in response to a party's motion, NMI Supreme Court will consider recusal issue on appeal even though defendant did not seek the judge's recusal at trial. *Commonwealth v. Kaipat*, 1996 MP 20 ¶ 9

—Generally

As a general rule, the Supreme Court does not hear an issue raised for the first time on appeal, unless it is subject to one of three narrow exceptions: (1) a new theory or issue arises because of a change in the law while the appeal was pending; (2) the issue is only one of law not relying on any factual record; or (3) plain error occurred and an injustice might otherwise result if the appellate court does not consider the issue. *Commonwealth v. Minto*, 2011 MP 14 ¶ 17 (2011).

An appellate court has discretion to review an issue raised for the first time on appeal where: (1) a new theory or issue has arisen due to a change in the law while the appeal was pending; (2) the issue is only one of law not relying on any factual record; or (3) plain error occurred and an injustice might otherwise result if the appellate court does not consider the case. These exceptions are discretionary and narrow.

Saipan Achugao Resort Members Assoc. v. Yoon, 2011 MP 12 ¶ 78 (2011).

An issue is raised and preserved for appeal when it was argued or briefed before the trial court. An issue that is only mentioned in a footnote is not argued or briefed before the trial court, and therefore has not been adequately raised and preserved for appellate review. *Saipan Achugao Resort Members Assoc. v. Yoon*, 2011 MP 12 ¶ 75 (2011).

The Supreme Court will only consider an issue raised for the first time on appeal if: (1) it is one of law not relying on any factual record; (2) a new theory or issue has arisen because of a change in law while the appeal was pending; or (3) plain error occurred and an injustice might otherwise result unless the Court considers the issue. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 58 (2011).

Once an appeal has been taken, the court may only consider an issue raised for the first time on appeal if: (1) it is one of law not relying on any factual record; (2) a new theory or issue has arisen because of a change in law while the appeal was pending; or (3) plain error occurred and an injustice might otherwise result unless the Court considers the issue. *Salas v. Mafnas*, 2010 MP 9 ¶ 47 (2010).

As a general rule, the Supreme Court does not consider issues raised for the first time on appeal. There are, however, three exceptions to this rule: (1) a new theory or issue arises because of a change in the law while the appeal was pending; (2) the issue is only one of law not relying on any factual record; or (3) plain error occurred and an injustice might otherwise result if the appellate court does not consider the issue. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 6 (2010).

Where a purely legal issue is being raised for the first time on appeal, the Supreme Court will not review it if it is necessary to refer to the record, even if the facts already exist in the record. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 7 (2010).

If an oversight occurred and counsel failed to assert a potentially valid defense at trial, an appeal to the Supreme Court is not a valid or appropriate remedy. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 11 (2010).

Appellate courts as a matter of general practice do not consider arguments raised for the first time on appeal. The court has, however, recognized there are three exceptions to the rule precluding appellate review of newly raised issues: (1) a new theory or issue arises because of a change in the law while the appeal was pending; (2) the issue is only one of law not relying on any factual record; or (3) plain error occurred and an injustice might otherwise result if the appellate court does not consider the issue. *Demapan v. Bank of Guam*, 2006 MP 16 ¶ 9

Where a purely legal issue is being raised for the first time on appeal, this Court will not review it if it is necessary to refer to the record, even if the facts already exist in the record. *Demapan v. Bank of Guam*, 2006 MP 16 ¶ 10

An issue may not be raised for the first time on appeal unless: a new theory or issue arose during the pendency of the appeal, due to a change in the law; the issue is legal and does not rely on a factual record; or 'plain error occurred and an injustice might otherwise result' if the appellate court does not consider the issue. *Falcon v. McCue*, 2005 MP 7 ¶ 26

The exception to the general rule that an issue may not be raised for the first time on appeal for a purely legal issue that does not rely on a factual record will not apply despite where the requisite facts are either found by the court or admitted by the parties, unless it is not necessary to rely on the factual record. *Falcon v. McCue*, 2005 MP 7 ¶ 27

The N.M.I. Supreme Court will not consider arguments raised for the first time on appeal unless: a new theory or issue has arisen due to a change in the law while the appeal was pending; the issue is only one of law not relying on any factual record; or plain error occurred and an injustice might otherwise result if the Court does not consider the case. *Mendiola v. Commonwealth Utils. Corp.*, 2005 MP 2 ¶ 24

As a general rule, a defendant's failure to object to the prosecutor's improper statements at trial precludes appellate review. *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 22

The general rule is that issues raised for the first time in a reply are deemed waived. A court clearly has the discretion to reject new issues raised in reply. *Bank of Saipan v. Superior Court (Disqualification of Lamorena)*, 2002 MP 17 ¶ 20

The reason issues raised for the first time in a reply are deemed waived is because it would be manifestly unfair to the parry who, under the rules, has no opportunity for a written response and because it would be unfair to the court itself, which without the benefit of a response to the late-blooming argument, would run the risk of an improvident or ill-advised opinion. *Bank of Saipan v. Superior Court (Disqualification of Lamorena)*, 2002 MP 17 ¶ 20

The court retains jurisdiction to consider arguments raised for the first time in a reply if justice and fairness require their consideration. *Bank of Saipan v. Superior Court (Disqualification of Lamorena)*, 2002 MP 17 ¶ 21

So long as the opponents are given the opportunity to respond, neither they nor the courts are prejudiced by an argument raised for the first time in a reply, thus negating the concerns underlying the general rule. *Bank of Saipan v. Superior Court (Disqualification of Lamorena)*, 2002 MP 17 ¶ 21

An appellate court will generally not discuss an issue not raised below. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 10

Although an appellate court will generally not discuss an issue not raised below, an exception will be made when: an argument raised for the first time on appeal is a new theory or the issue has arisen because of a change in the law while the appeal was pending; the issue raised for the first time on appeal is purely one of law that does not rely on any factual record; or when plain error was committed and an injustice might result unless the appellate court considers the issue. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 10

In order for an appellate court to consider an issue not raised below it is insufficient that plain error occurred, it must also be true that an injustice might result if the court declines to consider the issue. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 15

Issues not raised in a party's opening brief are waived. *Commonwealth v. Arriola*, 2002 MP 8 ¶ 4

Where an appellant does not explore an argument or provide a cogent analysis backed by case law, the N.M.I. Supreme Court may decline to rule on the issue. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 42

Generally, the Supreme Court will dismiss issues that are not discussed and supported in a party's brief, as they are deemed waived and no longer before the Court for decision, however, the Court may address these issues if they are issues of first impression and a discussion would be useful for future lower court application. *Reyes v. Reyes*, 2001 MP 13 ¶ 12

The court may not consider an issue raised for the first time on appeal unless: the issue is one of law not relying on any factual record; a new theory or issue has arisen because of a change in law while the appeal is pending; or plain error occurred and an injustice might otherwise result. *Fitial v. Kim Kyung Duk*, 2001 MP 9 ¶ 10

Even if an issue is purely legal, a court will not automatically entertain such an issue if it is raised for the first time on appeal. *Fitial v. Kim Kyung Duk*, 2001 MP 9 ¶ 10

Normally, the N.M.I. Supreme Court will not entertain an argument raised for the first time one appeal. *Estate of Muna v. Commonwealth*, 2000 MP 2 ¶ 13

Generally, the N.M.I. Supreme Court may not consider an issue raised for the first time on appeal. Only three narrow exceptions exist: where the issue is one of law not relying on any factual record; where a new theory or issue has arisen due to a change in law while the appeal is pending; or where plain error occurred and an injustice might otherwise result unless the issue is reconsidered. *Commonwealth v. Suda*, 1999 MP 17 ¶ 36

The N.M.I. Supreme Court will not automatically entertain an issue raised for the first time on appeal, simply because it is purely legal. It is incumbent upon a party to address its failure to raise an issue below, and the N.M.I. Supreme Court may review an issue of law if, after reviewing for plain error, it concludes that an injustice to the party might result. *Commonwealth v. Suda*, 1999 MP 17 ¶ 37

There are three narrow exceptions to the rule that an appellate court may not consider arguments raised for the first time on appeal: (1) a new theory or issue arises because of a change in the law while the appeal was pending; (2) the issue is only one of law not relying on any factual record; or, (3) plain error occurred and an injustice might otherwise result if the appellate court does not consider the issue. *Commonwealth v. Kaipat*, 1996 MP 20 ¶ 9

NMI Supreme Court may consider an issue raised for the first time on appeal in three situations: (1) where the issue is one of law not relying on any factual record; (2) where a new theory or issue has arisen because of a change of law while the appeal is

pending; or (3) where plain error occurred and an injustice might result unless the Court considers the issue. *Limon v. Camacho*, 1996 MP 18 ¶ 9

NMI Supreme Court may consider an issue raised for the first time on appeal if: (1) it is one of law not relying on any factual record; (2) a new theory or issue has arisen because of a change in law while the appeal was pending; or (3) plain error occurred and an injustice might otherwise result unless Court considers the issue. *Commonwealth v. Santos*, 4 N.M.I. 348 (1996).

NMI Supreme Court may consider an issue raised for first time on appeal if: (1) it is one of law not relying on a factual record; (2) a new theory or issue has arisen because of a change in law while the appeal is pending; or (3) plain error occurred and an injustice might otherwise result if Court does not consider the issue. *Castro v. Hotel Nikko Saipan, Inc.*, 4 N.M.I. 268 (1995), appeal dismissed, 96 F.3d 1259 (9th Cir. 1996).

Where an issue is raised for the first time on appeal, NMI Supreme Court may consider it only if: (1) it is one of law not relying on any factual record; (2) a new theory or issue has arisen because of a change in law while the appeal is pending; or (3) plain error occurred and an injustice might otherwise result. *Cushnie v. Bank of Guam*, 4 N.M.I. 198 (1994).

There are three narrow exceptions to rule that issues raised for first time on appeal will not be considered: (1) new theory or issue arose, during pendency of appeal, due to a change in the law; (2) issue is legal and does not rely on a factual record; or (3) plain error occurred and an injustice might otherwise result if appellate court does not consider issue. *Bolalin v. Guam Publications, Inc.*, 4 N.M.I. 176 (1994).

Simply because an issue being raised for the first time on appeal is purely legal does not automatically mean that NMI Supreme Court will entertain it. While it is incumbent upon a party to address its failure to raise issue below, Court may review an issue of law if, after reviewing for plain error, it concludes that an injustice to a party might otherwise result. *Bolalin v. Guam Publications, Inc.*, 4 N.M.I. 176 (1994).

If an issue is not raised by a party at trial, appellate court may consider it for first time on appeal only if: (1) issue is one of law not relying on any factual record; (2) new theory or issue has arisen because of a change in law while the appeal was pending; or (3) plain error occurred and an injustice might result unless appellate court considers issue. *Hwang Jae Corp. v. Marianas Trading & Dev. Corp.*, 4 N.M.I. 142 (1994).

NMI Supreme Court will not entertain factual issues raised for first time on appeal. *In re Estate of Deleon Castro*, 4 N.M.I. 102 (1994).

On appeal from a grant of summary judgment, a party may not allege a genuine issue of material fact where it failed to raise the issue below. *Riley v. Public Sch. Sys.*, 4 N.M.I. 85 (1994).

An appellate court is bound by an undisputed finding of fact. *Westenberger v. Atalig*, 3 N.M.I. 471 (1993).

If an issue was not raised at trial, appellate court may consider it for the first time on appeal only if: (1) the issue is one of law not relying on any factual record; (2) a new theory or issue has arisen because of a change in the law while the appeal was pending; or (3) plain error occurred and an injustice might otherwise result if the appellate court does not consider the issue. *Santos v. Matsunaga*, 3 N.M.I. 221 (1992).

Generally, an appellate court may not consider arguments raised for the first time on appeal. There are three narrow exceptions to this rule: (1) a new theory or issue arises because of a change in the law while the appeal was pending; (2) the issue is only one of law not relying on any factual record; or (3) plain error occurred and an injustice might otherwise result if the appellate court does not consider the issue. *In re Seman*, 3 N.M.I. 57 (1992).

While ordinarily appellate court will not consider issues raised for the first time on appeal, court may do so if the issue is only one of law not relying on any factual record. *Commonwealth v. Bergonia*, 3 N.M.I. 22 (1992).

Generally, an appellate court may not consider arguments raised for the first time on appeal. There are three narrow exceptions to this rule: (1) a new theory or issue arises because of a change in the law while the appeal was pending; (2) the issue is only one of law not relying on any factual record; or (3) plain error occurred and an injustice might otherwise result if the appellate court does not consider the issue. *Ada v. Sablan*, 1 N.M.I. 415 (1990).

Generally, an appellate court may not take into consideration arguments raised for the first time on appeal. There are three narrow exceptions to this rule: (1) a new theory or issue arises because of a change

in the law while the appeal was pending; (2) the issue is only one of law not relying on any factual record; or (3) plain error occurred and an injustice might otherwise result if the appellate court does not consider the issue. *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362 (1990).

DC App. Div. 1989. Where Government raised the defense of estoppel for the first time on appeal, the Government waived the defense of estoppel. CNMI *v. Micronesian Insurance Underwriters, Inc.*, 3 CR 731.

DC App. Div. 1989. Generally, an appellate court may not take into consideration arguments raised for the first time on appeal, regardless of the standard of review. *CNMI v. Micronesian Insurance Underwriters, Inc.*, 3 CR 731.

DC App. Div. 1989. As a general rule, a federal appellate court does not consider an issue not passed upon below. *CNMI v. Delos Santos*, 3 CR 661.

DC App. Div. 1989. Where the issue is squarely presented and fully briefed and is a recurring issue, the court may wish to dispose of the matter despite the fact that the issue was not presented below. *CNMI v. Delos Santos*, 3 CR 661.

DC App. Div. 1989. The Appellate Court has discretion to decide whether to address an issue not addressed in the trial court where the question is purely a legal one. *CNMI v. Delos Santos*, 3 CR 661.

DC App. Div. 1988. Where party argues on appeal that the court erred in granting a motion for a bifurcated trial, but he never opposed the motion in the lower court, party cannot now oppose it at the appellate level. *Dilutaoch v. C & S Concrete Block Products*, 3 CR 579.

DC App. Div. 1988. Where plaintiff's attorney did not move to excise those portions of the letter which he claims to be prejudicial on appeal, appellate court would not consider the issue as the objection should have been brought at trial. *Dilutaoch v. C & S Concrete Block Products*, 3 CR 579.

DC App. Div. 1987. The appellate court is restricted to the record before it and where issue of post trial motions is not properly before the Court, it cannot consider it. *CNMI v. Ahn*, 3 CR 35.

DC App. Div. 1987. A court of appeals will not address issues raised for the first time on appeal. Although there are exceptions to this rule, it is the appellant's burden to show whether they come within an exception and what the exception is. *CNMI Attorney General v. Cubol*, 3 CR 64.

DC App. Div. 1986. Where issue was not raised in the court below, it need not be addressed on appeal. *Palacios v. Trust Territory of the Pacific Islands*, 2 CR 904, aff'd, 838 F.2d 474 (9th Cir. 1988).

DC App. Div. 1983. Where the defendant challenged for the first time on appeal the competency of the victim to testify, failed to object at the time the victim took the oath, and objected to the government's line of questioning when it attempted to lay a foundation regarding the victim's competency, the trial court did not abuse its discretion by allowing the victim to testify, and the appellate court will refuse to address the issue when it appears for the first time on appeal. *CNMI v. Wabol*, 1 CR 782.

CTC 1989. Generally, an appellate court will not consider an issue not passed upon below. *In the Matter of the Appeal of Camacho*, 3 CR 615.

CTC 1985. Except where a statute allows a trial de novo, appellate review is generally limited to the examination and revision of the proceeding below, and the appellate court will not consider matters not presented and preserved in the lower court. *Palacios v. Trust Territory of the Pacific Islands*, 2 CR 256, aff'd, 2 CR 904 (DNMI App. Div. 1986), aff'd, 838 F.2d 474 (9th Cir. 1988).

——Particular Cases

Where claim that property interest was fee simple rather than tenancy at will was not asserted in Superior Court, opportunity to raise issue in Supreme Court was waived. *Milne v. Estate of Hillblom*, 1997 MP 11 ¶ 15

Where sole issue raised by appellant, not presented to trial court, concerned alleged wrongfulness of defendant/appellee bank's exercise of non-judicial remedy to obtain funds from mortgagor, no exception to rule prohibiting issue from being considered for first time on appeal applied to enable NMI Supreme Court to entertain issue. First, manner in which bank exercised remedy depended upon factual record and was not purely a question of law. Second, appellant alleged no new theory or issue arising from change in law during pendency of appeal. Finally, Court was not persuaded that trial court committed plain error in granting judgment in favor of bank. *Cushnie v. Bank of Guam*, 4 N.M.I. 198 (1994).

Propriety of trial court's grant of attorney's motion to withdraw as counsel would not be considered because party formerly represented by attorney improperly raised issue for first time on appeal, and none of three exceptions permitting appellate court to consider issue raised for first time on appeal were applicable. First, withdrawal of counsel based upon asserted conflict of interest was issue relying in part on factual record, thus not falling within first exception (i.e., issue is one of law not relying on any factual record). Second, party did not argue pertinent intervening change in law, thus not falling within second exception (i.e., new theory or issue has arisen because of change in law while appeal was pending). Third, based on plain error standard of review, granting of motion was not erroneous, thus not falling within third exception (i.e., plain error occurred and injustice might result unless appellate court considers issue). *Hwang Jae Corp. v. Marianas Trading & Dev. Corp.*, 4 N.M.I. 142 (1994).

NMI Supreme Court would not address issue concerning existence of agency relationship, raised first time on appeal, that should have been initiated and litigated before trial court. *Agulto v. Northern Marianas Inv. Group, Ltd.*, 4 N.M.I. 7 (1993).

Since issue of whether trial court's award of restitution to improver of land for value of improvements should have been offset by rental value of land during improver's occupancy was presented for first time on appeal, raising both factual and legal questions, appellate court would not address issue. *Westenberger v. Atalig*, 3 N.M.I. 471 (1993).

NMI Supreme Court would consider issue of whether cockfighting franchise licensee was indispensable party under Com. R. Civ. P. 19 in action challenging Tinian Cockfighting Board's award of exclusive franchise to licensee, despite fact that issue was not raised or considered below, because: (1) issue was purely one of law not relying on disputed factual issues and (2) trial court erred in issuing order affecting licensee's license without giving licensee an opportunity to be heard. *Aquino v. Tinian Cockfighting Bd.*, 3 N.M.I. 284 (1992).

No exception to rule prohibiting appellate court from considering issue raised for first time on appeal applied to permit NMI Supreme Court to consider appellant's claim that deed of gift was invalid for lack of consideration. Plain error had not occurred. No theory or issue arose because of a change in the law while the appeal was pending. Finally, issue was not entirely one of law not relying on any factual record, because it required finding that: (1) there was no consideration provided by grantee; and (2) grantee was not related by blood or affinity to grantor. *Santos v. Matsunaga*, 3 N.M.I. 221 (1992).

Because objection to admission of evidence was withdrawn at trial, issue concerning admission of evidence could not be raised on appeal. *In re Estate of Dela Cruz*, 2 N.M.I. 1 (1991).

Speculative issue not pertinent to central issue concerning the application of NMI Constitutional provision would not be considered on appeal. *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362 (1990).

Although defendant indicated at trial that certain legal issues would be raised on appeal, since issues were not presented to trial court for rulings, there were no rulings to review and issues could not be considered on appeal. *Commonwealth v. Kawai*, 1 N.M.I. 93 (1990).

In order for defendant to raise any question of law on appeal after pleading nolo contendere at trial, he had to reserve the right to do so. Failure to reserve the right to do so is a waiver of the right. *Commonwealth v. Kawai*, 1 N.M.I. 66 (1990), reh'g denied, 1 N.M.I. 93 (1990).

—Jury Instructions: Civil Actions

——Particular Cases

Defendant failed to preserve for appeal the question of whether the trial court erred in its jury instructions where defendant neither offered any jury instructions of his own nor objected to the proposed instructions at the beginning of or during the trial. Com. R. Civ. P. 51. *Jasper v. Quitugua*, 1999 MP 4 ¶ 9

Where party failed to timely object to purported omission in jury instructions or to proffer additional instructions, and there was no indication in record that trial court was aware of an objection and that any objection raised would have been futile, issue concerning purported error in instructions would be deemed waived. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

—Statute of Limitations

——Particular Cases

Where statute of limitations was not raised as an affirmative defense below and there was no basis for raising it on appeal for the first time, NMI Supreme Court declined to address the issue. *Estate of Teregeyo*, 1997 MP 14 ¶ 18

— Sua Sponte

As a general matter, the Supreme Court will not consider issues that were not raised at trial or on appeal. The general rule, however, does not restrict the Court's ability to sua sponte raise and decide issues. A question of law is well within the appellate court's discretion to sua sponte raise, consider, and decide. *Marine Revitalization Corp., et al. v. DLNR*, 2011 MP 2 ¶ 3 (2011).

The party petitioning for a rehearing must specifically bring to the Court's attention any legal error that it believes the Court made. *Marine Revitalization Corp., et al. v. DLNR*, 2011 MP 2 ¶ 5 (2011).

The Supreme Court possesses the inherent authority to sua sponte raise and decide issues that are questions of law that do not turn on disputed facts. *Marine Revitalization Corp., et al. v. DLNR*, 2011 MP 2 ¶ 5 (2011).

—Sufficiency of Evidence: Criminal Cases

If a criminal defendant moves for acquittal at close of government's case in jury trial but fails to renew motion at close of all evidence, on appeal earlier objection to sufficiency of the evidence will be deemed waived. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

Rule that criminal defendant who moves for acquittal at close of government's case in jury trial but fails to renew motion at close of all evidence waives appellate challenge to sufficiency of the evidence is subject to exception where defendant made timely post-trial motion for acquittal pursuant to Com. R. Crim. P. 29(c). *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

Issue Not Raised in Brief or Petition

—**Authority, Lack of Cited**

The Supreme Court will not consider an issue for which the proponent cites no legal authority. *In Re the Estate of Malite*, 2011 MP 4 ¶ 38 (2011).

A statement that an order is being appealed is nothing more than a bare assertion when the issue is not briefed or even raised on appeal, and thus the right to appeal that order is waived under those circumstances. *Commonwealth v. Arriola*, 2002 MP 8 ¶ 8

The C.N.M.I. Supreme Court is not required to address an issue in the absence of cited authority regarding an argument raised on appeal. *Rosario v. Camacho*, 2001 MP 3 ¶ 60

The N.M.I. Supreme Court will not consider an issue for which the proponent cites no legal authority. *Fitial v. Kim Kyung Duk*, 2001 MP 9 ¶ 18

—Generally

As a matter of general practice, the court will not consider arguments raised for the first time on appeal, although there are three exceptions to this rule: (1) a new theory or issue arises because of a change in the law while the appeal was pending; (2) the issue is only one of law not relying on any factual record; or (3) plain error occurred and an injustice might otherwise result if the appellate court does not consider the case. *Manglona v. Commonwealth*, 2005 MP 15 ¶ 39

As a general rule, the appellate court will not consider arguments raised for the first time on appeal unless: either a new theory or issue arises because of a change in the law while the appeal was pending; or the issue is only one of law not relying on any factual record; or plain error occurred and an injustice might otherwise result if the appellate court does not consider the case. *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22 ¶ 21

The court may consider an issue raised for the first time on appeal if: (1) it is one of law not relying on any factual record; (2) a new theory or issue has arisen because of a change in law while the appeal was pending; or (3) plain error occurred and an injustice might otherwise result unless the court considers the issue. *Reyes v. Reyes*, 2004 MP 1 ¶ 87

Generally, where a party does not discuss issues in its brief, they are treated as waived. *I.G.I. Gen. Contractor & Dev., Inc. v. Pub. Sch. Sys.*, 1999 MP 12 ¶ 16

The appellant bears the burden of pointing out clearly and specifically the error asserted on appeal. Where the appellant fails to carry this burden, appellate court need not address his or her argument. *Commonwealth v. Delos Reyes*, 4 N.M.I. 340 (1996).

Generally, where a party does not discuss issues in its brief, they are treated as waived. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

Normally, appellate court will consider an issue as waived or abandoned if it is not argued. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79 (1992).

Contentions raised on appeal that are unsupported by relevant argument will be considered if well-taken on their face. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79 (1992).

——Particular Cases

Despite extraordinary writ petitioners' failure to clearly specify provisions of NMI Constitution that NMI Superior Court allegedly violated in denying them a preliminary examination in criminal prosecution, because petition at least indicated two constitutional provisions and petitioners' substantial rights were implicated, in interest of justice NMI Supreme Court would consider petitioners' claims. *Babauta v. Superior Ct.*, 4 N.M.I. 309 (1995), aff'd, 106 F.3d 406 (9th Cir. 1997).

In absence of cited authority regarding arguments raised in appeal, NMI Supreme Court would not address arguments. *Roberto v. De Leon Guerrero*, 4 N.M.I. 295 (1995).

Because appellant did not, on appeal, raise issue concerning propriety of jury verdicts regarding appellant's liability for fraudulent conveyance of land, NMI Supreme Court would deem issue waived and restrict its review to trial court's disposition of appellant's motions for judgment notwithstanding the verdicts and new trial made with respect to damage verdicts. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

Generally, NMI Supreme Court will dismiss issues that are not discussed and supported in a party's brief. Since appellant did not discuss or analyze issues he presented, court would treat those issues as waived. *In re Blankenship*, 3 N.M.I. 209 (1992).

NMI Supreme Court would consider issues that had not been raised in briefs but were raised at oral argument concerning timeliness of appeal, notice that appellant was appealing particular order, and question of whether imposition of sanctions by trial court judge was void because judge later disqualified himself on ground that his impartiality might reasonably be questioned. Court would consider issues because first two dealt with court's jurisdiction and third concerned important consideration of public confidence in the integrity of the judicial process. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79 (1992).

NMI Supreme Court would disregard typographical error concerning order appealed from in brief and permit appeal from challenged order imposing sanctions. Brief clearly conveyed message that attorney was arguing against order imposing sanctions. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79 (1992).

Although sanctioned attorney did not, in his brief, raise issues concerning legal plausibility of claims that defendant in action below committed torts of intentional interference with contract relations and intentional interference with economic relations in appeal of sanction orders, NMI Supreme Court would nonetheless independently review claims because trial court was clearly wrong in its statement of law concerning claims. Fact that attorney offered little legal analysis of issues involved did not prevent court, in its discretion, from reaching issues. Com. R. Civ. P. 11. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79 (1992).

—Issue Raised by Court

See also **Issues Not Presented Below – Issue Raised by Court**, this topic.

A trial court abuses its discretion if it grants a plaintiff leave to amend a complaint to add the theory of unjust enrichment where there was no express or implied consent by the parties. *Manglona v. Tenorio*, 2004 MP 21 ¶ 3

Generally, the Court will not address an issue unless one of the parties directly appeals it. However, this rule is not without exception. The court may uphold a lower court's ruling upon any evidence in the record whether or not that issue was properly appealed, except in so doing we will not enlarge the rights of a non-appealing party. *Waibel v. Farber*, 2006 MP 15 ¶ 11

Where parties to a stipulation and a hearing officer are operating under an incorrect understanding of the relevant law, plain error is committed and an injustice might result unless the court considers the issue, even if not raised below. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 18

——Particular Cases

In appeal from action challenging apportionment of NMI Senate, brought under federal statute authorizing private civil rights enforcement actions against persons allegedly violating such rights, despite fact that appellee NMI Governor and Legislature had not raised issue concerning whether they were "persons" and therefore amenable to suit under statute, NMI Supreme Court would consider issue because it could affirm trial court decision on any ground supported by record and because issue implicated Court's jurisdiction. 42 U.S.C. § 1983. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

Judgments

DC NMI 1987. Notwithstanding the general rule that the acceptance of the fruits of a judgment is inconsistent with the right to appeal the judgment, an appeal can be taken if it is from a decision on a separate and distinct cause of action. *Wabol v. Muna*, 2 CR 963.

Jurisdiction

See **Standard of Review: Jurisdiction, Generally**, this topic.

Jurisdiction of Appellate Division

The Supreme Court has appellate jurisdiction over judgments and orders of the Superior Court of the Commonwealth. *Hee v. Oh*, 2011 MP 18 ¶ 6 (2011).

The Supreme Court has appellate jurisdiction over judgments and orders of the Superior Court of the Commonwealth. *Commonwealth v. Minto*, 2011 MP 14 ¶ 10 (2011).

DC App. Div. 1984. The Appellate Division of the District Court has jurisdiction of the decisions of the Disciplinary Panel of the Commonwealth Trial Court. 1 CMC §3301. *In Re the Matter Villanueva*, 1 CR 952.

Jury Instructions

—Criminal Cases

A defendant is entitled to reversal, based on the adequacy or completeness of jury instructions on the essential elements of the offense, only for plain error. Plain error is a highly prejudicial error, which affects the defendant's substantial rights. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 18

Jury Verdicts

Civil Actions, see **CIVIL PROCEDURE – Juries**: **Verdicts – Judicial Review**; Damages, see **DAMAGES – Assessment by Jury**.

Mandate

See **APPELLATE PROCEDURE – Mandate**.

Presentation and Reservation of Grounds of Review

NMI Supreme Court will not entertain challenge to the admissibility of testimony based on capacity to testify if appellant failed to object during the proceedings below. *Estate of Ayuyu*, 1996 MP 19 ¶ 23

Remand

See **Determination and Disposition – Remand**, this topic; see also **Reversal – Remand**, this topic.

Retrospective Application of Rule of Law

The general rule is that an appellate court determines questions according to the law prevailing at the time of the appellate decision. *Sablan v. Iginoef*, 1 N.M.I. 190 (1990), appeal dismissed sub nom., *Sablan v. Manglona*, 938 F.2d 970 (9th Cir. 1991).

Reversal

—Remand

CTC 1985. The reversal by an appellate court of a summary judgment is binding only with respect to the existence of a genuine triable controversy and is not a blueprint for all subsequent proceedings upon remand. *Palacios v. Trust Territory of the Pacific Islands*, 2 CR 256, aff'd, 2 CR 904 (App. Div. 1986), aff'd, 838 F.2d 474 (9th Cir. 1988).

CTC 1985. Where the appellate court, on its own motion, proceeded to hear a summary judgment motion for appellant on a new theory and new issue the trial court, on remand, would construe the mandate only as a ruling that a genuine issue of

material fact existed. *Palacios v. Trust Territory of the Pacific Islands*, 2 CR 256, aff'd, 2 CR 904 (App. Div. 1986), aff'd, 838 F.2d 474 (9th Cir. 1988).

Sanctions

DC App. Div. 1989. The trial court's determination of the facts regarding the allegedly improper conduct leading to an award of sanctions pursuant to rule is reviewed under the clearly erroneous standard; whether conduct violated rule governing sanctions is reviewed de novo, and the sanction imposed is reviewed for abuse of discretion. Com.R.Civ.P. 11. *Camacho v. J.C. Tenorio Enterprises*, 3 CR 964, amended, 3 CR 972.

Standard of Review

DC App. Div. 1985. Where trial court's findings are supported by substantial evidence, they should not be disturbed on appeal. *Candelaria v. Yano Enterprises*, Inc., 2 CR 220.

DC App. Div. 1983. Where a question is one of local concern, the decision of the local court should be affirmed unless no tenable theory supports the conclusion. *Manglona v. Camacho*, 1 CR 820.

—Abandonment of Child

See **Standard of Review – Child, Abandonment of Child**, this topic.

—Abuse of Discretion, Generally

Abuse of discretion review is deferential. *Commonwealth v. Hossain*, 2010 MP 21 ¶ 24 (2010).

In cases where the evidence supports the trial court's decision, no abuse of discretion is found. *Manglona v. Commonwealth*, 2010 MP 10 ¶ 31 (2010).

The propriety of the amount of liquidated damages awarded is reviewed for an abuse of discretion. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 29 (2010).

A sentence will not be disturbed on appeal absent a clear indication that the trial court abused its discretion. *Commonwealth v. Camacho*, 2009 MP 1 ¶ 38 (2009).

The Supreme Court reviews the trial court decisions excluding or admitting evidence for abuse of discretion and will reverse only where a ruling to admit or exclude evidence constitutes an abuse of discretion. *Commonwealth v. Camacho*, 2009 MP 1 ¶ 26 (2009).

The use of marital property to pay a debt is a case in which the Supreme Court reviews for an abuse of discretion. The trial court abuses its discretion when it bases its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence. *Bank of Guam v. Ruben*, 2008 MP 22 ¶ 19 (2008).

A trial court's decision to deny a motion seeking a bill of particulars is a matter within the discretion of the trial court, and its decision will not be disturbed in the absence of a showing of prejudice or an abuse of discretion. *Commonwealth v. Castro*, 2008 MP 18 ¶ 10 (2008).

Granting or denying motions for leave to amend are reviewed for an abuse of discretion. *Commonwealth v. Superior Court (JG Sablan, Inc.)*, 2008 MP 11 ¶ 12 (2008).

We review a trial court's denial of a post-conviction motion to withdraw a guilty plea for abuse of discretion. *Commonwealth v. Shimabukuro*, 2008 MP 10 ¶ 22 (2008).

The trial court abuses its discretion when it bases its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence. *Commonwealth v. Shimabukuro*, 2008 MP 10 ¶ 23 (2008).

The denial of a motion to disqualify an attorney or to appoint or not to appoint a special prosecutor is reviewed on an abuse of discretion standard. Under the abuse of discretion standard, we may reverse the trial court if its decision was based on a clearly erroneous finding of material fact or the trial court did not apply the law correctly. *Commonwealth v. Shoiter*, 2007 MP 20 ¶ 16

The control of discovery is entrusted to the sound discretion of the trial court and orders concerning discovery will not be disturbed on appeal in the absence of a clear abuse of discretion. *Estate of Muna v. Commonwealth*, 2007 MP 16 ¶ 6

The trial court must have clearly exceeded the bounds of reason or disregarded rules or principles of law and practice to the substantial detriment of a party to have committed an abuse of discretion. *Estate of Muna v. Commonwealth*, 2007 MP 16 ¶ 6

We review determinations regarding timeliness and neglect, as well as evidentiary rulings for abuse of discretion. We may reverse only if the trial court's decision was based on a clearly erroneous finding of material fact or did not apply the correct law. *Park v. Kim*, 2007 MP 13 ¶ 8

A trial court=s decision to transfer or dismiss an action on the ground of improper venue is reviewed for an abuse of discretion. *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26 ¶ 10

This Court reviews a trial court=s decision to admit exhibits in evidence under the abuse of discretion standard. *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26 ¶ 35

On appeal, the standard of review of a Rule 11 determination is whether the trial court abused its discretion. A trial court abuses its discretion when it clearly exceeds the bounds of reason or disregards rules or principles of law and practice to the substantial detriment of a party or litigant. *Matsunaga v. Matsunaga*, 2006 MP 25 ¶ 41

Whether the defendant made an adequate showing that assistance is reasonably necessary for his defense is left to the discretion of the trial judge, and therefore reviewed on an abuse of discretion basis. *Commonwealth v. Perez*, 2006 MP 24 ¶ 9

We review a trial court's granting of a motion to withdraw a guilty plea for an abuse of discretion. *Commonwealth v. Chen*, 2006 MP 14 ¶ 6

An abuse of discretion exists if the court based its ruling on an erroneous view of the law or on clearly erroneous assessment of the evidence. *Commonwealth v. Chen*, 2006 MP 14 ¶ 18

The N.M.I. Supreme Court reviews the admission or exclusion of evidence for an abuse of discretion. *Commonwealth v. Taitano*, 2005 MP 20 ¶ 26

The N.M.I. Supreme Court reviews the admission of evidence at trial for an abuse of discretion. *Commonwealth v. Taitano*, 2005 MP 20 ¶ 34

The N.M.I. Supreme Court reviews under an abuse of discretion standard the question of whether the Superior Court erred in severing the issue of title from a guardianship matter. *In re Fleming*, 2005 MP 13 ¶ 7

Failure to hold a full evidentiary hearing pursuant to *Kastigar v. U.S.*, 406 U.S. 441 (1972), is reviewed for abuse of discretion. *Commonwealth v.Repeki*, 2004 MP 19 ¶ 17

The appellate court reviews the trial court's decision to grant leave to amend a complaint under an abuse of discretion standard. *Manglona v. Tenorio*, 2004 MP 17 ¶ 11

Denial of defendant's motion for mistrial was not an abuse of discretion when the trial court was present for the entire trial and in the best position to decide the impact of the prosecutor's inflammatory statements, and statements themselves constituted harmless error. *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 65

The trial court's decision to dismiss a traffic citation will be reversed for abuse of discretion if dismissal was based on an erroneous view of the law or a clearly erroneous assessment of the evidence. *Commonwealth v. Jai Hoon Yoo*, 2004 MP 5 ¶ 16

The appellate court will not reverse a trial court order under the Marital Property Act unless the record is devoid of any reasonable evidence to support it. A trial court does not abuse its discretion in valuing the assets of a couples' business based on the balance sheet before it when the parties certified the balance sheet as accurate, the court-appointed auditor was prevented from conducting a separate audit due to the non-cooperation of one spouse, and no other evidence of the value of the business was offered. *Reyes v. Reyes*, 2004 MP 1 ¶ 35

A trial court has abused its discretion if the trial court based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence. *Commonwealth v. Palacios*, 2003 MP 6 ¶ 2

Under the abuse of discretion standard, the Supreme Court will uphold the trial court's ruling unless it was based on a clearly erroneous finding of material fact or the trial court did not apply the correct law. *Highsmith & O'Mallan, P.C. v. Leon Guerrero*, 2003 MP 4 ¶ 2

The rulings of a trial judge on objections made during closing arguments to a jury are reviewed for abuse of discretion. *Bisom v. Commonwealth*, 2002 MP 19 ¶ 3

Whether the trial court erred in denying a motion to file an amended complaint involves amendments to pleadings and is reviewed by the N.M.I. Supreme Court for abuse of discretion. *Manglona v. Commonwealth*, 2002 MP 7 ¶ 14

The trial court's denial of a motion for mistrial is reviewed for abuse of discretion on appeal. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 21

The trial court's denial of a motion for a new trial is reviewed for abuse of discretion. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 22

The N.M.I. Supreme Court reviews the trial court's decision to deny a motion for mistrial, based on claims that news reports may have tainted the jury and resulted in a mistrial, for abuse of discretion, giving substantial weight to the trial court's assessment of the impact of extraneous information. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 117

Absent a clear indication that the trial court has abused its discretion, the N.M.I. Supreme Court generally will not disturb the denial of a motion to reduce a lawful sentence. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 135

Despite misgivings about the appropriateness of a particular sanction, until and unless there is a definite and firm conviction that the court below committed a clear error of judgment in its conclusion, a lower court's decision may not be set aside for abuse of discretion. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 31

A trial court abuses its discretion when it clearly exceeds the bounds of reason or disregards rules or principals of law and practice to the substantial detriment of a party or litigant. *Fitial v. Kim Kyung Duk*, 2001 MP 9 ¶ 2

A judgment will not be disturbed under an abuse of discretion review unless the record is devoid of competent evidence to support the trial court's decision. *Pille v. Sanders*, 2000 MP 10 ¶ 2

Under the abuse of discretion standard, NMI Supreme Court may reverse the trial court if its decision is based on a clearly erroneous finding of material fact, or if it did not apply the correct law. *Ferreira v. Borja*, 1999 MP 2 ¶ 4

Under the abuse of discretion standard, Court may reverse the trial court if its decision is based on a clearly erroneous finding of material fact, or if it did not apply the correct law. *Aldan-Pierce v. Mafnas*, 1999 MP 11 ¶ 3

The scope of review on issues relating to an alleged abuse of discretion is limited to whether there was a manifest or gross abuse of discretion. *Hwang Jae Corp. v. Marianas Trading & Dev. Corp.*, 4 N.M.I. 142 (1994).

Under abuse of discretion standard, appellate court may reverse trial court if trial court's decision was based on a clearly erroneous finding of material fact or trial court did not apply correct law. *Pangelinan v. Itaman*, 4 N.M.I. 114 (1994).

In applying abuse of discretion standard on appeal, appellate court looks to determine whether there has been manifest or gross abuse of discretion by trial court. *Ito v. Macro Energy, Inc.*, 4 N.M.I. 46 (1993).

An abuse of discretion exists if the trial court based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), aff'd, 42 F.3d 546 (9th Cir. 1994).

Scope of review concerning issues relating to exercise of trial court's discretion is limited to whether there has been manifest or gross abuse of discretion. *Robinson v. Robinson*, 1 N.M.I. 81 (1990).

—Abuse of Discretion (Misc.)

It was not an abuse of discretion where CPA accepted a bid that was later corrected to provide additional required equipment with no change to the original bid price. *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶ 29

Generally, a decision to award prejudgment interest is reviewed for an abuse of discretion, unless the award hinges on interpretation of decisional or statutory law. *Manglona v. Commonwealth*, 2005 MP 15 ¶ 41

A court has abused its discretion if it based a ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence, including if a court based a convicted defendant's sentence on impermissible criteria of race or nationality. *Commonwealth v. Jong Hun Lee*, 2005 MP 19 ¶ 11

The trial court's decision to dismiss an information or citation is reviewed for an abuse of discretion. *Commonwealth v. Jai Hoon Yoo*, 2004 MP ¶ 2

Where a traffic citation was issued 5 days after an accident and the defendant failed to raise an objection to the citation prior to trial and then failed to show cause during trial that would warrant relief from waiver of objection, the trial court abused its

discretion by granting defendant relief and dismissing the case with prejudice. *Commonwealth v. Jai Hoon Yoo*, 2004 MP ¶ 16

NMI Supreme Court reviews trial court's interaction with counsel and witnesses during trial for an abuse of discretion. *Roberto v. De Leon Guerrero*, 4 N.M.I. 295 (1995).

Trial court ruling implicating court's power to control its docket would be reviewed for abuse of discretion on appeal. *Ito v. Macro Energy, Inc.*, 4 N.M.I. 46 (1993).

In action by Commonwealth taxpayers seeking to enjoin NMI Director of Finance from disclosing their tax returns and related information to Inspector General of U.S. Department of the Interior in audit, whether trial court should have taken custody and constructive possession of returns and related information was reviewed for abuse of discretion by appellate court. *Sablan v. Inos*, 3 N.M.I. 418 (1993).

—Acquittal

——Motion for Acquittal

Denial of a motion for judgment of acquittal is reviewed de novo. *Commonwealth v. Pua*, 2009 MP 21 ¶ 23 (2009).

The trial court's denial of a motion for acquittal is reviewed de novo. *Commonwealth v. Camacho*, 2009 MP 1 ¶ 36 (2009).

The test for determining whether the trial court properly denied the motion is the same as that for a challenge to the sufficiency to the evidence. The Supreme Court must determine whether any rational trier of fact could have found the essential elements of the crime in question beyond a reasonable doubt. The Court's review must encompass all of the evidence, direct or circumstantial, viewed in the light most favorable to the government. *Commonwealth v. Camacho*, 2009 MP 1 ¶ 36 (2009).

The N.M.I. Supreme Court would review the trial court's grant of a motion for a judgment of acquittal de novo on appeal. *Commonwealth v. Abuy*, 2001 MP 8 ¶ 6

In reviewing the sufficiency of evidence to defeat a motion for judgment of acquittal, the N.M.I. Supreme Court should utilize the same sufficiency of the evidence standard that the trial court used in considering the motion. *Commonwealth v. Abuy*, 2001 MP 8 ¶ 21

Denial of motion for acquittal under Com. R. Crim. P. 29 is reviewed de novo on appeal. Appellate court considers all evidence in light most favorable to government to determine whether any rational trier of fact could have found guilt beyond reasonable doubt on essential elements of offense. *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

NMI Supreme court would review trial court's denial of criminal defendant's motion for acquittal de novo on appeal. Com. R. Crim. P. 29(c). *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

DC App. Div. 1989. In reviewing a denial of a motion for acquittal, the appellate court views the evidence and draws all inferences in favor of the government and asks whether any reasonable trier of fact could have found beyond a reasonable doubt the essential elements of the offense; the test is the same whether the evidence is direct or circumstantial. *CNMI v. Tenorio*, 3 CR 679.

—Administrative Agencies

See **ADMINISTRATIVE LAW – Judicial Review – Standard of Review, Generally and Particular Agencies.**

The Supreme Court's review of a claim that originated in an administrative hearing is governed by the Commonwealth Administrative Procedure Act. The Court does not give deference to the lower court's findings because its review of agency actions is done with the identical guidelines followed by the lower court under the Administrative Procedure Act. In other words, the APA requires the Supreme Court to review the agency's decision de novo without regard to the trial court's findings. Under the APA, the reviewing court is required to set aside agency action, findings, and conclusions found to be contrary to constitutional right, power, privilege, or immunity. *Torres, et al. v. Commonwealth Utilities Corp.*, 2009 MP 14 ¶ 10 (2011).

——Agency Findings

The Supreme Court reviews the trial court's review of agency action de novo; in other words, the court is not bound by the findings of the lower court when it reviews the agency action. *Tano Group, Inc. v. Dep't of Publ. Works, et al.*, 2009 MP 18 ¶ 22 (2009).

The Supreme Court reviews de novo the trial court's review of an agency action. However, because the Court is also reviewing the actions of a Commonwealth administrative agency, it is bound by the constraints of the Commonwealth Administrative Procedure Act ("APA") in its de novo review. 1 CMC § 9112. *Calvo v. NMI Scholarship Advisory Bd.*, 2009 MP 2 ¶ 9 (2009).

DC App. Div. 1986. Appellate Court will affirm administrative agency findings if there is relevant evidence such that a reasonable mind might accept as adequate to support a conclusion. *David v. Camacho*, 2 CR 718.

—Adoption

The Supreme Court reviews the trial court's interpretation of the adoption residency statute de novo. *In the Matter of Y.M.F.V.*, 2011 MP 7 ¶ 9 (2011).

We review the trial court's denial of an adoption petition on the grounds that an adoption is not in the child's best interest under the clearly erroneous standard by determining whether there is any competent evidence in the record to support them. *In re Adoption of N.I.L.S. and D.D.V.*, 2007 MP 31 ¶ 5 (2007).

——Customary

A preponderance of the evidence standard is applied in customary adoption cases. *In Re the Estate of Malite*, 2011 MP 4 ¶ 32 (2011).

The trial court's finding of customary adoption involves a question of fact, which we review to determine if it is clearly erroneous. *In re the Estate of Rios*, 2008 MP 5 ¶ 22 (2008).

Issue of whether trial court could apply preponderance of the evidence standard in determining existence of customary adoption was issue of law, reviewable de novo. *In re Estate of Rofag*, 2 N.M.I. 18 (1991).

Issue of whether trial court's finding of customary adoption was supported by evidence involved question of fact; finding was reviewed to determine if it was clearly erroneous. Com. R. Civ. P. 52(a). *In re Estate of Rofag*, 2 N.M.I. 18 (1991).

—Adverse Possession

Whether a party acquired title to land by adverse possession is a mixed question of law and fact, which the Supreme Court reviews de novo. *In re the Estate of De Castro*, 2009 MP 3 ¶ 37 (2009).

The issue of whether title to real property was acquired by adverse possession presents a mixed question of law and fact, and is reviewed *de novo* on appeal. *Teregeyo v. Fejeran*, 2004 MP 18 ¶ 8

The issue of whether a tenant's actual, continuous, open, visible, notorious, and hostile occupation of land results in adverse possession by the tenant's landlord is a matter of first impression for the Court. *Teregeyo v. Fejeran*, 2004 MP 18 ¶ 13

Issue of whether party acquired title to land by adverse possession presented mixed question of law and fact, reviewed de novo on appeal. *Apatang v. Mundo*, 4 N.M.I. 90 (1994).

—Agency Relationship

Because the material facts from which party urged that agency relationship could be inferred were not in dispute, issue presented question of law, reviewable de novo. *Aldan-Pierce v. Mafnas*, 2 N.M.I. 122 (1991), rev'd, 31 F.3d 756 (9th Cir. 1994), cert. denied, 513 U.S. 1116, 115 S. Ct. 913, 130 L. Ed. 2d 794 (1995).

Because material facts from which party urged that an agency relationship could be inferred were not in dispute, issue presented question of law, reviewable de novo. *Repeki v. MAC Homes (Saipan) Co., Ltd.*, 2 N.M.I. 33 (1991).

—Alimony

The amount of an award of maintenance, spousal support, or alimony is within the sound discretion of the trial court and its determination will not be disturbed on appeal absent a showing of manifest abuse of discretion, or the decision is contrary to the manifest weight of the evidence. The burden is on the appellant to show that the court abused its discretion. *Thornburgh v. Thornburgh*, 1997 MP 27 ¶ 3.

—Alter Ego

——Corporation

Trial court's conclusion that corporation was party's alter ego and therefore liable for party's actions would be reviewed on appeal for sufficiency of

evidence. *United Enters., Inc. v. King*, 4 N.M.I. 304 (1995).

—Appeal Period

Issue of whether thirty-day filing period under 2 CMC § 1541(b), permitting appeal of coastal resources management regulatory agency decisions to Coastal Resources Management Office Appeals Board, was directory rather than mandatory was conclusion of law or matter of statutory interpretation, reviewable de novo on appeal. *Nansay Micronesia Corp. v. Govendo*, 3 N.M.I. 12 (1992).

Issue of whether thirty-day filing period under 2 CMC § 1541(b), permitting appeal of coastal resources management regulatory agency decisions to Coastal Resources Management Office Appeals Board, begins to run only after an aggrieved person has received actual notice of decision was conclusion of law or matter of statutory interpretation, reviewable de novo on appeal. *Nansay Micronesia Corp. v. Govendo*, 3 N.M.I. 12 (1992).

NMI Supreme Court reviews the timeliness of a notice of appeal de novo. *Defunturum v. Saipan Mfrs., Inc.*, 1997 MP 21 ¶ 7.

—Appealability of Order

See **Standard of Review – Judgment, Entry of Judgment**, this topic.

—Arbitrary and Capricious Action

——Generally

Under the Administrative Procedure Act, the court defers to agency decisions. Agency decisions are reviewed on the basis of an arbitrary and capricious standard. *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶ 14

Arbitrary action has been defined in this jurisdiction as characterization of a decision or action taken by an administrative agency or inferior court meaning willful and unreasonable action without consideration or in disregard of facts or without determining principle. Additionally, entirely failing to consider an important aspect of a claim will also render an agency action arbitrary and capricious. *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶ 14

The scope of review under the arbitrary and capricious standard is narrow and a court is not to substitute its judgment for that of an agency. Agency action should be overturned only when the agency has relied on factors the Legislature has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶ 14

There was no arbitrary and capricious conduct where CPA sought professional technical advice from the very start of the Bid Invite process, solicited bids through a Bid Invite that required bidders to meet specific qualifications as to both responsibility and responsiveness, allowed a protest to the bidding process, produced a clear and rational multi-page written decision upholding the award, and provided an appeal process to the CPA Appeals Committee. *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶ 31

Appellate court reviews actions alleged to be arbitrary and capricious under abuse of discretion standard. *In re Blankenship*, 3 N.M.I. 209 (1992).

The term "arbitrary and capricious" characterizes a decision or action taken by an administrative agency or inferior court meaning willful and unreasonable action without consideration or in disregard of facts or without determining principle. *In re Blankenship*, 3 N.M.I. 209 (1992).

The standard of review for an appeal alleging an arbitrary and capricious action is similar to, if not the same as, the abuse of discretion standard. A court will review an action or decision alleged to be arbitrary and capricious to determine whether the action was reasonable and based on information sufficient to support the decision at the time it was made. *In re Blankenship*, 3 N.M.I. 209 (1992).

——Administrative Agencies

See **ADMINISTRATIVE LAW – Judicial Review – Standard of Review, Generally and Particular Agencies**.

—Assumption of Risk

Issue of whether decedent impliedly assumed risks which led to accident resulting in his death involved mixed questions of law and fact, and would therefore be reviewed de novo on appeal. *Ito v. Macro Energy, Inc.*, 4 N.M.I. 46 (1993).

—Attorney Ethics

Issue of whether attorney violated ABA Model Rule of Professional Conduct 1.15 by commingling his client's funds with his own funds without client's knowledge and consent was question of law, reviewable de novo. *In re Discipline of Lizama*, 2 N.M.I. 360 (1991).

Issue of whether attorney violated ABA Model Rules of Professional Conduct 1.7(a) and 2.2 by simultaneously representing himself, client and attorney's mother when they had conflicting interests was question of law, reviewable de novo. *In re Discipline of Lizama*, 2 N.M.I. 360 (1991).

Issue of whether attorney violated ABA Model Rule of Professional Conduct 1.8(a) by entering into business transaction with client without clearly explaining the nature of the transaction and advising the client to seek the advice of independent counsel was question of law, reviewable de novo. *In re Discipline of Lizama,* 2 N.M.I. 360 (1991).

Issue of whether attorney violated ABA Model Rule of Professional Conduct 1.8(e) by providing financial assistance to a client in connection with pending or contemplated litigation was question of law, reviewable de novo. *In re Discipline of Lizama*, 2 N.M.I. 360 (1991).

Issue of whether attorney violated ABA Model Rule of Professional Conduct 1.8(f) by simultaneously receiving fees from his client and a third person concerning the same transaction was question of law, reviewable de novo. *In re Discipline of Lizama*, 2 N.M.I. 360 (1991).

—Attorney's Fees

A court's decision to award attorney's fees is reviewed for abuse of discretion. *Saipan Achugao Resort Members Assoc. v. Yoon*, 2011 MP 12 ¶ 67 (2011).

Whether a party may recover attorney fees paid by his insurer is an issue of law, which the Supreme Court reviews de novo. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 69 (2011).

The Supreme Court reviews the trial court's decision not to award attorney fees for abuse of discretion. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 69 (2011).

An award of attorney fees is reviewed for an abuse of discretion; however, whether the trial court applied the correct legal standard is reviewed de novo. *In the Matter of the Estate of Malite*, 2010 MP 20 ¶ 38 (2010).

The Supreme Court reviews for an abuse of discretion the decision to award attorney's fees. *Century Ins. Co., Ltd. v. Guerrero Bros., Inc., et al.*, 2010 MP 13 ¶ 17 (2010).

The Supreme Court reviews de novo an award of attorney's fees under the Consumer Protection Act, and the Court looks for an abuse of discretion in reviewing the propriety of the amount of fees awarded. Similarly, the Court looks for an abuse of discretion in reviewing an award of costs. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 64 (2010).

We review the award of attorney's fees for an abuse of discretion. Under the abuse of discretion standard, we will uphold the trial court's ruling unless it was based on a clearly erroneous finding of material fact or if the trial court did not apply the correct law. *Triple J Saipan, Inc. v. Sanchez,* 2007 MP 23 ¶ 27

Reasonableness of attorney's fees is reviewed on appeal for abuse of discretion. *Matsunaga v. Matsunaga,* 2006 MP 25 ¶ 27

Review of an award of attorney fees, insofar as it is based on the availability of fees under Article X, Section 9 of the N.M.I. Constitution, involves a question of law and is reviewed de novo. The propriety of the amount of fees is reviewed under an abuse of discretion standard. N.M.I. Const. art. X, § 9. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 4

The trial court's award of attorney fees is reviewed for abuse of discretion. *Pille v. Sanders*, 2000 MP 10 ¶ 4

Whether plaintiff is entitled to damages and attorney's fees is a question of law subject to de novo review. *Bank of Hawaii v. Sablan*, 1997 MP 9 ¶ 4

Trial court's award of attorney's fees is reviewed on appeal for abuse of discretion. *Wabol v. Camacho*, 4 N.M.I. 388 (1996).

On appeal, NMI Supreme Court would review de novo NMI Superior Court's construction of lease provision concerning attorney's fees. *Camacho v. L & T Int'l Corp.*, 4 N.M.I. 323 (1996).

Trial court's award of attorney's fees is reviewed under abuse of discretion standard on appeal. *Pangelinan v. Itaman*, 4 N.M.I. 114 (1994).

Reasonableness of award of attorney's fees under Commonwealth Consumer Protection Act is reviewed under abuse of discretion standard. 4 CMC § 5101 et seq. *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

—Bail

Whether the trial court has the authority to set bail for a defendant who has been found guilty of a crime and is awaiting sentencing is a question of law which the N.M.I. Supreme court will review de novo. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 5

—Bifurcation of Trial

Issue of whether trial court erred in bifurcating trial was subject to review under abuse of discretion standard. *Dilutaoch v. C & S Concrete Block Prods*., 1 N.M.I. 478 (1991).

— Burden of Proof

The Supreme Court reviews de novo whether a party discharged its burden of proof. *Manglona v. Commonwealth*, 2010 MP 10 ¶ 6 (2010).

—Certified Question

A certified legal question from the U.S. District Court is reviewed de novo. *United States v. Borja (Mayor of Tinian)*, 2003 MP 8 ¶ 2

The N.M.I. Supreme Court reviews a certified legal question de novo. *Bank of Saipan v. Carlsmith Ball Wichman Case & Ichiki*, 1999 MP 20 ¶ 5

NMI Supreme Court reviews a certified legal question de novo. *In re Tenth Legislature Bills*, 1998 MP 3 ¶ 1

—Child

——Abandonment of Child

In appeal of adoption proceeding, issue of whether biological father had abandoned children was a legal conclusion, subject to de novo review. *In re Adoption of Olopa*i, 2 N.M.I. 91 (1991).

——Child Support

Whether the trial court correctly calculated a child support award is reviewed for abuse of discretion. The appellant bears the burden of proving that an abuse of discretion occurred. *Pille v. Sanders*, 2000 MP 10 ¶ 2

The N.M.I. Supreme Court reviews the trial court's factual findings on the amount, if any, of retroactive child support to which an appellant is entitled, for clear error, and will not reverse such findings unless the court is left with a firm and definite conviction that a mistake has been made. *Pille v. Sanders*, 2000 MP 10 ¶ 3

Whether the trial court correctly calculated a child support award is subject to review for abuse of discretion and the order will be affirmed unless the record is devoid of competent evidence to support the trial court's decision. *Santos v. Santos*, 2000 MP 9 ¶ 2

——Visitation Rights

Applicable standard to be applied by trial court concerning child visitation rights in divorce proceeding was question of law, freely reviewable on appeal—the same as de novo review. *Robinson v. Robinson*, 1 N.M.I. 81 (1990).

Because NMI statute grants trial court discretion in determination of child visitation rights, court's determination is subject to abuse of discretion standard on appeal. 8 CMC § 1311. *Robinson v. Robinson*, 1 N.M.I. 81 (1990).

To determine that trial court has abused its discretion in establishing child visitation rights, record must be devoid of competent evidence to support the decision. In testing the sufficiency of the evidence it must be taken in the strongest manner in favor of the appellee and in support of the court's findings, and a judgment will not be disturbed when there is any reasonable evidence to support it. 8 CMC § 1311. *Robinson v. Robinson*, 1 N.M.I. 81 (1990).

—Clearly Erroneous

A trial court's award of damages will be upheld unless the decision is clearly erroneous. *Fusco, et al. v. Matsumoto*, 2011 MP 17 ¶ 43 (2011).

The Supreme Court reviews factual findings under the clearly erroneous standard. *Fusco, et al. v. Matsumoto*, 2011 MP 17 ¶ 13 (2011).

To the extent that review of trial court credibility determinations is necessary to resolve a matter, such determinations are considered findings of fact and are subject to a "clearly erroneous" standard of review. *Rebuenog v. Aldan*, 2010 MP 1 ¶ 32 (2010).

A trial court's findings of fact can only be set aside if such findings are clearly erroneous. A finding is clearly erroneous when, even though some evidence supports it, the entire record produced the definite and firm conviction that the court below committed a mistake. The test is whether the trial court could rationally have found as it did, rather than whether the reviewing court would have ruled differently. *Rebuenog v. Aldan*, 2010 MP 1 ¶ 20 (2010).

A ruling is clearly erroneous as a matter of law where the Court is firmly convinced that the lower court has erred in deciding a legal question. *Bank of Saipan v. Superior Ct. (Carlsmith)*, 2001 MP 7 ¶ 16

—Closed Courtroom

The decision to close a portion of a trial is a discretionary one, however, the adequacy of the procedures employed by the court is a question of law, which the Supreme Court reviews de novo. *Commonwealth v. Repeki*, 2003 MP 1 ¶ 3

—Common Law

——Generally

We review *de novo* the legal issue of whether a trial court erred in applying common law. *Matsunaga v. Matsunaga*, 2006 MP 25 ¶ 27

Whether trial court erred in applying common law was legal question reviewed de novo on appeal. *Bolalin v. Guam Publications, Inc.*, 4 N.M.I. 176 (1994).

The nature and applicability of a common law doctrine under which a claim for relief is made are questions of law, reviewable de novo. *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

——Miscellaneous

Whether the trial court correctly applied the law to the facts is a legal question, reviewed de novo. *Pille v. Sanders*, 2000 MP 10 ¶ 3

Whether trial court used proper rule of law applicable to boundary dispute was issue of law reviewed de novo on appeal. *Estate of Taisacan v. Hattori*, 4 N.M.I. 26 (1993).

Whether trial court erred in ruling that Restatement (Second) of Contracts provision was inapplicable in action for termination of lease was question of law, reviewable de novo. *Marianas Pub. Land Corp. v. Guerrero*, 2 N.M.I. 301 (1991).

Whether the law as found by Superior Court in case concerning married woman's rights in property acquired during marriage was the common law as understood and applied in the United States was a question of law, reviewable de novo. 7 CMC § 3401. *Ada v. Sablan*, 1 N.M.I. 415 (1990).

Whether at common law a married woman was entitled to an equitable distribution, upon divorce, of property acquired during marriage was a question of law, reviewable de novo. *Ada v. Sablan*, 1 N.M.I. 415 (1990).

—Condemnation Proceedings

DC App. Div. 1989. The weighing of the evidence in a condemnation proceeding is the main function of the fact-finder and it is not for the appellate court to re-weigh the evidence. *CNMI v. Bordallo*, 3 CR 805.

—Confession

——Voluntariness of Confession

The issue of voluntariness of a criminal defendant's confession is, under a totality of the circumstances test, a mixed question of law and fact, but the ultimate issue of voluntariness is a legal question. Appellate court reviews either issue de novo on appeal. *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

Whether a criminal defendant's confession was voluntary is a mixed question of fact and law. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

—Conflict of Interest

Attorney ethics, see **Standard of Review – Attorney Ethics**, this topic.

—Conflicting Evidence

When reviewing a trial court decision, the Supreme Court will afford particular weight to a trial judge's assessment of conflicting and ambiguous evidence. *In Re the Estate of Malite*, 2011 MP 4, ¶ 49 (2011).

DC App. Div. 1986. On appeal, the appellate court accords particular weight to the trial judge's assessment of conflicting and ambiguous evidence. *EDLF v. Pangelinan*, 2 CR 451.

DC App. Div. 1985. In reviewing findings of fact of the trial court, the appellate court accords particular weight to the trial judge's assessment of conflicting and ambiguous evidence. *Aldan v. Kaipat*., 2 CR 190, aff'd, 794 F.2d 1371 (9th Cir. 1986).

DC App. Div. 1982. The appellate court accords particular weight to the trial judge's assessment of conflicting or ambiguous evidence. Fed.R.Civ.P. 52(a). *In Re the Estate of Taisakan*, 1 CR 326.

—Constitutional Questions

——Generally

Constitutional issues are subject to de novo review on appeal. *Commonwealth v. Minto*, 2011 MP 14 ¶ 21 (2011).

The Supreme Court reviews de novo constitutional and statutory questions. *Marine Revitalization Corp., et al. v. DLNR*, 2010 MP 18 ¶ 11 (2010).

In the CNMI, constitutional issues are subject to de novo review on appeal. This de novo review entails three parts, according to the dictates that the U.S. Supreme Court laid out. First, we determine whether school records in the CNMI are protected by a qualified privilege or a legal equivalent. Second, if we ascertain qualified privilege, we address which legal standard the trial court should use when determining whether to grant in camera review of school records. Finally, we decide whether the trial court applied the correct legal standard. *Commonwealth v. Hossain*, 2010 MP 21 ¶ 9 (2010).

Issues of constitutional and statutory interpretation are reviewed de novo. *In re Estate of Tudela*, 2009 MP 9 ¶ 6 (2009).

Constitutional issues, including whether a trial court order violates a party's right to due process, are subject to de novo review on appeal. *Castro v. Castro*, 2009 MP 8 ¶ 15 (2009).

Constitutional issues are inherently questions of law and are, therefore, reviewed de novo. *Castro v. Castro*, 2009 MP 8 ¶ 11 (2009).

The Supreme Court conducts a de novo review of a case regarding the due process clause of the United States Constitution for the requirement that courts appoint counsel for indigent litigants when they may lose their physical liberty as a result of litigation. *Bank of Guam v. Ruben*, 2008 MP 22 ¶ 5 (2008).

Whether the trial court is required to notify an alleged civil contemnor of his right to counsel pursuant to the Due Process Clauses of the United States and Commonwealth Constitutions is reviewed *de novo*. *Pac. Fin. Corp. v. Muna*, 2008 MP 21 ¶ 5 (2008).

Whether a guilty plea is voluntary and intelligent is a constitutional question and is reviewed *de novo*. *Commonwealth v. Jindawong*, 2008 MP 3 ¶ 5 (2008).

We review issues implicating constitutional rights *de novo*. *Commonwealth v. Daikichy*, 2007 MP 27 ¶ 5 (2007).

The Court reviews constitutional provisions and statutes *de novo*. *N. Marianas Coll. v. Civil Serv. Comm'n II,* 2007 MP 8 ¶ 2

We review whether a guilty plea was voluntary as a constitutional question *de novo*. *Commonwealth v.Chen*, 2006 MP 14 ¶ 5

The constitutional right to due process, including whether an accused is entitled to a jury trial, is reviewed *de novo*. *Commonwealth v. Jong Hun Lee*, 2005 MP 19 ¶ 9

The N.M.I. Supreme Court reviews *de novo* a Superior Court decision in which an appellant alleges a violation of constitutional rights. *In re Fleming*, 2005 MP 13 ¶ 7

Whether the Double Jeopardy Clause at N.M.I. Const. art. I, § 4(e) was violated when a trial judge convicted a defendant for the misdemeanors assault and battery, assault, and disturbing the peace after the jury had found the defendant not guilty of the felonies charged in the same trial is subject to *de novo* review. N.M.I. Const. Art. I § 4(e). *Commonwealth v. Taisacan*, 2005 MP 9 ¶ 17

Whether the offenses of assault and assault and battery are lesser-included offenses of disturbing the peace, so that sentencing a defendant for all three offenses violates the Double Jeopardy Clause at N.M.I. Const. Art I, § 4(e), is a question of law reviewed *de novo*. N.M.I. Const. Art. I, § 4(e). *Commonwealth v. Taisacan*, 2005 MP 9 ¶ 17

Whether there was a violation of an individual's right to equal protection is a constitutional issue and is reviewed *de novo*. *Commonwealth v. Attao*, 2005 MP 8 ¶ 12

Alleged violations of the Confrontation Clause at Article I, section 4(b) of the Constitution of the Northern Mariana Islands are reviewed *de novo*. N.M.I. Const. Art. I, § 4(b). *Commonwealth v. Attao*, 2005 MP 8 ¶ 21

Constitutional issues are subject to *de novo* review on appeal. *Office of the Attorney Gen. v. Estel*, 2004 MP 20 ¶ 10

Constitutional issues are subject to *de novo* review. *Office of the Attorney Gen. v. Estel*, 2004 MP 20 ¶ 18

A question involving the application of the U.S. or N.M.I. Constitution is reviewed *de novo*. *Commonwealth v. Mundo*, 2004 MP 13 ¶ 13

Vagueness challenges that do not implicate First Amendment interests are reviewed in light of the facts of each case. *Commonwealth v. Mundo*, 2004 MP 13 ¶ 17

A question of constitutional law is reviewed de novo on appeal. *Commonwealth v. Deleon Guerrero*, 2003 MP 15 ¶ 4

A question involving the application of the U.S. or N.M.I. Constitution is reviewed de novo. *Commonwealth v. Rapax*, 2003 MP 1 ¶ 3

Allegations of constitutional error are reviewed de novo, but are not necessarily fatal. Reviewing courts normally disregard trial errors that are harmless, unless they are of a structural nature. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 70

On appeal, the burden is on the beneficiary of the constitutional or unconstitutional trial error to prove that there was no injury. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 71

Constitutional issues are subject to de novo review on appeal. *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 10

A trial court's interpretation of a constitutional or statutory provision, such as whether the two-year statute of limitations provision of the Commonwealth Code applies to a claim filed under Article I, Section 3(c) of the N.M.I. Constitution, is reviewed de novo. *Zhang Gui Juan v. Commonwealth*, 2001 MP 18 ¶ 10

The N.M.I. Supreme Court reviews constitutional questions of law de novo. *Ferreira v. Borja*, 1999 MP 23 ¶ 3.

A question involving the interpretation and application of the N.M.I. Constitution or the U.S. Constitution is reviewed de novo. *Triple J. Saipan, Inc. v. Rasiang*, 1999 MP 7 ¶ 2

N.M.I. Supreme Court reviews a challenge to the constitutionality of a statute de novo. *Milne v. Estate of Hillblom*, 1997 MP 11 ¶ 4; *Dela Cruz v. Hotel Nikko Saipan, Inc.*, 1997 MP 16 ¶ 4

NMI Supreme Court reviews de novo a challenge to the constitutionality of a statute. *Limon v. Camacho*, 1996 MP 18 ¶ 2

The constitutionality of a statute is a question of law reviewed de novo. *Commonwealth v. Kaipat*, 4 N.M.I. 292 (1995), aff'd, 94 F.3d 574 (9th Cir. 1996).

NMI Supreme Court's review of constitutional claims is de novo. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993).

Issue raising question concerning constitutionality of statutes was subject to de novo review on appeal. *In re Estate of Tudela*, 4 N.M.I. 1 (1993), appeal dismissed, 43 F.3d 1479 (9th Cir. 1994).

Constitutional questions are subject to de novo review on appeal. *Office of the Attorney General v. Rivera*, 3 N.M.I. 436 (1993).

Constitutional issues are inherently questions of law and are, therefore, subject to de novo review. *Commonwealth v. Tinian Casino Gaming Control Comm'n*, 3 N.M.I. 134 (1992).

A challenge to the constitutionality of a statute is reviewed de novo. *Office of the Attorney General v. Deala*, 3 N.M.I. 110 (1992).

A question involving the application of the U.S. or the NMI Constitution is reviewed de novo. *Commonwealth v. Bergonia*, 3 N.M.I. 22 (1992).

A question involving application of the U.S. Constitution is subject to de novo standard of review. *Commonwealth v. Peters*, 1 N.M.I. 466 (1991).

——Miscellaneous

The trial court's determining that a trial can proceed in English and that a translator is not necessary is reviewed for abuse of discretion. *Commonwealth v. Deleon Guerrero*, 2003 MP 15 ¶ 13

In general, abuse of discretion review applies to limitations placed on counsels' questioning, but when the limitations directly implicate the core values of the Sixth Amendment right to confrontation, review is de novo. *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 32

Whether the trial court violated a defendant's due process rights by not ordering a competency hearing prior to conviction, is reviewed for abuse of discretion. *Commonwealth v. Camacho*, 2002 MP 22 ¶ 2

Whether the trial court violated double jeopardy by convicting a defendant for both Disturbing the Peace and Assault and Battery presents a question of law and is reviewed de novo on appeal. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 2

Whether the trial court violated the confrontation clause by limiting questioning presents a question of law and is reviewed de novo on appeal. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 2

Generally, abuse of discretion review applies to limitations placed on counsel's questioning of a witness, but when the limitations directly implicate the core values of the Sixth Amendment right to confrontation, review is de novo. U.S. Const. amend. VI. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 55

Whether a defendant's due process rights, guaranteed by the Fourteenth Amendment to the Unites States Constitution and Article I, Section 5 of the Constitution of the Northern Mariana Islands, are violated when: he is charged as an aider and abettor and despite the provisions of 6 CMC § 251(d), he is not allowed to present the common law defense of not being a principal; the Commonwealth fails to obtain juvenile court authorization to treat the defendant as an adult; or the defendant is prosecuted by an alleged usurper of the C.N.M.I. Attorney General's prosecutorial power are all constitutional questions which the N.M.I. Supreme Court will review de novo. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 15

Whether double jeopardy bars the defendant's prosecution in the trial court when the Commonwealth has also instituted juvenile proceedings against the defendant implicates a constitutional right and is therefore reviewed de novo by the N.M.I. Supreme Court. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 16

Whether a defendant's Fifth Amendment rights were violated by the prosecution commenting on his post-arrest silence or whether the defendant's due process rights were violated by improper statements of the prosecution are both constitutional questions, which the N.M.I. Supreme Court reviews de novo. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 19

The N.M.I. Supreme Court reviews, de novo, whether the trial court provided an alleged contemnor with due process. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 3

The N.M.I. Supreme Court applies a de novo standard of review to alleged violations of the Confrontation Clause, such as the admission of an out-of-court statement by the wife of a criminal defendant to her treating physician without any showing of unavailability. *Commonwealth v. O'Connor*, 2000 MP 11 ¶ 2

The admissibility, under the medical hearsay exception to the hearsay rule, of an out-of-court statement by the wife of a criminal defendant to her treating physician, identifying the defendant as her assailant is reviewed under the abuse of discretion standard. *Commonwealth v. O'Connor*, 2000 MP 11 ¶ 2

The N.M.I. Supreme Court applies a de novo standard of review to alleged violations of the Confrontation Clause, such as the admission of an out-of-court statement by the wife of a criminal defendant to her treating physician without any showing of unavailability. *Commonwealth v. O'Connor*, 2000 MP 11 ¶ 2

Whether a certification order violated a juvenile criminal defendant's right to due process under the Fourteenth Amendment to the United States Constitution involves constitutional issues, which the N.M.I. Supreme Court reviews de novo. *In re J.J.C.*, 2000 MP 8 ¶ 3

Whether a certification order constitutes an adjudication for purposes of double jeopardy involves constitutional issues, which the N.M.I. Supreme Court reviews de novo. *In re J.J.C.*, 2000 MP 8 ¶ 3

Whether the Commonwealth's adult certification statute, 6 CMC § 5102, violates Article I, Section 4(j)

of the Commonwealth Constitution involves constitutional issues, which the N.M.I. Supreme Court reviews de novo. 6 CMC § 5102; N.M.I. Const. art. I, § 4(j). *In re J.J.C.*, 2000 MP 8 ¶3

Whether trial court's refusal to permit pro se Chamorro defendant to question witnesses in Chamorro violated the Commonwealth Constitution and defendant's right to due process and equal protection of the laws involves constitutional questions and is reviewed de novo by NMI Supreme Court. *Jasper v. Quitugua*, 1999 MP 4 ¶ 2

Whether withdrawal of Attorney General's Office as counsel, AGO's subsequent failure to obtain other counsel for defendant, and AGO's subsequent representation of the Office of the Governor with a theory antagonistic to defendant violated his right to due process of law and a fair trial involve constitutional questions and are reviewed de novo by NMI Supreme Court. *Jasper v. Quitugua*, 1999 MP 4 ¶ 6

The constitutionality of a statute is a question of law reviewed de novo by the NMI Supreme Court. *Commonwealth v. Taisacan*, 1999 MP 8 ¶ 18

Whether, under Article XII, non-Northern Marianas descent heirs may inherit less than permanent or long term interest in land is a question of law reviewable de novo. N.M.I. Const. art. XII. *Estate of Imamura*, 1997 MP 7 ¶ 2

Whether the Superior Court erred in holding that the laws of the Commonwealth sometimes do not require law enforcement agents to knock and announce before conducting a search of homes is a constitutional question which the NMI Supreme Court reviews de novo. *Commonwealth v. Aldan*, 1997 MP 31 ¶ 3

NMI Supreme Court reviews de novo constitutional sufficiency of deportation proceedings. *Office of the Attorney General v. Honrado*, 1996 MP 15 ¶ 3

Issue of whether trial court erred in ordering deportation of nonresident worker who claimed due process right to pursue administrative proceeding for transfer to new employer after alleged assault and battery by former employer would be reviewed de novo on appeal. *Office of the Attorney General v. Paran*, 4 N.M.I. 191 (1994).

Whether issuance of certificate of land title to party's deceased mother based on government survey violated opposing party's due process rights was issue of law, reviewed de novo on appeal. *Estate of Taisacan v. Hattori*, 4 N.M.I. 26 (1993).

Question involving interpretation and application of N.M.I. Const. art. XX, § 1, concerning Commonwealth civil service, was reviewable de novo on appeal. *Manglona v. Civil Service Comm'n*, 3 N.M.I. 243 (1992).

Whether decision denying application to sit for NMI bar examination violated applicant's equal protection rights or was otherwise unconstitutional was issue of law, reviewable de novo. *In re Blankenship*, 3 N.M.I. 209 (1992).

Issue of whether interpretation of thirty-day filing period under 2 CMC § 1541(b), permitting appeal of coastal resources management regulatory agency decisions to Coastal Resources Management Office Appeals Board, as mandatory violated appellant's right to due process of law was conclusion of law or matter of statutory interpretation, reviewable de novo on appeal. *Nansay Micronesia Corp. v. Govendo*, 3 N.M.I. 12 (1992).

Whether the common law doctrine that a wife has no legal existence separate from her husband violated a married woman's equal protection rights under the NMI Constitution and the U.S. Constitution was a question of law, reviewable de novo. *Ada v. Sablan*, 1 N.M.I. 415 (1990).

Whether Superior Court must take into account a constitutional prohibition in rules it devises governing determination of marital property and distribution of such property upon dissolution is a question of law, reviewable de novo. *Ada v. Sablan*, 1 N.M.I. 415 (1990).

—Consumer Protection

Whether Commonwealth Consumer Protection Act has been violated based on particular actions is a legal question, reviewable de novo. 4 CMC § 5101 et seq. *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

—Contempt

The Supreme Court reviews for an abuse of discretion a trial court's contempt finding, including whether a contemnor has failed to adequately assert inability as a defense to civil contempt. *In the Matter of the Estate of Malite*, 2010 MP 20 ¶ 59 (2010).

The right to appellate review normally springs from the imposition of punishment. Where a contempt

order has been issued, but no fine or imprisonment has been imposed, the proceeding is pending in the court below and the contempt order is not appealable. *Kaainoa v. Cabrera*, 2003 MP 18 ¶ 10

Where a fine contains an admixture of civil and criminal elements, the criminal aspect of the order fixes its character for purposes of procedure on review. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

—Continuance

——Grant or Denial of Continuance

NMI Supreme Court reviews for an abuse of discretion Superior Court decision to grant or deny a continuance. *Desince v. Sablan*, 1997 MP 20 ¶ 3

NMI Supreme Court reviews trial court decision to grant or deny a continuance for an abuse of discretion. *Commonwealth v. Cristobal*, 4 N.M.I. 345 (1996).

Appellate court reviews trial court's decision to grant or deny a continuance for an abuse of discretion. *Commonwealth v. Delos Reyes*, 4 N.M.I. 340 (1996).

The denial of a motion for continuance is reviewed on appeal for abuse of discretion. *Hwang Jae Corp. v. Marianas Trading & Dev. Corp.*, 4 N.M.I. 142 (1994).

Issue of whether trial court abused its discretion in denying party's motion for continuance to retain new counsel would be reviewed under abuse of discretion standard on appeal. *Deleon Guerrero v. Nabors*, 4 N.M.I. 31 (1993).

Trial court's ruling denying motion for trial continuance is reviewed for abuse of discretion. *Manglona v. Kaipat*, 3 N.M.I. 322 (1992).

In appeals from eminent domain actions, trial court's denial of landowners' motion for continuance to hire new appraiser and have expert witness testify concerning value of land was subject to review under abuse of discretion standard. *Commonwealth v. Bordallo*, 2 N.M.I. 226 (1991).

The denial of a motion for continuance is subject to review under the abuse of discretion standard. *In re Adoption of Olopai*, 2 N.M.I. 91 (1991).

Issue of whether trial court abused its discretion in denying party's motion for continuance was subject to review under the abuse of discretion standard. *Guerrero v. Guerrero*, 2 N.M.I. 61 (1991).

DC App. Div. 1989. The decision to deny a continuance is left to the sound discretion of the trial court and will not be overturned absent an abuse of that discretion. *CNMI v. Bordallo*, 3 CR 805.

—Contracts

——Generally

Issues of contract interpretation are reviewed de novo. *Fusco, et al. v. Matsumoto*, 2011 MP 17 ¶ 31 (2011).

Interpretation of contract terms is a question of law that the Supreme Court reviews de novo. *Fusco, et al. v. Matsumoto*, 2011 MP 17 ¶ 26 (2011).

Interpretation of contract terms is a question of law reviewable de novo. *Saipan Achugao Resort Members Assoc. v. Yoon*, 2011 MP 12 ¶ 15 (2011).

Whether the non-breaching party to a contract bears the burden of proof to show that it reasonably attempted to mitigate standby costs is a question of law; questions of law are reviewed de novo. *Tano Group, Inc. v. Dep't of Publ. Works, et al.*, 2009 MP 18 ¶ 47 (2009).

In general, factual findings as to what the parties said or did are reviewed under the clearly erroneous standard while principles of contract interpretation applied to the facts are reviewed *de novo*. *Manglona v. Commonwealth*, 2005 MP 15 ¶ 14

On appeal, the N.M.I. Supreme Court reviews application of contract law under the *de novo* standard, and any finding based on extrinsic evidence under the clear error standard. *Manglona v. Commonwealth*, 2005 MP 15 ¶ 14

The appellate court reviews the trial court's application of contract law *de novo*, and any findings based on extrinsic evidence under the clear error standard. *Island Leisure Corp. v. Rasa*, 2004 MP 4 ¶ 2

Interpretation of the terms of a contract is a question of law, reviewable de novo by the NMI Supreme Court. *Pangelinan v. Itaman*, 1996 MP 16 ¶ 2

On appeal, NMI Supreme Court reviews application of contract law under the de novo standard of review and any findings based on extrinsic evidence under the clear error standard of review. *Camacho v. L & T Int'l Corp.*, 4 N.M.I. 323 (1996).

——Miscellaneous

Whether an assignment of a lease constitutes a valid and enforceable contract supported by adequate consideration is a question of law, which the Supreme Court reviews *de novo*. *Stephanson v. Teregeyo*, 2008 MP 13, ¶ 13 (2008).

On appeal, NMI Supreme Court would review de novo NMI Superior Court's construction of lease provision concerning attorney's fees. *Camacho v. L & T Int'l Corp.*, 4 N.M.I. 323 (1996).

In action based on defective workmanship in construction of house, issue of whether plaintiff could independently claim relief for breach of contract, apart from claim for recovery under builder's warranty specified in contract, was question of law, reviewable de novo. *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

—Conveyances

Land Alienation Restriction, see **Standard of Review – Land Alienation Restriction**, this topic.

The interpretation of an assignment is a question of law the Supreme Court reviews de novo. *Pacific Financial Corp. v. Sablan*, 2011 MP 19 ¶ 16 (2011).

Interpretation of deeds is a question of law, which the Supreme Court reviews de novo. *Fusco, et al. v. Matsumoto*, 2011 MP 17 ¶ 24 (2011).

——Generally

The N.M.I. Supreme Court reviews de novo a trial court's finding of that a deed of gift is void for lack of consideration. *Rosario v. Camacho*, 2001 MP 3 ¶ 74

The enforceability of a deed is reviewed de novo. *Benavente v. Marianas Pub. Land Corp.*, 2000 MP 13 ¶ 3

The issue of whether the trial court properly determined that real property was fraudulently obtained is reviewed for clear error. *Benavente v. Marianas Pub. Land Corp.*, 2000 MP 13 ¶ 3

Interpretation of a deed is a question of law, reviewable de novo by the NMI Supreme Court. *Pangelinan v. Itaman*, 1996 MP 16 ¶ 2

Issue of whether contract purporting to convey land was valid was mixed question of law and fact, reviewed de novo on appeal. *Pangelinan v. Itaman*, 4 N.M.I. 114 (1994).

Since trial court's interpretation of contract purporting to convey land included review of extrinsic evidence of related facts, on appeal NMI Supreme Court would review application of contract law de novo and finding of facts under clearly erroneous standard. *Pangelinan v. Itaman*, 4 N.M.I. 114 (1994).

The determination of the validity of a deed is a question of law, subject to de novo review on appeal. *In re Estate of Camacho*, 4 N.M.I. 22 (1993).

Whether trial court erred in determining that party had enforceable lease involved legal question, reviewable de novo on appeal. *Rosario v. Quan*, 3 N.M.I. 269 (1992).

Issue of whether deed of gift was void for lack of consideration involved question of law, reviewed de novo by appellate court. *Santos v. Matsunaga*, 3 N.M.I. 221 (1992).

The issue of whether there has been delivery of a deed of conveyance is a mixed question of law and fact which appellate court reviews de novo. *Cabrera v. Cabrera*, 3 N.M.I. 1 (1992).

Issue of whether trial court erred in concluding that party received land by gift from his father involved mixed questions of law and fact. As such, it was subject to de novo review. *Guerrero v. Guerrero*, 2 N.M.I. 61 (1991).

Issue as to whether agreement between government agency and private party conveyed a cognizable property interest in land in dispute was question of law, subject to de novo review. *Borja v. Rangamar*, 1 N.M.I. 347 (1990).

——Oral Conveyances

Issue as to whether tract of property was orally conveyed was question of fact, subject to clearly erroneous standard of review. *Sablan v. Iginoef*, 1 N.M.I. 190 (1990), appeal dismissed sub nom., Sablan v. Manglona, 938 F.2d 970 (9th Cir. 1991).

—Counsel

——Disqualification of Counsel

NMI Supreme Court reviews a denial of a motion to disqualify counsel under the abuse of discretion standard. *Dela Cruz v. Hotel Nikko Saipan, Inc.*, 1997 MP 16 ¶ 4

Denial of a motion to disqualify counsel is reviewed for abuse of discretion. *Commonwealth v. Oden*, 3 N.M.I. 186 (1992), aff'd, 19 F.3d 26 (9th Cir. 1994).

——Effective Assistance of Counsel

A claim of ineffective assistance of counsel is reviewed *de novo*. *Commonwealth v. Taivero*, 2009 MP 10 ¶ 7; *Commonwealth v. Shimabukuro,* 2008 MP 10 ¶ 7 (2008).

A claim of ineffective assistance of counsel at trial is ordinarily raised by collateral attack upon the conviction and not on direct appeal. We may, however, review the issue on direct appeal, but only where the record is sufficiently complete to decide the issue. *Commonwealth v. Shimabukuro,* 2008 MP 10 ¶ 8 (2008).

Whether defendant in criminal prosecution was denied effective assistance of counsel at trial was mixed question of law and fact, reviewable de novo. *Commonwealth v. Esteves*, 3 N.M.I. 447 (1993).

——Withdrawal of Counsel

The disposition of a motion to withdraw as counsel is reviewed on appeal for abuse of discretion. *Hwang Jae Corp. v. Marianas Trading & Dev. Corp.*, 4 N.M.I. 142 (1994).

—Criminal Due Process Rights

The Supreme Court reviews the trial court's denial of a defendant's request for in camera review of the victim's school records for an abuse of discretion. *Commonwealth v. Hossain*, 2010 MP 21 ¶ 9 (2010).

——Advisement of Rights

Because issue concerning admission into evidence of incriminating statement made during custodial police interrogation implicated adequacy of warnings criminal defendant received regarding his procedural due process rights, NMI Supreme Court would review trial court's admission of evidence de novo. *Commonwealth v. Kaipat*, 4 N.M.I. 300 (1995), aff'd, 91 F.3d 151 (9th Cir. 1996).

Issue of whether NMI Department of Public Safety's advice of constitutional rights form given to criminal defendant prior to questioning adequately apprised defendant of his procedural due process rights was question of law reviewed de novo on appeal. *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

Whether accused was in custody for purposes of determining governmental compliance with duty to apprise accused of his or her procedural due process rights is a question of law. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

——Generally

Whether a defendant received inadequate notice of the charges against him, in violation of his due process rights, is a question of law which the N.M.I. Supreme Court reviews de novo. *Commonwealth v. Martinez*, 2000 MP 5 ¶ 4

When asked to determine whether a criminal defendant's due process rights were violated, NMI Supreme Court employs de novo standard of review on appeal. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), aff'd, 42 F.3d 546 (9th Cir. 1994).

—Criminal Information

Whether the Superior Court erred in dismissing a traffic case that was brought by way of a criminal information instead of a traffic citation is a question of law and is reviewed de novo. *Commonwealth v. Babauta*, 2001 MP 10 ¶ 2

Whether a criminal count is duplicitous is a question of law reviewed de novo on appeal. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

—Criminal Offense

——Lesser Included Offense

Whether the offense of child abuse is a lesser-included offense of second degree murder is reviewed *de novo* on appeal. *Commonwealth v. Manila,* 2005 MP 17 ¶ 12

Whether an offense is a lesser included offense of a charged offense is reviewed *de novo*. *Commonwealth v. Repeki*, 2004 MP 19 ¶ 11

Whether the Superior Court erred in convicting defendant of assault and battery, under 6 CMC § 1202, as a lesser-included offense, where the offense charged was aggravated assault and battery under 6 CMC § 1203 involves a question of law and is reviewable de novo. *Commonwealth v. Mitchell*, 1997 MP 4 ¶ 2

Appellate court determines whether an offense is a lesser included offense of a charged offense de novo. *Commonwealth v. Kaipat*, 4 N.M.I. 300 (1995), aff'd, 91 F.3d 151 (9th Cir. 1996).

——Sentence and Sentencing

The legality of a condition of suspended imposition of sentence is a question of law which is reviewed de novo. *Commonwealth v. Itibus*, 1997 MP 10 ¶ 2

Whether a restitution-probation sentence is illegal involves a question of law and is reviewable de novo. *Commonwealth v. Mitchell*, 1997 MP 4 ¶ 2

NMI Supreme Court reviews the denial of a motion to reduce a lawful sentence for a clear abuse of discretion. *Commonwealth v. Ramangmau*, 1996 MP 17 ¶ 3

—Custom

DC App. Div. 1982. Although the existence of a custom is a mixed question of fact and law which is freely reviewable on appeal, the clear error standard governs the review of factual findings concerning the execution of a partida pursuant to custom. Fed.R.Civ.P.52(a). *In Re the Estate of Taisakan*, 1 CR 326.

—Customary Adoption

See **Standard of Review – Adoption, Customary**, this topic.

—Customary Law

——Generally

Whether the Superior Court imposed a new and erroneous procedure, by requiring the objectors to rebut a presumption that land at issue in a probate was Carolinian land, involves legal issues and is reviewed de novo. *In re Estate of Laropi*, 2002 MP 10 ¶ 8

Whether the Superior Court erroneously determined that certain properties should be distributed in accordance with Carolinian law presents a mixed question of fact and law and is reviewed de novo. *In re Estate of Laropi*, 2002 MP 10 ¶ 9

A trial court's application and interpretation of the customary law of partida is reviewed de novo. *Rosario v. Camacho*, 2001 MP 3 ¶ 42

Issue involving trial court's interpretation of customary law would be reviewed de novo on appeal. *In re Estate of Seman*, 4 N.M.I. 129 (1994).

——Miscellaneous

Whether the trial court erred in determining the elements of the Refaluwasch custom of mwei-mwei and in finding that adoption did not occur under this custom is a mixed question of law and fact, reviewable de novo. Within the context of de novo review, determination of the proper elements of Refaluwasch customary law presents a question of law, while the trial court's factual findings as to the proof of adoption should be affirmed in the absence of clear error. *Estate of Amires*, 1997 MP 8 ¶ 3

Whether the trial court erred in ruling that land was Refaluwasch family land rather than land owned individually by the decedent is a mixed question of law and fact, reviewable de novo. Within the context of de novo review, determination of the proper elements of Refaluwasch customary law and the meaning of family land present questions of law, while the trial court's factual findings as to the the treatment of the land should be affirmed in the absence of clear error. *Estate of Amires*, 1997 MP 8 ¶ 3

Whether the trial court erred in finding that a partida took place is a question of fact reviewable for clear error by the NMI Supreme Court. *Estate of Ayuyu*, 1996 MP 19 ¶ 3

Issue of whether trial court applied correct Chamorro custom regarding paternity in context of inheritance rights of children born out of wedlock was question of law, reviewed de novo on appeal. *Willbanks v. Stein*, 4 N.M.I. 195 (1994), reh'g denied, 4 N.M.I. 205 (1994).

Issue of whether trial court erred in finding that Carolinian family failed to treat disputed land in accordance with Carolinian land tenure custom was mixed question of law and fact, reviewed de novo on appeal. *In re Estate of Rangamar*, 4 N.M.I. 72 (1993).

Issue of whether disputed properties in probate proceeding were subject to Carolinian land custom was mixed question of law and fact, dependent upon how land was acquired and treated. *In re Estate of Rangamar*, 4 N.M.I. 72 (1993).

Whether the law as found by Superior Court in case concerning married woman's rights in property acquired during marriage was consistent with local customary law was a question of law, reviewable de novo. 7 CMC § 3401. *Ada v. Sablan*, 1 N.M.I. 415 (1990).

—Damages

The amount of a party's recoverable damages is a question of fact, and is reviewed under a clearly erroneous standard. *Saipan Achugao Resort Members Assoc. v. Yoon*, 2011 MP 12 ¶ 61 (2011).

The measure of damages upon which that factual computation is based is a question of law and is reviewed de novo. *Saipan Achugao Resort Members Assoc. v. Yoon*, 2011 MP 12 ¶ 61 (2011).

——Award by Court

Punitive Damages, see **Standard of Review – Damages, Punitive Damages**, this topic.

Whether an award of interest was proper, and whether the right interest rate was applied, is a question of law. Questions of law are reviewed de novo. *Tano Group, Inc. v. Dep't of Pub'l. Works, et al.*, 2009 MP 18 ¶ 52 (2009).

A damage award is a finding of fact, and it is reviewed under the clear error standard. A finding of fact is clearly erroneous only when the reviewing court is left with the definite and firm conviction that a mistake occurred. If there are two permissible views of the evidence, the choice of one view over the other is not clearly erroneous. The trial court's assessment of witness credibility can also almost never amount to clear error. Thus, the Supreme Court will not disturb a damage award simply because the court would have awarded damages differently. *Tano Group, Inc. v. Dep't of Pub'l. Works, et al.*, 2009 MP 18 ¶ 29 (2009).

In reviewing a trial court's determination of damages, the N.M.I. Supreme Court examines all issues of law *de novo*. *Manglona v. Commonwealth*, 2005 MP 15 ¶ 47

The lower court's damage award cannot be overturned unless its factual basis is clearly erroneous. *Manglona v. Commonwealth*, 2005 MP 15 ¶ 66

Whether the Superior Court erred as a matter of law in awarding damages for conversion is an issue of law that the N.M.I. Supreme Court reviews *de novo*. *Mendiola v. Commonwealth Utils. Corp.*, 2005 MP 2 ¶ 17

The Superior Court's decision not to award restitution to an appellant is reviewed under the abuse of discretion standard. The underlying findings of fact are reviewed under the clearly erroneous standard. Thus, the N.M.I. Supreme Court will not reverse unless, after reviewing all the evidence, it is left with a firm and definite conviction that a mistake has been made. *Benavente v. Marianas Pub. Land Corp.*, 2000 MP 13 ¶ 4

On appeal, NMI Supreme Court reviews trial court's award of damages for breach of contract to determine whether there has been a manifest or gross abuse of discretion. *Camacho v. L & T Int'l Corp.*, 4 N.M.I. 323 (1996).

A trial court's damage award should be considered excessive only if the amount shocks appellate court's sense of justice or sound judgment. Appellate court will also look to insure that trial judge was not swayed by passion or prejudice. If the damage award passes these subjective tests, then appellate court will review for an abuse of discretion the trial court's choice of a discount rate, inflation rate, and any other figures used in calculating a present value award. *Ito v. Macro Energy, Inc.*, 4 N.M.I. 46 (1993).

——Award by Jury

Punitive Damages, see **Standard of Review – Damages, Punitive Damages**, this topic.

Where damages have been fixed by the verdict of a jury, the appellate court cannot take notice of an assignment of error and disturb the judgment upon the ground that the damages found by the jury were excessive. *Mendiola v. Commonwealth Utils. Corp.*, 2005 MP 2 ¶ 23

A claim that a jury erred in allowing an unreasonable amount of damages must be presented to the trial court in a motion for a new trial before the issue can be raised on appeal. *Mendiola v. Commonwealth Utils. Corp.*, 2005 MP 2 ¶ 23

To determine if jury damage award is grossly excessive, court examines whether award comports with rules for determining measure of damages in tort actions, which are based upon the purposes for which tort actions are maintainable: (a) to give compensation, indemnity or restitution for harms; (b) to determine rights; (c) to punish wrongdoers and deter wrongful conduct; and (d) to vindicate parties and deter retaliation or violent and unlawful self-help. Restatement (Second) of Torts § 901 (1979). *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

Court takes limited review of jury's award of damages to ensure that it does not encroach upon jury's functions. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

A verdict awarding damages is supported by substantial evidence if it could reasonably have been reached by the jury. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

——Generally

The N.M.I. Supreme Court reviews de novo a trial court's conclusion that damages are available as a matter of law. *KTT Corp. v. Tomokane*, 2003 MP 17 ¶ 6

The N.M.I. Supreme Court reviews a trial court's award of damages to see whether the award is clearly erroneous. *KTT Corp. v. Tomokane*, 2003 MP 17 ¶ 6

On review of the trial court's award of damages, the N.M.I. Supreme Court looks to see whether the award is clearly erroneous. Where the only evidence supporting a substantial award is the expert opinion of a witness who could not testify as to the veracity of the documents on which his opinion was based, there is no factual basis for the trial court's award of damages. *KTT Corp. v. Tomokane*, 2003 MP 17 ¶ 30

Whether plaintiff is entitled to damages and attorney's fees is a question of law subject to de novo review. *Bank of Hawaii v. Sablan*, 1997 MP 9 ¶ 4

Damage awards are reviewed under "clearly erroneous" standard on appeal. *Ito v. Macro Energy, Inc.*, 4 N.M.I. 46 (1993).

Trial court's determination regarding damages is a finding of fact and, as such, will not be set aside on appeal unless it is clearly erroneous. Com. R. Civ. P. 52(a). *Ito v. Macro Energy, Inc.*, 4 N.M.I. 46 (1993).

Since trial court's assessment of damages rests on determinations of questions of fact, court's award of damages will not be reversed unless it is clearly erroneous. *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

——Judgment Notwithstanding Verdict, Denial of

Appellate court will reverse denial of motion for judgment notwithstanding jury verdict on damages where verdict is found to be grossly excessive, clearly not supported by the evidence, or based on speculation and guesswork. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

——Miscellaneous

Budgeting Act of 1983, 1 CMC §§ 7101, et seq., is a question of law and is reviewed de novo. N.M.I. Const. art. X, § 9, 1 CMC §§ 7101, et seq. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 3

——Monetary Damages, Taxpayer

Whether a taxpayer can sue a government official for monetary relief under Article X, Section 9 of the Constitution and the Commonwealth Planning and Budgeting Act of 1983, 1 CMC §§ 7101, et seq., is a question of law and is reviewed de novo. N.M.I. Const. Art. X, § 9, 1 CMC §§ 7101, et seq. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 3

——Punitive Damages, Award by Court

We review a trial court's award of punitive damages for abuse of discretion. *Santos v. STS Enters., Inc*., 2005 MP 4 ¶ 29

Appellate courts review *de novo* a trial court's application of the three guideposts to a jury's punitive damages award. *Santos v. STS Enters., Inc*., 2005 MP 4 ¶ 30

On appeal, a trial court's award of punitive damages is reviewed under the abuse of discretion standard. *Young Jo Cho v. Min Wa Cho*, 2002 MP 24 ¶ 8

The N.M.I. Supreme Court reviews a trial court's grant of punitive damages for abuse of discretion. *Rosario v. Camacho*, 2001 MP 3 ¶ 41

Punitive damages award is a finding of fact and will not be set aside on appeal by the NMI Supreme Court

unless it is clearly erroneous. *Mendiola v. Marianas Agupa Enter.*, 1998 MP 10 ¶ 2

Trial court's award of punitive damages is reviewed under abuse of discretion standard on appeal. *Pangelinan v. Itaman*, 4 N.M.I. 114 (1994).

—Default Judgment

The Supreme Court reviews de novo a trial court's determination that a default judgment is void for insufficient service of process. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 17 (2011).

The Supreme Court applies an abuse of discretion standard in reviewing the trial court's grant of a default judgment. Pursuant to the approach espoused by Restatement § 78, the Court only considers issues that are part of the trial court's record or are questions of law; it will not consider any issue that requires it to examine facts that were not established below. *Commonwealth Dev. Auth. v. Camacho, et al.*, 2010 MP 19 ¶ 22 (2010).

——Motion to Vacate

Trial court's decisions under Com. R. Civ. P. 55(c), permitting entry of default to be set aside for good cause shown, are reviewed on appeal for an abuse of discretion. *Roberto v. De Leon Guerrero*, 4 N.M.I. 295 (1995).

——Particular Cases

NMI Supreme Court reviews denial of a motion to set aside a judgment pursuant to Rule 60(b) for an abuse of discretion. *Montecillo v. Di-All Chemical Co.*, 1998 MP 15 ¶ 1

—Defense, Preclusion of

A trial court's ruling to preclude a defendant's proffered defense is reviewed de novo. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 18

—Deportation

Whether the Superior Court has statutory jurisdiction to grant voluntary departure after a deportation case has commenced is a legal issue reviewed de novo. *Office of the Attorney General v. Sagun*, 1999 MP 19 ¶ 3

Issue of whether trial court erred in ordering deportation of nonresident worker who claimed due process right to pursue administrative proceeding for transfer to new employer after alleged assault and battery by former employer would be reviewed de novo on appeal. *Office of the Attorney General v. Paran*, 4 N.M.I. 191 (1994).

—Determination of Ownership

Issue of whether trial court could remand case to NMI Land Commission under statute providing for review of agency's determinations of ownership was question of law, reviewed de novo on appeal. 2 CMC § 4249. *Songao v. Commonwealth*, 4 N.M.I. 186 (1994).

Whether probate court erred in not accepting NMI Land Commission determination of ownership involved question of law and would therefore be reviewed de novo on appeal. *In re Estate of Barcinas*, 4 N.M.I. 149 (1994).

Whether trial court erroneously set aside Trust Territory land title determination was question of law, reviewable de novo. *Pangelinan v. Tudela*, 3 N.M.I. 233 (1992).

Whether trial court erroneously relied upon certificate of title issued by NMI Land Commission in determining ownership of land was question of law, reviewable de novo. *Pangelinan v. Tudela*, 3 N.M.I. 233 (1992).

Issue of whether Trust Territory title determination constituted an administrative adjudication which had become conclusive under res judicata principles was a question of law, reviewable de novo. *In re Estate of Dela Cruz*, 2 N.M.I. 1 (1991).

—Directed Verdict

NMI Supreme Court reviews de novo whether the Superior Court erred in denying motion for a directed verdict. *Commonwealth v. Santos*, 1998 MP 6 ¶ 4

—Discovery Orders

N.M.I. Supreme Court review a trial court's decision not to allow additional discovery for a clear abuse of discretion. *Milne v. Estate of Hillblom*, 1997 MP 11 ¶ 4

Trial court's decision to order disclosure of government witness list in criminal prosecution

would be reviewed for abuse of discretion. *Commonwealth v. Adlaon*, 4 N.M.I. 171 (1994).

The control of discovery is entrusted to the sound discretion of the trial court and orders concerning discovery will not be disturbed on appeal in the absence of a clear abuse of discretion. *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992)

—Dismissal of Civil Action, Involuntary

See also **Standard of Review – Jurisdiction**, this topic.

The Court reviews de novo dismissals under rule 12(b)(6). *Aldan, et al. v. Pangelinan, et al.*, 2011 MP 10 ¶ 4 (2011).

The Supreme Court reviews a trial court's grant of a motion to dismiss de novo. *Century Ins. Co., Ltd. v. Guerrero, et al.*, 2009 MP 16 ¶ 2 (2009).

We review *de novo* an order dismissing a claim under Rule 12(b)(6). *Camacho v. MDC, Inc.*, 2008 MP 8 ¶ 8 (2008).

Dismissal of a complaint for lack of subject matter jurisdiction pursuant to Commonwealth Rule of Civil Procedure 12(b)(1) is subject to *de novo* review on appeal. *Atalig v. Inos*, 2006 MP 1 ¶17

On appeal, a motion to dismiss for failure to state a claim under Commonwealth Rules of Civil Procedure 12(b)(6) is reviewed de novo. Com. R. Civ. P. 12(b)(6). *Guo Qiong He v. Commonwealth*, 2003 MP 3 ¶ 9

The N.M.I. Supreme Court reviews trial court dismissal and summary judgment motions de novo on appeal. *In re Estate of Roberto*, 2002 MP 23 ¶ 4

Whether the lower court abused its discretion in ordering the dismissal with prejudice of appellant's lawsuit for failure to prosecute is reviewed for an abuse of discretion. *Wabol v. Villacrusis*, 2000 MP 18 ¶ 2

In the context of dismissals under Commonwealth Rule of Civil Procedure 41(b), a rule of thumb as to the meaning of the abuse of discretion standard provides that the trial court's exercise of discretion should not be disturbed unless there is a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant factors. Com. R. Civ. P. 41(b). *Wabol v. Villacrusis*, 2000 MP 18 ¶ 19

Whether trial court erred in dismissing complaint for failure to state a claim upon which relief can be granted is reviewed de novo by the NMI Supreme Court. *I.G.I. Gen. Contractor & Dev., Inc. v. Pub. Sch. Sys.*, 1999 MP 12 ¶ 2

Whether trial court erred in dismissing complaint on the ground that plaintiff failed to exhaust administrative remedies is reviewed de novo by the NMI Supreme Court. *I.G.I. Gen. Contractor & Dev., Inc. v. Pub. Sch. Sys.*, 1999 MP 12 ¶ 2

NMI Supreme Court reviews de novo a Rule 12(b)(6) motion. In an appeal from a dismissal for failure to state a claim, factual allegations in the complaint are presumed to be true and are construed in the light most favorable to the plaintiff. *O'Connor v. Div. of Pub. Lands*, 1999 MP 5 ¶ 2

A dismissal under Com. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted is reviewed de novo on appeal. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

Trial court ruling dismissing claim, which should have been based on failure to state a claim upon which relief could be granted, would be reviewed de novo on appeal. Com. R. Civ. P. 12(b)(6). *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

The propriety of a dismissal for failure to state a claim is reviewed de novo on appeal. Com. R. Civ. P. 12(b)(6). *Bolalin v. Guam Publications, Inc.*, 4 N.M.I. 176 (1994).

Dismissal of a complaint for lack of subject matter jurisdiction pursuant to Com. R. Civ. P. 12(b)(1) is subject to de novo review on appeal. *Rivera v. Guerrero*, 4 N.M.I. 79 (1993).

Issue of whether trial court erred in dismissing fraud claim was subject to de novo review since it involved a question of law. *Ada v. K. Sadhwani's, Inc.*, 3 N.M.I. 303 (1992).

The dismissal of a complaint for failure to state a claim for which relief can be granted presents a question of law. As such, the standard of review is de novo. Com. R. Civ. P. 12(b)(6). *Cepeda v. Hefner*, 3 N.M.I. 121 (1992).

A dismissal based on Com. R. Civ. P. 41(b) involves a determination of the merits, rather than an exercise of discretion by the trial court. The usual standards applicable to review of a judgment on the merits in a

nonjury case are controlling. The conclusions of law are freely reviewable, although the findings of fact of the trial court cannot be set aside unless they are clearly erroneous. *Cabrera v. Cabrera*, 3 N.M.I. 1 (1992).

Dismissal of a complaint pursuant to Com. R. Civ. P. 12(b)(6) for failure to state a claim for which relief can be granted raises a question of law which appellate court reviews de novo. *Govendo v. Marianas Pub. Land Corp.*, 2 N.M.I. 482 (1992).

In reviewing the involuntary dismissal of an action pursuant to Com. R. Civ. P. 41(b), appellate court reviews conclusions of law de novo and findings of fact under clearly erroneous standard. *Rogolofoi v. Guerrero*, 2 N.M.I. 468 (1992).

A dismissal for failure to state a claim upon which relief can be granted is reviewed de novo. Com. R. Civ. P. 12(b)(6). *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270 (1991).

On appeal, after trial court's dismissal for failure, upon facts and law, to show a right to relief, conclusions of law are subject to de novo review and findings of fact are subject to clearly erroneous review. Com. R. Civ. P. 41(b). *Castro v. Castro*, 2 N.M.I. 334 (1991).

Whether trial court erred in concluding that petition failed to state a claim for which relief could be granted was a question of law, reviewed de novo. Com. R. Civ. P. 12(b)(6). *In re Adoption of Magofna*, 1 N.M.I. 449 (1990).

DC App. Div. 1985. In the absence of testimony or other evidence as to how defendant's name was entered into plaintiff hospital's data banks, eventually appearing on its cycle billings as "responsible party," the alleged liability of the defendant for decedent's hospital bills is mere conjecture and not established by a preponderance of the evidence; accordingly, the grant of involuntary dismissal under Rule 41(b) was proper. Fed.R. Civ.P. 41(b). *Guam Memorial Hospital v. Dale*, 2 CR 291, aff'd, 811 F.2d 1507 (9th Cir.1987).

DC App. Div. 1985. In reviewing a Rule 41(b) dismissal, an appellate court must view the findings of the trial court in the same manner as those entered at the close of all evidence, determining only whether they are clearly erroneous. Fed.R.Civ.P. 41(b). *Guam Memorial Hospital v. Dale*, 2 CR 291, aff'd, 8 11 F.2d 1507 (9th Cir.1987).

DC App. Div. 1985. Findings made by the trial court when granting an involuntary dismissal at the close of plaintiffs case, which is an adjudication on the merits, should not be overturned unless they are clearly erroneous. Com. Tr. C. R.Civ.Pro. 41 (b). *EDLF v. Arriola*, 2 CR 212.

—— Punitive Damages, Award by Court

An award of punitive damages is also reviewed for an abuse of discretion. An abuse of discretion occurs when the decision rests upon a clearly erroneous finding of fact, an errant conclusion of law or an improper application of law to fact. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 33 (2010).

Whether the amount of punitive damages awarded by the trial court complies with the Due Process Clause of the Fourteenth Amendment is a question of law reviewed de novo. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 33 (2010).

—Dismissal of Criminal Case, Information

The decision to dismiss an information is reviewed for an abuse of discretion. *Commonwealth v. Palacios*, 2003 MP 6 ¶ 2

Dismissal of an indictment is an extraordinary remedy. While a court has the power to dismiss pursuant to its supervisory powers, it is a disfavored remedy. *Commonwealth v. Palacios*, 2003 MP 6 ¶ 8

The propriety of granting a motion to dismiss is a question of law which the NMI Supreme Court reviews de novo. *Commonwealth v. Manglona*, 1997 MP 28 ¶ 2

Dismissal of a criminal case on due process grounds is reviewed de novo on appeal. *Commonwealth v. Adlaon*, 4 N.M.I. 171 (1994).

Trial court's dismissal of criminal case due to government's violation of duty to produce discovery materials would be reviewed for abuse of discretion on appeal. *Commonwealth v. Adlaon*, 4 N.M.I. 171 (1994).

Issue of whether trial court erred in granting motion to suppress evidence and in subsequently dismissing criminal case would be reviewed for abuse of discretion on appeal, in view of court's discretionary power to cure potential violation of due process rule requiring prosecution to disclose requested evidence

favorable to an accused where the evidence is material either to guilt or punishment. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), aff'd, 42 F.3d 546 (9th Cir. 1994).

Trial court's dismissal of criminal information without prejudice under Com. R. Crim. P. 48(a) would be reviewed for abuse of discretion on appeal. *Commonwealth v. Brel*, 4 N.M.I. 200 (1994).

—Disqualification of Judges

The N.M.I. Supreme Court reviews the Superior Court's denial of a motion to disqualify a judge from presiding over a criminal case under the abuse of discretion standard. *Commonwealth v. Caja*, 2001 MP 6 ¶ 2

NMI Supreme Court reviews a trial judge's failure to recuse himself or herself under the abuse of discretion standard. *Commonwealth v. Kaipat*, 1996 MP 20 ¶ 2

— Double Jeopardy

A double jeopardy challenge is a question of law this Court reviews de novo. *Commonwealth v. Peter*, 2010 MP 15 ¶ 4 (2010).

—Documents

The legal nature and effect of a document involves a legal question subject to de novo review on appeal. *In re Estate of Deleon Castro*, 4 N.M.I. 102 (1994).

—Easements

Issue of whether landowner was entitled to change location of access road across adjoining property raised question of law, reviewed de novo on appeal. *Sonoda v. Villagomez*, 4 N.M.I. 34 (1993).

Once easement of necessity is established, issue of whether easement may unilaterally be relocated by owner of dominant tenement raises question of law, reviewed de novo on appeal. *Sonoda v. Villagomez*, 4 N.M.I. 34 (1993).

—Encroachment

Issue of whether land had been encroached upon raised mixed questions of fact and law, reviewed de novo on appeal. *Estate of Taisacan v. Hattori*, 4 N.M.I. 26 (1993).

—Entry of Judgment

See **Standard of Review – Judgment, Entry of Judgment**, this topic.

—Equity

The Supreme Court reviews a court's exercise of its equitable powers for abuse of discretion. An abuse of discretion occurs when the decision rests upon a clearly erroneous finding of fact, errant conclusion of law or an improper application of law to fact. *Saipan Achugao Resort Members Assoc. v. Yoon*, 2011 MP 12 ¶ 41 (2011).

NMI Supreme Court reviews a trial court's exercise of equitable remedies for abuse of discretion. *Pangelinan v. Itaman*, 1996 MP 16 ¶ 2

NMI Supreme Court reviews trial court's exercise of its equitable powers for an abuse of discretion. *Eurotex (Saipan), Inc. v. Muna*, 4 N.M.I. 280 (1995).

Whether trial court erred in failing to rule on equitable remedies prayed for by plaintiffs in their complaint was issue of law, reviewed de novo on appeal. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

Trial court's exercise of its equitable powers is reviewed under abuse of discretion standard on appeal. *Pangelinan v. Itaman*, 4 N.M.I. 114 (1994).

A trial court's use of its equity power will be reviewed on appeal under the abuse of discretion standard. *Rosario v. Quan*, 3 N.M.I. 269 (1992).

—Error

——Cumulative

On appeal, the N.M.I. Supreme Court reviews the cumulative errors in a trial to determine whether the overall effect amounts to prejudice requiring reversal of the defendant's conviction. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 23

—Estoppel

Whether the court erred in deciding estoppel is reviewed under the clearly erroneous standard. *Piteg v. Piteg*, 2000 MP 3 ¶ 2

Issue of whether trial court erred in applying doctrine of estoppel against party was mixed question of law

and fact, reviewable de novo. *Aquino v. Tinian Cockfighting Bd.*, 3 N.M.I. 284 (1992).

Whether Tinian Cockfighting Board's conduct concerning bidder for cockfighting franchise constituted affirmative misconduct, permitting trial court to apply doctrine of estoppel against the Board, was question of law which appellate court would review de novo. *Aquino v. Tinian Cockfighting Bd.*, 3 N.M.I. 284 (1992).

Issue of whether equitable doctrines of laches and estoppel barred party's heirship claim against estate presented mixed question of law and fact which appellate court would review de novo. *In re Estate of Deleon Guerrero*, 3 N.M.I. 253 (1992).

—Evidence

——Admission of Evidence

The Supreme Court reviews a trial court's decision to exclude or admit evidence for an abuse of discretion. *In Re the Estate of Malite*, 2011 MP 4 ¶ 36 (2011).

The Supreme Court uses an abuse of discretion standard to review trial court decisions to exclude or admit evidence. *Commonwealth v. Hossain*, 2010 MP 21 ¶ 22 (2010).

The Supreme Court reviews a trial court's decision pertaining to the admission of evidence for abuse of discretion. An abuse of discretion exists if the trial court based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence. Commonwealth v. Cepeda, 2009 MP 15 ¶ 12 (2009).

The admission of evidence is within the sound discretion of the trial court, and is subject to review for abuse of discretion. An abuse of discretion exists if the trial court based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence. Under this standard, the Supreme Court looks to determine whether there has been manifest or gross abuse of discretion. *Commonwealth v. Zhang*, 2009 MP 6 ¶ 18 (2009).

The admission of evidence is within the sound discretion of the trial court, and is subject to review for abuse of discretion. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 17

——Authentication of Evidence

NMI Superior Court's finding, in probate proceeding, that decedent signed document involved authentication or identification of document. On appeal, NMI Supreme Court would consider whether finding was supported by sufficient evidence. Com. R. Evid. 901(a). *In re Estate of Deleon Castro*, 4 N.M.I. 102 (1994).

——Sufficiency of Evidence, Civil Actions

Questions involving sufficiency of the evidence are legal issues reviewed *de novo* in the Commonwealth. *Torres v. Fitial*, 2008 MP 15 ¶ 7 (2008).

When considering sufficiency of the evidence questions, the court must determine if the evidence, when viewed in a light most favorable to the prevailing party, is sufficient to support the conclusion of the fact-finder. *Torres v. Fitial*, 2008 MP 15 ¶ 7 (2008).

The trial court's legal conclusions and the factual determination that the Department of Labor and Immigration's Hearing Officer's decision was based on substantial evidence are reviewed de novo on appeal. *Ramos V. Magusa, Inc.*, 2002 MP 25 ¶ 2

Sufficiency of the evidence is a question of law, which the N.M.I. Supreme Court reviews de novo, examining the record in the light most favorable to the prevailing party. *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 3

Under sufficiency of evidence standard of review, appellate court determines if the evidence, when viewed in a light most favorable to the prevailing party, is sufficient to support the conclusion of the fact-finder. *United Enters., Inc. v. King*, 4 N.M.I. 304 (1995).

Whether sufficient evidence supports a court's factual finding is a legal conclusion reviewable de novo on appeal. *United Enters., Inc. v. King*, 4 N.M.I. 304 (1995).

Whether sufficient evidence supports a court's finding of fact is a legal conclusion reviewed de novo on appeal. *In re Estate of Deleon Castro*, 4 N.M.I. 102 (1994).

The standard of review for sufficiency of the evidence is whether the evidence, when viewed in a light most favorable to the prevailing party, is sufficient to support the conclusion of the fact finder. *Manglona v. Kaipat*, 3 N.M.I. 322 (1992).

——Sufficiency of Evidence, Criminal Cases

Anyone claiming insufficiency of the evidence faces a nearly insurmountable hurdle. In considering the sufficiency of the evidence, the Court must consider the evidence in the light most favorable to the government and then determine whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Review must encompass all of the evidence, direct or circumstantial. In construing evidence, all reasonable inferences must be drawn in favor of the government, and conflicts in the evidence are to be resolved in favor of the verdict. *Commonwealth v. Minto*, 2011 MP 14 ¶ 38 (2011).

The Court cannot weigh conflicting evidence or consider the credibility of witnesses. The Court is not at liberty to disturb factual findings which hinge on the trial court's assessment of a witness's credibility. The Court will not reverse the finding unless after reviewing all the evidence we are left with a firm and definite conviction that a mistake has been made. *Commonwealth v. Minto*, 2011 MP 14 ¶ 38 (2011).

In considering the sufficiency of the evidence, the Supreme Court cannot weigh conflicting evidence or consider the credibility of witnesses. The Court must consider the evidence in the light most favorable to the government and determine whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Review encompasses all evidence, direct or circumstantial. In construing evidence, all reasonable inferences are to be drawn in favor of the government, and any conflicts in the evidence are to be resolved in favor of the verdict. *Commonwealth v. Guerrero*, 2011 MP 13 ¶ 10 (2011).

The standard of review regarding the sufficiency of the evidence in a criminal case is whether any reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. This standard is highly deferential to the trial court. *Commonwealth v. Guerrero*, 2011 MP 13 ¶ 10 (2011).

Whether there is sufficient evidence to support an assault and battery conviction is reviewed de novo. Although our review encompasses all the evidence from trial, a litigant claiming insufficiency of the evidence faces a nearly insurmountable hurdle. In reviewing a challenge to the sufficiency of the evidence, the court does not re-weigh the evidence, nor does it disregard the determinations of the trier of fact and substitute its judgment for that of the trial court. Rather, the Supreme Court considers the evidence in the light most favorable to the government and determines whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. All reasonable inferences are drawn in favor of the government, and any conflicts in the evidence are resolved in favor of the verdict. *Commonwealth v. Zhang*, 2009 MP 6 ¶ 6 (2009).

When reviewing a non-jury criminal conviction, where the evidence consists largely of oral testimony contradictory in nature, due regard is given by the Supreme Court to the opportunity of the trial court to judge the credibility of the witnesses. The Supreme Court will not reverse the finding unless, after reviewing all the evidence, the court is left with a firm and definite conviction that a mistake has been made. *Commonwealth v. Zhang*, 2009 MP 6 ¶ 6 (2009).

The Supreme Court's review of the sufficiency of evidence is *de novo* and must encompass all of the evidence, direct or circumstantial. *Commonwealth v. Camacho*, 2009 MP 1 ¶ 12 (2009).

The Supreme Court does not re-weigh the evidence; it considers the evidence in the light most favorable to the government and determines whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. The Court will not reverse the finding unless, after reviewing all the evidence, it is left with a firm and definite conviction that a mistake has been made. *Commonwealth v. Camacho*, 2009 MP 1 ¶ 12 (2009).

In reviewing a challenge to the sufficiency of the evidence, the Supreme Court examines the record in the light most favorable to the prosecution to establish whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. The Court may not weigh conflicting evidence or consider the credibility of witnesses. All reasonable inferences are drawn in favor of the government, and any conflicts in the evidence are resolved in favor of the verdict. The Court will not reverse the finding unless, after reviewing all the evidence, it is left with a firm and definite conviction that a mistake has been made. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 35 (2008).

The issue of whether there is sufficient evidence to support Wu's convictions of reckless driving and driving under the influence of alcohol are reviewed *de novo*. Our review must encompass all of the evidence, direct or circumstantial. We do not re-weigh the evidence, but we consider the evidence in the light most favorable to the government and determine whether any reasonable trier of fact could

have found the essential elements of the crime beyond a reasonable doubt. We will not reverse the finding unless, after reviewing all the evidence, we are left with a firm and definite conviction that a mistake has been made. *Commonwealth v. Wu*, 2007 MP 29 ¶ 6 (2007).

The issue of whether there is sufficient evidence to support a conviction of driving under the influence of alcohol is reviewed *de novo*. Our review must encompass all of the evidence, direct or circumstantial. We do not re-weigh the evidence, but we consider the evidence in the light most favorable to the government and determine whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. We will not reverse the finding unless, after reviewing all the evidence, we are left with a firm and definite conviction that a mistake has been made. *Commonwealth v. Andrew*, 2007 MP 25 ¶ 4

The issue of whether there is sufficient evidence to support Li's conviction of reckless driving is reviewed *de novo*. Our review must encompass all of the evidence, direct or circumstantial. We do not re-weigh the evidence, but we consider the evidence in the light most favorable to the government and determine whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. We will not reverse the finding unless, after reviewing all the evidence, we are left with a firm and definite conviction that a mistake has been made. *Commonwealth v. Li*, 2007 MP 21 ¶ 5

The issue of whether there is sufficient evidence to support that Blas drove the truck, and if he did, that he did so while under the influence of alcohol is reviewed *de novo*. *Commonwealth v. Blas*, 2007 MP 17 ¶ 4
Our review must encompass all of the evidence, direct or circumstantial. We do not re-weigh the evidence, but we consider the evidence in the light most favorable to the government and determine whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. We will not reverse the finding unless, after reviewing all the evidence, we are left with a firm and definite conviction that a mistake has been made. *Commonwealth v. Blas*, 2007 MP 17 ¶ 4
An appellate court cannot substitute its own judgment of the credibility of a witness for that of the fact-finder. *Commonwealth v. Blas*, 2007 MP 17 ¶ 8

The issue of whether there is sufficient evidence to support criminal convictions is reviewed *de novo*. *Commonwealth v. Yao*, 2001 MP 12 ¶ 5

Our review must encompass all of the evidence, direct or circumstantial. We do not re-weigh the evidence, but we consider the evidence in the light most favorable to the government and determine whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Commonwealth v. Yao*, 2001 MP 12 ¶ 5

The issue of whether there is sufficient evidence to support appellant's conviction is reviewed *de novo*. A challenge to the sufficiency of the evidence in a criminal case requires the Court to consider the evidence in the light most favorable to the government and to determine whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Commonwealth v. Castro*, 2007 MP 9 ¶ 8

In reviewing the evidence, the Court should not substitute its judgment for that of the jury. *Commonwealth v. Castro*, 2007 MP 9 ¶ 9

The Court must resolve issues of witness credibility in favor of the prosecution, and it is the exclusive function of the jury to determine the credibility of witnesses, resolve evidentiary conflicts, and draw reasonable inference from proven facts. *Commonwealth v. Castro*, 2007 MP 9 ¶ 9

The reviewing court must respect the exclusive province of the jury to determine the credibility of witnesses, resolve evidentiary conflicts, and draw reasonable inferences from proven facts, by assuming that the jury resolved all such matters in a manner which supports the verdict. A jury's credibility determinations are therefore entitled to a high level of deference. *Commonwealth v. Castro*, 2007 MP 9 ¶ 11

The test for sufficiency is whether, in a light most favorable to the government, any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Commonwealth v. Crisostomo*, 2007 MP 7 ¶ 12

The appellate court will not reverse based on sufficiency of the evidence unless, after reviewing all the evidence, it is left with a firm and definite conviction that a mistake has been made. *Commonwealth v. Crisostomo*, 2007 MP 7 ¶ 18

When reviewing a challenge to the sufficiency of the evidence the court will examine the evidence in the light most favorable to the Government and determine whether a rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *Commonwealth v. Taitano,* 2005 MP 20 ¶ 10

An appellant faces a nearly insurmountable hurdle in claiming that the evidence presented at trial could not lead a reasonable juror to find, beyond a reasonable doubt, an accused guilty of the crime for which they were convicted. *Commonwealth v. Taitano,* 2005 MP 20 ¶ 12

On appeal of a criminal conviction for insufficiency of the evidence, the appellate court will not substitute its judgment for that of the jury. *Commonwealth v. Taitano,* 2005 MP 20 ¶ 12

Where a jury reviewed the evidence presented, evaluated credibility, and made a determination that there was no malice aforethought but that the killing was indeed unlawful and that decision produced a conviction for manslaughter, which was reasonable under the circumstances, an appellate court will not retry the case by reconsidering the evidence. *Commonwealth v. Taitano,* 2005 MP 20 ¶ 14

An appellate court resolves issues of witness credibility in favor of the prosecution because it is the exclusive function of the jury to determine the credibility of witnesses, resolve evidentiary conflicts, and draw reasonable inference from proven facts. *Commonwealth v. Taitano,* 2005 MP 20 ¶ 15

A trial court is accorded wide latitude to receive evidence as it sees fit, particularly when the trial court is conducting a bench trial. *Commonwealth v. Taitano,* 2005 MP 20 ¶ 24

Where an appellant elicited and opened the door to the testimony he now assigns as error, he is not entitled to relief. The court will not allow a litigant to take advantage of errors which he himself committed, invited, induced the trial court to commit, or which were the natural consequence of his own neglect or misconduct. *Commonwealth v. Taitano,* 2005 MP 20 ¶ 25

In determining whether a criminal conviction is supported by sufficient evidence, the N.M.I. Supreme Court examines the evidence presented at trial, drawing all reasonable inferences in favor of the Commonwealth, and then examines whether the trier of fact could find that every element of the crime charged was proved beyond a reasonable doubt. *Commonwealth v. Jong Hun Lee,* 2005 MP 19 ¶ 8

An appellant must show that, viewing the evidence in the light most favorable to the government, no reasonable trier of fact could have convicted him. A litigant claiming insufficiency of the evidence faces a nearly insurmountable hurdle. *Commonwealth v. Jong Hun Lee,* 2005 MP 19 ¶ 8

Sufficiency of the evidence in a criminal case is reviewed on appeal by determining whether, after reviewing the evidence in the light most favorable to the prosecution, any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Commonwealth v. Taisacan,* 2005 MP 9 ¶ 17

The N.M.I. Supreme Court reviews the sufficiency of the evidence in a criminal case by determining whether, after reviewing the evidence in the light most favorable to the prosecution, any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Commonwealth v. Attao,* 2005 MP 8 ¶ 27

In assessing whether there is sufficient evidence to prove an element of a crime to determine whether any reasonable trier of fact could find an element beyond a reasonable doubt, the evidence will be reviewed in the light most favorable to the prosecution. *Commonwealth v. Palacios,* 2004 MP 23 ¶ 8

In assessing whether there is sufficient evidence to prove an element of a crime, the Court will review the evidence in the light most favorable to the prosecution to determine whether any reasonable trier of fact could have found that the element was proven beyond a reasonable doubt. *Commonwealth v. Mundo*, 2004 MP 13 ¶ 21

A challenge to the sufficiency of evidence in a criminal case involving the defense of others requires the court to consider the evidence in the light most favorable to the government and to determine whether a reasonable trier of fact could have found beyond a reasonable doubt that defense of others was inapplicable. *Commonwealth v. Deleon Guerrero,* 2004 MP 3 ¶ 7

A challenge to the sufficiency of evidence requires the court to review the evidence in the light most favorable to the government and determine whether any reasonable trier of fact could have found the

essential elements of the crime beyond a reasonable doubt. *Commonwealth v. Lucas*, 2003 MP 9 ¶ 3

To determine the sufficiency of the evidence to support a defendant's conviction, the N.M.I. Supreme Court reviews the record in the light most favorable to the prosecution to determine whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 20

In reviewing a challenge to the sufficiency of the evidence, the N.M.I. Supreme Court will examine the record in the light most favorable to the prosecution to establish whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 108

In reviewing a challenge to the sufficiency of the evidence, all reasonable inferences are to be drawn in favor of the government, and any conflicts in the evidence are to be resolved in favor of the verdict. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 108

On appeal, the court may not weigh conflicting evidence or consider the credibility of witnesses, appeal courts are powerless to question a jury's assessment of a witness' credibility. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 108

On appeal, the N.M.I. Supreme Court cannot disregard a witness's statement unless the testimony is incredible on its face. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 109

Even if there are inconsistencies in the testimony, so long as the testimony is not inherently implausible, the conviction must stand. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 110

The issue of whether sufficient evidence supports defendant's conviction for Promoting Prostitution in the Second Degree is reviewed de novo on appeal. *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 12

In conducting review of sufficiency of the evidence, the N.M.I. Supreme Court determines whether, after examining the evidence presented at trial in a light most favorable to the Commonwealth, and then drawing all reasonable inferences in favor of the Commonwealth, the trier of fact could find that every element of the crime charged had been proved beyond a reasonable doubt. *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 12

A criminal defendant challenging the sufficiency of the evidence faces a nearly insurmountable hurdle, as he or she must demonstrate that, viewing the evidence in the light most favorable to the government, no reasonable trier of fact could have convicted him or her. *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 33

Whether the Commonwealth proved criminal charges beyond a reasonable doubt is reviewed by the N.M.I. Supreme Court de novo. The test of sufficiency of evidence is whether, after the court examines the evidence presented at trial in the light most favorable to the appellee, and then drawing all reasonable inferences in favor of the appellee, a reasonable trier of fact could find that every element of the crimes charged had been proven beyond a reasonable doubt. *Commonwealth v. Seman*, 2001 MP 20 ¶ 6

When reviewing a non-jury criminal conviction, where the evidence consists largely of oral testimony, contradictory in nature, due regard must be given by the Supreme Court to the opportunity of the trial court to judge the credibility of the witnesses. *Commonwealth v. Seman*, 2001 MP 20 ¶ 9

A challenge to the sufficiency of evidence in a criminal case is reviewed by considering the evidence in the light most favorable to the prosecution to determine whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Commonwealth v. Caja*, 2001 MP 6 ¶ 3

A challenge to the sufficiency of evidence in a criminal case requires the Court to consider the evidence in the light most favorable to the Government, and to determine whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Commonwealth v. O'Connor*, 2000 MP 11 ¶ 2

A challenge to the sufficiency of evidence in a criminal case requires the Court to consider the evidence in the light most favorable to the Government, and to determine whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Commonwealth v. O'Connor*, 2000 MP 11 ¶ 2

A challenge to the sufficiency of evidence in a criminal case requires the reviewing court to consider the evidence in the light most favorable to the prosecution, and to determine whether any reasonable trier of fact could have found the essential elements

of the crime beyond a reasonable doubt. *Commonwealth v. Martinez*, 2000 MP 5 ¶ 3

Any discrepancies between an arresting Officers' written and oral testimony represent a credibility issue which the N.M.I. Supreme Court need not evaluate on review. An arresting Officers' testimony is sufficient evidence to support a reasonable trier of fact's finding, beyond a reasonable doubt, that the defendant was under the influence of alcohol. *Commonwealth v. Martinez*, 2000 MP 5 ¶ 26

Whether there is evidence beyond a reasonable doubt that Defendant drove a car while under the influence of alcohol, in violation of 9 CMC § 7105 involves the question of whether there was sufficient evidence to support the conviction. The N.M.I. Supreme Court reviews the evidence in a light most favorable to the prosecution and ascertains whether any reasonable trier of fact could have found each element of the crime charged beyond a reasonable doubt. *Commonwealth v. Scragg*, 2000 MP 4 ¶ 3

Whether there is sufficient evidence to support a conviction for refusing to take a breath test pursuant to 9 CMC § 7106 involves the question of whether there was sufficient evidence to support the convictions. The N.M.I. Supreme Court reviews the evidence in a light most favorable to the prosecution and ascertains whether any reasonable trier of fact could have found each element of the crime charged beyond a reasonable doubt. *Commonwealth v. Scragg*, 2000 MP 4 ¶ 3

In assessing whether there is sufficient evidence to prove an element of a crime, NMI Supreme Court reviews the evidence in the light most favorable to the prosecution to determine whether any reasonable trier of fact could have found the element beyond a reasonable doubt. *Commonwealth v. Delos Reyes*, 4 N.M.I. 340 (1996).

Issue of whether defendant in criminal prosecution presented sufficient unrebutted evidence of necessity to establish a defense was mixed question of law and fact reviewable de novo on appeal. *Commonwealth v. Delos Reyes*, 4 N.M.I. 340 (1996).

A challenge to the sufficiency of the evidence in a criminal case requires the appellate court to consider the evidence in the light most favorable to the government and to determine whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Commonwealth v. Delos Reyes*, 4 N.M.I. 340 (1996).

Issue of whether sufficient evidence supported defendant's conviction for theft would be reviewed de novo on appeal. In conducting review, NMI Supreme Court would view evidence in a light most favorable to the government to determine if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Commonwealth v. Yan*, 4 N.M.I. 334 (1996).

NMI Supreme Court reviews factual findings of the Superior Court in a criminal case for sufficiency of the evidence. *Commonwealth v. Palacios*, 4 N.M.I. 330 (1996).

A challenge to the sufficiency of the evidence in a criminal case requires appellate court to consider the evidence in the light most favorable to the government and to determine whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Commonwealth v. Palacios*, 4 N.M.I. 330 (1996).

Appellate court reviews the sufficiency of the evidence in a criminal case by determining whether, after reviewing the evidence in the light most favorable to the prosecution, any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Commonwealth v. Oden*, 3 N.M.I. 186 (1992), aff'd, 19 F.3d 26 (9th Cir. 1994).

In a challenge to the sufficiency of the evidence in an appeal of a criminal conviction, appellate court must consider evidence in a light most favorable to the government and determine whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Commonwealth v. Bergonia*, 3 N.M.I. 22 (1992).

On a challenge to the sufficiency of the evidence in an appeal of a criminal conviction, appellate court considers the evidence in a light most favorable to the government and determines whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Commonwealth v. Kaniki*, 2 N.M.I. 353 (1991).

On a challenge to the sufficiency of the evidence in appeal of a criminal conviction, the appellate court must consider the evidence in a light most favorable to the government and determine whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Commonwealth v. Kaipat*, 2 N.M.I. 322 (1991).

In reviewing a non-jury criminal conviction, where the evidence consists largely of oral testimony contradictory in nature, due regard should be given to the opportunity of the trial court to judge the credibility of the witnesses. *Commonwealth v. Kaipat*, 2 N.M.I. 322 (1991).

——Suppression of Evidence, Due Process

In general, abuse of discretion review applies to limitations placed on counsels' questioning, but when the limitations directly implicate the core values of the Sixth Amendment right to confrontation, review is de novo. *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 32

In prosecution for theft, issue of whether trial court erred in admitting officer's testimony instead of suppressing evidence for alleged due process violation would be reviewed de novo on appeal. *Commonwealth v. Yan*, 4 N.M.I. 334 (1996).

Denial of motion to suppress evidence based on alleged due process violation is reviewed de novo on appeal. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

Issue of whether trial court order granting motion to suppress evidence in criminal case was founded on asserted due process violation presented question of law, reviewed de novo on appeal. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), aff'd, 42 F.3d 546 (9th Cir. 1994).

Issue of whether trial court erred in granting motion to suppress evidence and in subsequently dismissing criminal case would be reviewed for abuse of discretion on appeal, in view of court's discretionary power to cure potential violation of due process rule requiring prosecution to disclose requested evidence favorable to an accused where the evidence is material either to guilt or punishment. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), aff'd, 42 F.3d 546 (9th Cir. 1994).

——Suppression of Evidence, Motion to Suppress

The Supreme Court reviews a trial court's ruling on a motion to suppress evidence de novo. *Commonwealth v. Pua*, 2009 MP 21 ¶ 11 (2009).

An appellate court may consider evidence first produced at trial when reviewing a trial court's denial of a motion to suppress. In determining whether a district court erred in admitting evidence claimed to have been seized as the result of an unreasonable search, an appellate court will not ordinarily limit itself to the testimony received at a pretrial motion to suppress, but will also consider pertinent testimony given at the trial. The reasoning for these decisions is grounded in the exclusionary rule, which is justified only to the extent that it deters police from violations of constitutional and statutory protections and prevents the prosecution from being put in a better position than it would have been in if no illegality had transpired. Thus, the Supreme Court will consider evidence produced at trial in determining whether the trial court erred in denying a defendant's motion to suppress. *Commonwealth v. Pua*, 2009 MP 21 ¶ 14 (2009).

The denial of a motion to suppress the results of two field sobriety tests and a Breathalyzer test is subject to de novo review. *Commonwealth v. Suda*, 1999 MP 17 ¶ 2

—Evidentiary Ruling

——Generally

Where an appellant is concerned that he was unable to introduce evidence of witness' prior bad acts with the repetition and shock value he desired, he will not succeed if the trial court has permissibly allowed some evidence of the prior bad acts. Trial courts are permitted wide discretion in admitting evidence. *Commonwealth v. Taitano*, 2005 MP 20 ¶ 35

The N.M.I. Supreme Court reviews trial court decisions excluding or admitting evidence for abuse of discretion. *Santos v. STS Enters., Inc*., 2005 MP 4 ¶ 15

The decision to admit or exclude evidence is within the sound discretion of the trial court. An appellant has the burden of showing that the trial court clearly abused its discretion. *Santos v. STS Enters., Inc*., 2005 MP 4 ¶ 15

The appellate court will not disturb a trial court's determinations of credibility. *Reyes v. Reyes*, 2004 MP 1 ¶ 53

The trial court's decision to admit or exclude evidence is reviewed for abuse of discretion on appeal. *KTT Corp. v. Tomokane*, 2003 MP 17 ¶ 6

Generally, abuse of discretion review applies to limitations placed on counsel's questioning of a witness, but when the limitations directly implicate the core values of the Sixth Amendment right to

confrontation, review is de novo. U.S. Const. amend. VI. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 55

Rulings pertaining to the admission of evidence are reviewed on appeal for abuse of discretion. *Bisom v. Commonwealth*, 2002 MP 19 ¶ 3

The trial court has wide latitude in deciding whether to admit or exclude photographs of a victim and its ruling will not be overturned on appeal, absent an abuse of discretion. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 53

Where the trial court reviewed a photograph and determined that is was relevant and probative because it identified the victim, and the party protesting its admission on appeal has not offered any indication of unfair prejudice, the trial court did not abuse its discretion in admitting the photograph. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 54

The Superior Court restriction of cross-examination of a witness is subject to review for abuse of discretion. *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 11

Whether the juvenile court erred in compelling a juvenile criminal defendant's mother to testify on behalf of the government involves a claim of evidentiary error and is reviewed for abuse of discretion. *In re J.J.C.*, 2000 MP 8 ¶ 3

The appellate court accords particular weight to a trial judge's assessment of conflicting and ambiguous evidence and, unless the appellate court is firmly convinced that a mistake was clearly committed below, it will not disturb the trial court's assessment. *Arriola v. Arriola*, 1999 MP 13 ¶ 18

The decision to admit or exclude evidence is within the sound discretion of the trial court. An appellant has the burden to show that the trial court clearly abused that discretion. Absent such abuse of discretion, the appellate court should affirm the decision of the trial court. *Pellegrino v. Commonwealth*, 1999 MP 10 ¶ 10

The fact that the trial court addressed a disputed peripheral issue in making its summary judgment decision does not render the ruling erroneous. The admission of irrelevant evidence does not constitute grounds for reversal if it does not affect the substantial rights of the parties. *Pellegrino v. Commonwealth*, 1999 MP 10 ¶ 12

Admissibility of evidence is reviewed by the NMI Supreme Court for an abuse of discretion. *Mi Sook Seol v. Saipan Honeymoon Corp.*, 1999 MP 9 ¶ 4

Admissibility of evidence is reviewed for an abuse of discretion by the NMI Supreme Court. *Mendiola v. Marianas Agupa Enter.*, 1998 MP 10 ¶ 2

NMI Supreme Court reviews trial court's decision to exclude evidence for an abuse of discretion. *Lifoifoi v. Lifoifoi-Aldan*, 1996 MP 14 ¶ 2

NMI Supreme Court reviews trial court decisions excluding or admitting evidence for abuse of discretion. *Norita v. Norita*, 4 N.M.I. 381 (1996).

NMI Supreme Court reviews a claim of evidentiary error for an abuse of discretion. *Commonwealth v. Delos Reyes*, 4 N.M.I. 340 (1996).

NMI Supreme Court reviews trial court decision to exclude evidence for an abuse of discretion. *Commonwealth v. Delos Reyes*, 4 N.M.I. 340 (1996).

NMI Supreme Court reviews Superior Court rulings on the admission of evidence in a criminal prosecution for an abuse of discretion. An error is to be disregarded if it does not affect substantial rights of the defendant. *Commonwealth v. Palacios*, 4 N.M.I. 330 (1996).

Trial court's admission of evidence is reviewed for abuse of discretion on appeal. *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

Trial court ruling denying defense motion to exclude evidence in criminal prosecution would be reviewed on appeal for abuse of discretion. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

Trial court's evidentiary decisions are reviewed for abuse of discretion on appeal. *Commonwealth v. Brel*, 4 N.M.I. 200 (1994).

Admission of evidence at trial is subject to abuse of discretion standard of review on appeal. The appellant bears the burden of showing such an abuse. *In re Estate of Deleon Castro*, 4 N.M.I. 102 (1994).

Admissibility of evidence is reviewed for abuse of discretion. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

Rulings pertaining to the admission of evidence are reviewed for abuse of discretion. *Manglona v. Kaipat*, 3 N.M.I. 322 (1992).

Trial court's admission of evidence in probate proceeding that claimant was born out of wedlock was subject to review under abuse of discretion standard. *In re Estate of Deleon Guerrero*, 3 N.M.I. 253 (1992).

Issue of whether trial court erred by not allowing plaintiff's counsel to examine plaintiff and his wife and to cross-examine defense witness concerning prior inconsistent statements allegedly made by defense witness was, as evidentiary ruling, reviewed by appellate court for abuse of discretion. *Santos v. Matsunaga*, 3 N.M.I. 221 (1992).

A trial court's decision to admit evidence over a timely objection is subject to review under the abuse of discretion standard. An error in such a decision is to be disregarded if it does not affect substantial rights of the appellant. *Commonwealth v. Bergonia*, 3 N.M.I. 22 (1992).

Appellate court reviews exclusion of evidence by trial court for an abuse of discretion. *In re Discipline of Lizama*, 2 N.M.I. 360 (1991).

A trial court's limitation on the scope of cross-examination is reviewed for an abuse of discretion. *Commonwealth v. Hanada*, 2 N.M.I. 343 (1991).

In reviewing the propriety of the admission or exclusion of evidence, appellate court applies the abuse of discretion standard. *Commonwealth v. Kaipat*, 2 N.M.I. 322 (1991).

Issue of whether trial court erred in admitting evidence was subject to review under abuse of discretion standard. *Dilutaoch v. C & S Concrete Block Prods.*, 1 N.M.I. 478 (1991).

In reviewing the propriety of the admission or exclusion of evidence, appellate court applies the abuse of discretion standard. *In re Estate of Mueilemar*, 1 N.M.I. 441 (1990).

In order for appellate court to find the exclusion of evidence reversible error, a substantial right of the appellant must have been affected. Where the excluded evidence is cumulative, merely corroborative, not consequential and does not affect a substantial right of the appellant, trial court does not commit reversible error in excluding such evidence. Com. R. Evid. 103(a). *Pangelinan v. Unknown Heirs of Mangarero*, 1 N.M.I. 387 (1990).

Decision to admit or exclude evidence is within the sound discretion of the trial court. An appellant has the burden of showing that the trial court clearly abused that discretion; absent such abuse of discretion, appellate court should affirm the decision of the trial court. *Pangelinan v. Unknown Heirs of Mangarero*, 1 N.M.I. 387 (1990).

DC App. Div. 1989. Evidentiary rulings of the trial court are reviewed for an abuse of discretion. *CNMI v. Delos Santos*, 3 CR 661.

——Hearsay

The N.M.I. Supreme Court reviews the trial court's admission of alleged hearsay evidence for an abuse of discretion. *Commonwealth v. Taitano*, 2005 MP 20 ¶ 16

Whether the trial court correctly construed the hearsay rule is a question of law, reviewable de novo, however the trial court's decision to admit evidence under exceptions to the hearsay rule is reviewed for an abuse of discretion. *Commonwealth v. Lucas*, 2003 MP 9 ¶ 2

The exclusion of evidence under the hearsay rule is reviewed for an abuse of discretion. *Commonwealth v. Lucas*, 2003 MP 9 ¶ 2

Whether the trial court improperly admitted hearsay evidence is reviewed under the abuse of discretion standard. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 2

In the absence of any showing that defendant suffered harm as a result of improperly admitted hearsay testimony, the appellate court will not reverse the trial court's decision to admit the testimony. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 62

Whether the trial court erred in striking an unsworn statement of a party litigant and a portion of his son's declaration which relates discussions with the party litigant about various land documents involves the admissibility of hearsay statements and is reviewed for abuse of discretion. *Aguon v. Marianas Pub. Land Corp.*, 2001 MP 4 ¶ 3

The admissibility, under the medical hearsay exception to the hearsay rule, of an out-of-court statement by the wife of a criminal defendant to her treating physician, identifying the defendant as her assailant is reviewed under the abuse of discretion standard. *Commonwealth v. O'Connor*, 2000 MP 11 ¶ 2

NMI Supreme Court reviews Superior Court's decision to admit hearsay for an abuse of discretion. *Tropic Isles Cable TV Corp. v. Mafnas*, 1998 MP 11 ¶ 2

Issue involving admission of hearsay testimony into evidence would be reviewed for abuse of discretion on appeal. *In re Estate of Seman*, 4 N.M.I. 129 (1994).

Trial court's admission of hearsay evidence was subject to review under abuse of discretion standard. *In re Estate of Deleon Guerrero*, 3 N.M.I. 253 (1992).

Issue of whether trial court erred in admitting hearsay testimony that party's father intended to give him land was subject to abuse of discretion standard on review. *Guerrero v. Guerrero*, 2 N.M.I. 61 (1991).

Both propriety and abuse of hearsay reputation testimony, on both sides, depend on numerous and subtle considerations, difficult to detect or appraise from a cold record, and therefore rarely and only on a clear showing of prejudicial abuse of discretion will courts of appeal disturb rulings of trial courts on this subject. *Guerrero v. Guerrero*, 2 N.M.I. 61 (1991).

Trial court's decision to admit hearsay evidence is subject to review for abuse of discretion. *In re Estate of Dela Cruz*, 2 N.M.I. 1 (1991).

——Parol or Extrinsic Evidence

Whether Superior Court erred in admitting parol evidence is an issue of law which is reviewed de novo by the NMI Supreme Court. *Mi Sook Seol v. Saipan Honeymoon Corp.*, 1999 MP 9 ¶ 2

——Plain Error

Reversal under the plain error rule is only proper when two factors exist: substantial rights of the defendant are affected, and it is necessary to safeguard the integrity and reputation of the judicial process or to forestall a miscarriage of justice. *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 48

Issue of whether trial court erred in admitting Breathalyzer test result into evidence in DUI prosecution when defendant did not object to admission of evidence at trial was subject to plain error standard of review. Com. R. Evid. 103; Com. R. Crim. P. 52(b). *Commonwealth v. Peters*, 1 N.M.I. 466 (1991).

——Summary Judgment

The applicable standard of review of a lower court's evidentiary decisions in the context of summary judgment proceedings is abuse of discretion. Reversal is only warranted if the erroneous admission or exclusion of evidence caused prejudice. *Pellegrino v. Commonwealth*, 1999 MP 10 ¶ 4

— Final Orders

Whether an order is "final" for the purposes of an appeal pursuant to Commonwealth Rule of Civil Procedure Rule 54(b) is a legal question that we review de novo. *Commonwealth Dev. Auth. v. Camacho, et al.*, 2010 MP 19 ¶ 5 (2010).

If an order is final, then the Supreme Court reviews the trial court's determination that no just reason for delay exists for an abuse of discretion. *Commonwealth Dev. Auth. v. Camacho, et al.*, 2010 MP 19 ¶ 5 (2010).

—Findings of Fact

The Supreme Court is not permitted to "read between the lines" and imply factual findings that the trial court did not make. *Fusco, et al. v. Matsumoto*, 2011 MP 17 ¶ 53 (2011).

A grantor's donative intent is a question of fact, which depends on all the circumstances surrounding the transaction. *Fusco, et al. v. Matsumoto*, 2011 MP 17 ¶ 13 (2011).

Whether a criminal defendant is entitled to written findings pursuant to NMI Rule of Criminal Procedure 23(c), which governs the trial court's duty to enter findings of fact and conclusions of law in a case tried without a jury, is an issue of law that the Supreme Court reviews de novo. *Commonwealth v. Sebuu*, 2011 MP 15 ¶ 6 (2011).

The intent to abandon a lease is an issue of fact. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 66 (2011).

The Supreme Court reviews the trial court's findings of fact for clear error. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 28 (2011).

The Supreme Court reviews findings of fact for clear error. *Deleon Guerrero v. Dep't Publ. Lands*, 2011 MP 3 ¶ 19 (2011).

A residency determination is tied in large part to the intent of the individual to return to their place of habitation whenever they are absent. Intent is a question of fact. *Rebuenog v. Aldan*, 2010 MP 1 ¶ 22 (2010).

——Adequacy of Findings

The standard of review for determining the adequacy of factual findings is whether the findings are explicit enough on the ultimate issue in the case to give the appellate court a clear understanding of the basis of the decision and enable it to determine the grounds on which the trial court reached its decision. Com. R. Civ. P. 52(a). *Manglona v. Kaipat*, 3 N.M.I. 322 (1992).

——Generally

While mixed questions of law and fact are usually reviewed *de novo*, the trial court's findings of fact are reviewed under the clearly erroneous standard, and the NMI Supreme Court will not reverse those findings unless it is left with a firm and definite conviction that clear error has been made. *Sattler v. Mathis*, 2006 MP 6 ¶ 7

In general, factual findings as to what the parties said or did are reviewed under the clearly erroneous standard while principles of contract interpretation applied to the facts are reviewed *de novo*. *Manglona v. Commonwealth*, 2005 MP 15 ¶ 14

On appeal, the N.M.I. Supreme Court reviews application of contract law under the *de novo* standard, and any finding based on extrinsic evidence under the clear error standard. *Manglona v. Commonwealth*, 2005 MP 15 ¶ 14

The N.M.I. Supreme Court can inquire into a question of fact when evidence of a definitive and clear promise supporting a promissory estoppel defense exists. *Merci Corp. v. World Int'l Corp.,* 2005 MP 10 ¶ 31

Whether the Superior Court erred in concluding that a privately owned lot included the publicly constructed roadway over it is a question of fact and therefore reviewed under the clearly erroneous standard. *Mendiola v. Commonwealth Utils. Corp.*, 2005 MP 2 ¶ 11

A trial court's finding is clearly erroneous when, although there is evidence to support it, the reviewing court, on the entire evidence, is left with a definite and firm conviction that a mistake has been committed. *Mendiola v. Commonwealth Utils. Corp.*, 2005 MP 2 ¶ 14

When the N.M.I. Supreme Court finds no evidence in the record to contradict the Superior Court's finding of fact, the Superior Court was not clearly erroneous in its finding. *Mendiola v. Commonwealth Utils. Corp.*, 2005 MP 2 ¶ 16

Factual findings constitute a question of law where the burden of proof at the trial court was that of clear and convincing evidence, and the assigned error is that the evidence does not support the trial court's findings of fact. The standard of review is whether, as a matter of law, the trial court's findings are supported by competent and substantial evidence. *Office of the Attorney Gen. v. Estel*, 2004 MP 20 ¶ 23

The appellate court may not consider issues of fact *de novo*; deference is given to the trial court's findings of fact. *Commonwealth v. Deleon Guerrero*, 2004 MP 3 ¶ 7

While mixed questions of law and fact are usually reviewed *de novo*, the trial court's findings of fact are reviewed under the clearly erroneous standard, and the appellate court will not reverse those findings unless it is left with a firm and definite conviction that clear error has been made. *Reyes v. Reyes*, 2004 MP 1 ¶ 3

The trial court's legal conclusions and the factual determination that the Department of Labor and Immigration's Hearing Officer's decision was based on substantial evidence are reviewed de novo on appeal. *Ramos v. Magusa, Inc.*, 2002 MP 25 ¶ 2

Findings of fact are reviewed under a clearly erroneous standard, and the trial court's factual findings will not be disturbed unless, after reviewing all the evidence, the appellate court is left with a firm and definite conviction that a mistake has been made. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 69

A court's findings of fact are reviewed under a clearly erroneous standard. *Bisom v. Commonwealth*, 2002 MP 19 ¶ 4

The Supreme Court will not disturb a factual determination made by the trial court unless after reviewing all the evidence, it is left with a firm and definite conviction that a mistake has been made. *Bisom v. Commonwealth*, 2002 MP 19 ¶ 54

Whether the trial court erred in finding that stock was transferred to the decedent's sons during his lifetime

is a question of fact, which the N.M.I. Supreme Court reviews for clear error. *In re Estate of Yong Kyun Kim*, 2001 MP 22 ¶ 3

A finding is clearly erroneous when, even though some evidence supports it, the entire record produces the definite and firm conviction that the court below committed a mistake. The test is whether the trial court could rationally have found as it did, rather than whether the reviewing court would have ruled differently. *In re Estate of Yong Kyun Kim*, 2001 MP 22 ¶ 9

The burden to convince the reviewing court of a clearly erroneous ruling by a lower court is on the appellant. *In re Estate of Yong Kyun Kim*, 2001 MP 22 ¶ 9

When a trial judge's finding is based on his decision to credit the testimony of one of two or more witnesses, each of whom has told a coherent and facially plausible story, that finding, if not internally inconsistent, can virtually never be clear error. *In re Estate of Yong Kyun Kim*, 2001 MP 22 ¶ 10

A lower court's finding of a family relationship and residential relationship between parties presents a question of fact reviewed under the clearly erroneous standard. *Olupomar v. Mahora*, 2001 MP 17 ¶ 2

Whether an individual consented to a property division order is a factual finding of the lower court which the N.M.I. Supreme Court reviews for clear error and will not reverse unless it is left with a firm and definite conviction that a mistake has been made. *Reyes v. Reyes*, 2001 MP 13 ¶ 2

An Appellate Court will not weigh factual evidence already adjudicated by the trial court to reach a different, more favorable, conclusion. This is not the proper function of an appeal, nor is it proper grounds for a new trial. *Fitial v. Kim Kyung Duk*, 2001 MP 9 ¶ 15

A new trial should be granted if the jury's verdict is against the clear weight of the evidence, but the appellate court will not second-guess the trial court's evaluation of a witness' credibility nor will it reweigh evidence presented to the trial court. *Fitial v. Kim Kyung Duk*, 2001 MP 9 ¶ 18

The trial court's findings of fact are subject to the clearly erroneous standard, and the Supreme Court will not reverse such findings unless it is left with a firm and definite conviction that a mistake has been made. *Rosario v. Camacho*, 2001 MP 3 ¶ 42

The appellate court accords particular weight to a trial judge's assessment of conflicting and ambiguous evidence. *Benavente v. Marianas Pub. Land Corp.*, 2000 MP 13¶ 28

Whether an appellee was a holder in due course is a factual question, subject to the clearly erroneous standard on appellate review. *Yang Jae Oh v. Angel Ent., Inc.*, 2000 MP 6 ¶ 2

Waiver is a question of fact and is reviewed for clear error. *Piteg v. Piteg*, 2000 MP 3 ¶ 2

Whether the Superior Court erred in finding that a party made a payment of a certain amount under a lease and its amendment involves findings of fact, and shall not be set aside unless clearly erroneous. After a review of the entire record below, the N.M.I. Supreme Court will not disturb the lower court's factual findings, or reweigh the evidence presented below unless it is convinced that a mistake was clearly made. *Hemley v. Hemley*, 1999 MP 18 ¶ 3

Whether the Superior Court erred in holding that a party received a certain amount of money in trust, but has accounted only for a portion of that amount in the manner provided by the court involves findings of fact, and shall not be set aside unless clearly erroneous. After a review of the entire record below, the N.M.I. Supreme Court will not disturb the lower court's factual findings, or reweigh the evidence presented below unless it is convinced that a mistake was clearly made. *Hemley v. Hemley*, 1999 MP 18 ¶ 3

Whether the Superior Court erred in finding and holding that a party has an unaccounted balance of rental payments involves findings of fact, and shall not be set aside unless clearly erroneous. After a review of the entire record below, the N.M.I. Supreme Court will not disturb the lower court's factual findings, or reweigh the evidence presented below unless it is convinced that a mistake was clearly made. *Hemley v. Hemley*, 1999 MP 18 ¶ 3

Findings of fact shall not be set aside unless clearly erroneous. *Hemley v. Hemley*, 1999 MP 18 ¶ 9

A trial court's factual findings are reviewed under the clearly erroneous standard and they will not be reversed unless, after viewing the evidence, the N.M.I. Supreme Court is left with a firm and definite conviction that the trial court made a mistake. *Pacific Am. Title Ins. & Escrow (C.N.M.I.), Inc. v. Anderson*, 1999 MP 15 ¶ 3

Under the clearly erroneous standard for review of factual findings, the N.M.I. Supreme Court may not reverse unless it is left with a firm and definite conviction that the trial court made a mistake. *Pacific Am. Title Ins. & Escrow (C.N.M.I.), Inc. v. Anderson*, 1999 MP 15 ¶ 11

Whether the trial court erred in holding that a tract of property belonged to an estate involves questions of fact and is therefore subject to the clearly erroneous standard of review. *Arriola v. Arriola*, 1999 MP 13 ¶ 3

Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. Com. R. Civ. P. 52(a). *Arriola v. Arriola*, 1999 MP 13 ¶ 16

A finding of fact is clearly erroneous when, even though some evidence supports it, the entire record produces the definite and firm conviction that the court below made a mistake. *Arriola v. Arriola*, 1999 MP 13 ¶ 20

Where the evidence supporting the contention that no sale of land occurred included that no one knew when the alleged sale took place and that the "seller's" son and wife were shown land markers designating the portion of the disputed property which the seller intended to pass on to his son, the trial court's finding that the sale took place was clearly erroneous. *Arriola v. Arriola*, 1999 MP 13 ¶ 21

The N.M.I. Supreme Court may find a trial court's findings of fact, based on either oral or documentary evidence, to be clearly erroneous only if after reviewing all the evidence, it is left with a firm and definite conviction that a mistake has been made. *Arriola v. Arriola*, 1999 MP 13 ¶ 26

Findings of fact made by the trial court are subject to review under the clearly erroneous standard by the NMI Supreme Court. *Mi Sook Seol v. Saipan Honeymoon Corp.*, 1999 MP 9 ¶ 4

NMI Supreme Court reviews Superior Court's findings of fact under the clearly erroneous standard. Court will not reverse the finding unless, after reviewing all the evidence, it is left with a firm and definite conviction that a mistake has been made. *Tropic Isles Cable TV Corp. v. Mafnas*, 1998 MP 11 ¶ 3

NMI Supreme Court reviews Superior Court's findings of fact under the clearly erroneous standard. After reviewing all the evidence, Court will not reverse unless it is left with a firm and definite conviction that a mistake has been made. *Sablan v. Blake*, 1998 MP 8 ¶ 2; *Sablan v. Blake*, 1998 MP 9 ¶ 2

An issue of fact will not be disturbed on appeal unless clearly erroneous. *Desince v. Sablan*, 1997 MP 20 ¶ 3

NMI Supreme Court had jurisdiction, pursuant to 1 CMC § 3102(a), over appeal from Superior Court decision finding that property belonged exclusively to certain heirs and was not held according to Carolinian custom and that property had been orally conveyed as a gift. *Estate of Teregeyo*, 1997 MP 14 ¶ 1

The assessment of evidence is a trial function. It is not the province of the reviewing court to reweigh the evidence. Unless the court is firmly convinced that a mistake was clearly committed below, it will not disturb the assessment of the trial court. *Estate of Teregeyo*, 1997 MP 14 ¶ 9

An appellate court will not reverse a finding having evidentiary support, even though it might find the facts to be different if it performed the fact-finding function. The Court will not substitute its own findings for those of the trial court. *Estate of Teregeyo*, 1997 MP 14 ¶ 9

NMI Supreme Court will accord particular weight to a trial judge's assessment of conflicting and ambiguous evidence. The appellant has the burden to clearly demonstrate error in the lower court's findings. *Estate of Teregeyo*, 1997 MP 14 ¶ 9

The NMI Supreme Court makes a determination of clear error only if, after reviewing all the evidence, the Court is left with a firm and definite conviction that a mistake has been made. *Estate of Ayuyu*, 1996 MP 19 ¶ 17

NMI Supreme Court may not reweigh evidence presented to trial court. 1 CMC § 3103. *Commonwealth v. Delos Reyes*, 4 N.M.I. 340 (1996).

Trial court's findings of fact are reviewed under clearly erroneous standard. Appellate court will not reverse finding unless, after reviewing all the evidence, it is left with a firm and definite conviction that a mistake has been made. *Camacho v. L & T Int'l Corp.*, 4 N.M.I. 323 (1996).

Appellate court is not at liberty to disturb factual findings which hinge on trial court's assessment of a witness's credibility. *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

Under clear error standard of review, unless convinced that a mistake has been made with regard to trial court's factual findings, appellate court must affirm findings. *Yoo v. Quitugua*, 4 N.M.I. 120 (1994).

Since trial court's interpretation of contract purporting to convey land included review of extrinsic evidence of related facts, on appeal NMI Supreme Court would review application of contract law de novo and finding of facts under clearly erroneous standard. *Pangelinan v. Itaman*, 4 N.M.I. 114 (1994).

A determination of clear error will be made with respect to a finding of fact where the appellate court, reviewing all the evidence, finds support for the finding, but is left with a definite and firm conviction that a mistake has been made. *Pangelinan v. Itaman*, 4 N.M.I. 114 (1994).

Issue implicating propriety of trial court's findings of fact would be reviewed for clear error on appeal. 1 CMC § 3103; Com. R. Civ. P. 52(a). *Apatang v. Mundo*, 4 N.M.I. 90 (1994).

NMI Supreme Court will not disturb Superior Court's findings of fact unless it finds clear error. 1 CMC § 3103; Com. R. Civ. P. 52(a). *Apatang v. Mundo*, 4 N.M.I. 90 (1994).

Appellate court accords particular weight to trial judge's assessment of conflicting and ambiguous evidence. *Manglona v. Kaipat*, 3 N.M.I. 322 (1992).

The assessment of evidence is a trial function. Unless appellate court is firmly convinced that a mistake was clearly committed below, it will not disturb trial court's assessment. *Manglona v. Kaipat*, 3 N.M.I. 322 (1992).

Appellate court reviews issue concerning question of fact under the clearly erroneous standard. *In re Estate of Deleon Guerrero*, 3 N.M.I. 253 (1992).

Unless appellate court is convinced after reviewing the trial record that a mistake was clearly committed below, it will not disturb a trial court's factual findings or reweigh the evidence. *In re Estate of Deleon Guerrero*, 3 N.M.I. 253 (1992).

Issue involving findings of fact made by trial court was subject to review under clearly erroneous standard. *Office of the Attorney General v. Deala*, 3 N.M.I. 110 (1992).

Appellate court does not reweigh the evidence. It will not set aside a trial court's factual finding, or reasonable inferences derived therefrom, unless it is firmly convinced after reviewing the entire record that a mistake was clearly committed below. *Cabrera v. Cabrera*, 3 N.M.I. 1 (1992).

A finding is clearly erroneous when, even though some evidence supports it, the entire record produces the definite and firm conviction that the court below committed a mistake. Appellate court will accord particular weight to a trial judge's assessment of conflicting and ambiguous evidence. The test is whether the trial court could rationally have found as it did, rather than whether the reviewing court would have ruled differently. *Rogolofoi v. Guerrero*, 2 N.M.I. 468 (1992).

When burden of proof at trial is clear and convincing evidence, and assigned error is that evidence does not support trial court's findings of fact, standard of review is whether the findings are supported by competent and substantial evidence. This is a question of law. *In re Discipline of Lizama*, 2 N.M.I. 360 (1991).

Appellate court accords particular weight to trial judge's assessment of conflicting and ambiguous evidence. *In re Discipline of Lizama*, 2 N.M.I. 360 (1991).

When a trial court's finding of fact is supported by substantial evidence, it should not be disturbed on appeal. *In re Discipline of Lizama*, 2 N.M.I. 360 (1991).

Appellate court will set aside a finding of fact only if it is clearly erroneous. Com. R. Civ. P. 52(a). *Repeki v. MAC Homes (Saipan) Co., Ltd.*, 2 N.M.I. 33 (1991).

A finding of fact is clearly erroneous when, even though some evidence supports it, the entire record produces the definite and firm conviction that the court below committed a mistake. *In re Estate of Rofag*, 2 N.M.I. 18 (1991).

Appellate court will accord particular weight to a trial judge's assessment of conflicting and ambiguous evidence. The test is whether the trial court could

rationally have found as it did, rather than whether the reviewing court would have ruled differently. *In re Estate of Rofag*, 2 N.M.I. 18 (1991).

When a trial court's finding is supported by substantial evidence, it should not be disturbed on appeal. *In re Estate of Rofag*, 2 N.M.I. 18 (1991).

An appellant must convince appellate court that factual findings of trial court are clearly erroneous before appellate court can accept his version of facts; an appellate court ordinarily cannot substitute its findings for those of the trial court. *Pangelinan v. Unknown Heirs of Mangarero*, 1 N.M.I. 387 (1990).

DC App. Div. 1989. A finding is clearly erroneous when the appellate court is left with the definite and firm conviction that a mistake has been committed. *CNMI v. Cabrera*, 3 CR 655.

DC App. Div. 1988. Findings of fact are reviewed on appeal for clear error. *Matagolai v. Pangelinan*, 3 CR 591.

DC App. Div. 1988. A finding of fact of the trial court is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Matagolai v. Pangelinan*, 3 CR 591.

DC App. Div. 1987. The Appellate Division of the District Court reviews the Trial Court's findings of fact under a clearly erroneous standard and conclusions of law are freely reviewable. *Saipan Secretarial/Employment Services, Inc. v. CNMI*, 3 CR 168.

DC App. Div. 1986. Where appellants failed to make any reference in the trial court record establishing that the trial court's factual finding was clearly erroneous, appellants failed to show reversible error. *Palacios v. Trust Territory of the Pacific Islands*, 2 CR 904, aff'd, 838 F.2d 474 (9th Cir. 1988).

DC App. Div. 1986. When reviewing the findings of fact of the trial court the appellate court uses the clearly erroneous standard. *EDLF v. Pangelinan*, 2 CR 451.

DC App. Div. 1986. A finding is clearly erroneous when the entire record produces the definite and firm conviction that the court below committed a mistake. *EDLF v. Pangelinan*, 1 CR 451.

DC App. Div. 1986. The "clearly erroneous" standard applies to review of all factual determinations of the trial court. *Marianas Public Land Trust v. Government NMI*, 2 CR 870, rev'd, 838 F.2d 341 (9th Cir. 1988).

DC App. Div. 1986. A finding of fact of the trial court is "clearly erroneous" when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Marianas Public Land Trust v. Government NMI*, 2 CR 870, rev'd, 838 F.2d 341 (9th Cir. 1988).

DC App. Div. 1985. A finding is clearly erroneous when the entire record produces the definite and firm conviction that the court below committed a mistake. *Aldan v. Kaipat*., 2 CR 190, aff'd, 794 F.2d 1371 (9th Cir. 1986).

DC App. Div. 1985. Findings are clearly erroneous only if the appellate court is definitely and firmly convinced that a mistake has been committed. *EDLF v. Arriola*, 2 CR 212.

DC App. Div. 1985. In reviewing the findings of fact of the trial court the Appellate Division of the District Court will not reverse unless the findings are "clearly erroneous." *Aldan v. Kaipat*, 2 CR 190, aff'd, 794 F.2d 1371 (9th Cir. 1986).

DC App. Div. 1983. Trial court's finding that there was insufficient evidence to support a partida would not be disturbed where it was not clearly erroneous, nor against the weight of evidence. *Pangelinan v. Tudela*, 1 CR 708, aff'd, 733 F.2d 1341 (9th Cir. 1986).

DC App. Div. 1982. A finding is clearly erroneous when, even though some evidence supports it, the entire record produces the definite and firm conviction that a mistake has been made. Fed.R.Civ.P. 52(a). *In Re the Estate of Taisakan*, 1 CR 326.

DC App. Div. 1982. The test whether a finding is clearly erroneous is whether the lower court rationally could have found as it did, rather than whether the reviewing court would have ruled differently. Fed. R.Civ.P.52(a). *In Re the Estate of Taisakan*, 1 CR 326.

DC App. Div. 1982. An appellate court cannot substitute its interpretation of the evidence for the trial courts simply because the reviewing court might

have resolved the factual arnbigui ties differently. *In Re the Estate of Taisakan*, 1 CR 326.

DC App. Div. 1981. A finding is clearly erroneous when, even though some evidence supports it, the entire record produces a definite and firm conviction that the court below committed a mistake. Com. Tr. C. 56. *In the Estate of Torres*, 1 CR 237.

DC App. Div. 1981. Trial court's factual determination that document called testamento, signed by husband and wife, was a valid customary will was supported by substantial evidence and was not clearly erroneous. Com. Tr.C. P. 56. *In the Estate of Torres*, 1 CR 237.

—Fraud

The N.M.I. Supreme Court reviews the trial court's finding of fraud under the clearly erroneous standard. *Rosario v. Camacho*, 2001 MP 3 ¶ 79

A determination of fraud would not be reversed on appeal unless it is clearly erroneous. A determination of clear error will be made where the appellate court, reviewing all the evidence, finds support for the finding but is left with a definite and firm conviction that a mistake has been made. *Boddy v. Guerrero*, 1997 MP 23 ¶ 8

Trier of fact's determination of fraud will not be reversed on appeal unless it is clearly erroneous. Com. R. Civ. P. 52(a). *Pangelinan v. Itaman*, 4 N.M.I. 114 (1994).

—Gifts

The question of whether an individual has procured a gift through undue influence is a mixed question of law and fact. Where the trial court has made factual findings that underlie the issue of undue influence, the Supreme Court is statutorily required not to upset those findings unless they are clearly erroneous. The question of whether the facts – as determined by the trial court – are sufficient to overcome the presumption of undue influence is a question of law which this Court reviews for competent and substantial evidence. *Salas v. Mafnas*, 2010 MP 9 ¶ 19 (2010).

The Supreme Court's responsibility on appeal is to ascertain whether the finding of the trial court that a gift was given voluntarily and not as a product of undue influence is supported by competent and substantial evidence. *Salas v. Mafnas*, 2010 MP 9 ¶ 29 (2010).

Issue of whether trial court erred in concluding that party received land by gift from his father involved mixed questions of law and fact. As such, it was subject to de novo review. *Guerrero v. Guerrero*, 2 N.M.I. 61 (1991).

—Good Faith

An appellate court reviews the lower court's finding of good faith for clear error. *Yang Jae Oh v. Angel Ent., Inc.*, 2000 MP 6 ¶ 20

—Guilty Plea

The Supreme Court reviews a trial court's denial of a post-conviction motion to withdraw a guilty plea for abuse of discretion. *Commonwealth v. Taivero*, 2009 MP 10 ¶ 25 (2009).

The standard of review of the denial of a motion to withdraw a guilty plea after sentencing is whether the trial court exceeded the bounds of discretion in concluding that there was no manifest injustice to warrant setting aside the judgment of conviction. Com. R. Crim. P. 32(d). *Commonwealth v. Cabrera*, 2 N.M.I. 311 (1991), aff'd, 979 F.2d 854 (9th Cir. 1992).

The issue of whether a criminal defendant has entered a valid Alford plea ("I'm not guilty but I plead guilty") is a legal question, reviewable de novo. *Commonwealth v. Cabrera*, 2 N.M.I. 311 (1991), aff'd, 979 F.2d 854 (9th Cir. 1992).

— Habeas Corpus

The Supreme Court reviews de novo an appeal from a denial of a writ of habeas corpus. *Commonwealth v. Miura*, 2010 MP 12 ¶ 5 (2010).

—Hearsay

See **Standard of Review – Evidentiary Ruling: Hearsay**, this topic.

—Immunity

Whether a government entity enjoys sovereign immunity on interest damages is a question of law reviewed de novo. *Pangelinan v. NMI Retirement Fund*, 2009 MP 12 ¶ 25 (2009).

Whether Public Law No. 9-23 renders a particular case moot by releasing defendants from any liability is a question of law and is reviewed de novo. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 3

Whether a government official is entitled to qualified immunity is a question of law and is reviewed de novo. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 3

—Improvements

Whether improver of land was entitled to restitution under facts of case was question of law which appellate court would review de novo. *Westenberger v. Atalig*, 3 N.M.I. 471 (1993).

Since evidence concerning issue of whether occupant of property made improvements in good faith while in bona fide possession under color of title was essentially undisputed, issue presented question of law, reviewable de novo. *Repeki v. MAC Homes (Saipan) Co., Ltd.*, 2 N.M.I. 33 (1991).

—Inconsistent Verdicts

See **Standard of Review – Jury Verdicts: Criminal Cases**, this topic.

—Indispensable Parties

Whether Inspector General (IG) of U.S. Department of the Interior was indispensable party in action by Commonwealth taxpayers seeking to enjoin NMI Director of Finance from disclosing their tax returns and related information to IG in audit was question of law, reviewed de novo by appellate court. *Sablan v. Inos*, 3 N.M.I. 418 (1993).

Whether person was indispensable party to litigation was issue of law, reviewable de novo. *Aquino v. Tinian Cockfighting Bd.*, 3 N.M.I. 284 (1992).

—Injunction

——Temporary Injunction

The grant or denial of a preliminary injunction is reviewed for abuse of discretion or misapprehension of the law. *Villanueva v Tinian Shipping and Transp., Inc.*, 2005 MP 12 ¶ 18

A court that has issued or denied a preliminary injunction has abused its discretion if it has based its decision on clearly erroneous factual findings and has misapprehended the law if it has based its decision on an erroneous legal standard. *Villanueva v Tinian Shipping and Transp., Inc.*, 2005 MP 12 ¶ 18

Whether, in balancing the hardships, the trial court erred in finding that a party would have an adequate remedy at law is a question of law, which the N.M.I. Supreme Court reviews de novo. *Pacific Am. Title Ins. & Escrow (C.N.M.I.), Inc. v. Anderson*, 1999 MP 15 ¶ 3

Whether the trial court erred in determining the probability of success on the merits is a question of law, which the N.M.I. Supreme Court reviews de novo. *Pacific Am. Title Ins. & Escrow (C.N.M.I.), Inc. v. Anderson*, 1999 MP 15 ¶ 3

Whether the denial of the preliminary injunction should be reversed is reviewed for abuse of discretion. *Pacific Am. Title Ins. & Escrow (C.N.M.I.), Inc. v. Anderson*, 1999 MP 15 ¶ 3

Trial court's grant or denial of a preliminary injunction is reviewed on appeal for abuse of discretion or misapplication of law. *Norita v. Norita*, 4 N.M.I. 381 (1996).

—Insurance Policies

——Interpretation and Construction

The interpretation of language in an insurance policy is a question of law and is construed liberally in favor of the insured and strictly against the insurer. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 19 (2010).

The interpretation of language in an insurance policy involves a question of law. *Century Ins. Co., Ltd. v. Hong Kong Entm't. (Overseas) Inv., Ltd., et al.*, 2009 MP 4 ¶ 15 (2009).

The question of whether, in an agreement which indemnifies against both loss and liability, there is only one cause of action or whether the covenants are separate and the question of when the statute of limitations begins to accrue on this type of agreement are both questions of law, which the NMI Supreme Court will review *de novo*. *Century Ins. Co., Ltd. v. TAC Int'l Constructors, Inc*., 2006 MP 10 ¶ 8

Interpretation of language in insurance policy involves question of law which is subject to de novo review on appeal. *Ito v. Macro Energy, Inc.*, 4 N.M.I. 46 (1993).

—Interlocutory Appeal

See **Standard of Review – Judgment, Entry of Judgment**, this topic.

—Interpreter

——Right to Interpreter

The trial court's determining that a trial can proceed in English and that a translator is not necessary is reviewed for abuse of discretion. *Commonwealth v. Deleon Guerrero*, 2003 MP 15 ¶ 13

Whether trial court's refusal to permit pro se Chamorro defendant to question witnesses in Chamorro violated the Commonwealth Constitution and defendant's right to due process and equal protection of the laws involves constitutional questions and is reviewed de novo by NMI Supreme Court. *Jasper v. Quitugua*, 1999 MP 4 ¶ 2

—Issues of Law

Issues of law are reviewed de novo. *Saipan Achugao Resort Member Assoc. v. Yoon*, 2011 MP 12 ¶ 45 (2011).

Whether the Superior Court imposed a new and erroneous procedure, by requiring the objectors to rebut a presumption that land at issue in a probate was Carolinian land, involves legal issues and is reviewed de novo. *In re Estate of Laropi*, 2002 MP 10 ¶ 8

The N.M.I. Supreme Court reviews procedural issues of law under the de novo standard. *Santos v. Santos*, 2001 MP 12 ¶ 4

NMI Supreme Court reviews de novo issues of law disposed of by summary judgment. *L & T Int'l Corp. v. Benavente*, 1997 MP 24 ¶ 3

—Involuntary Dismissal

See **Standard of Review – Dismissal of Civil Action** and **Dismissal of Criminal Case/Information**, this topic.

— Judicial Conduct

In the Commonwealth, the sanction to be imposed on a judge for a violation of the canons or rules is not a de novo question. *In the Matter of Govendo*, 2010 MP 16 ¶ 12 (2010).

The Supreme Court exercises independent judgment in judicial misconduct proceedings and is not bound by the investigative judge's findings but such findings are considered and given their due regard. *In re Lizama*, 2008 MP 20 ¶ 9 (2008).

—Judges

——Disqualification of Judges

Whether the trial court judge erred in not disqualifying himself is reviewed for abuse of discretion. *Commonwealth v. Camacho*, 2002 MP 22 ¶ 2

—Judgment

——Entry of Judgment

A final judgment or order is a decision that fully informs a party of the extent of the remedy entered against it. *Commonwealth v. Appleby*, 2007 MP 19 ¶ 6

Review of a Superior Court decision reviewing an agency action is *de novo*, yet bound by the constraints of the Administrative Procedure Act. The appellate court does not give deference to a lower court's findings because its review of agency actions is done with the identical guidelines followed by the lower court under the Administrative Procedure Act. *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶12

In reviewing a judgment nunc pro tunc, the appellate court must determine first whether the trial court was attempting to correct a clerical or a judicial error. Since this is a matter of legal classification, it is reviewed *de novo*. *In Sik Chang v. Estate of Norita*, 2006 MP 2 ¶ 25

Whether the N.M.I. Supreme Court has jurisdiction over an order certified for appeal pursuant to Commonwealth Rule of Civil Procedure 54(b) and whether it has jurisdiction over a denial of a summary judgment motion, which was subsequently certified by the trial court for interlocutory review are questions of law and are reviewed de novo. Com. R. Civ. P. 54(b). *Chan v. Chan*, 2003 MP 5 ¶ 2

Whether the Superior Court followed the proper procedures for entering a Rule 54(b) judgment and a determination of "no just reason for delay" is reviewed under an abuse of discretion standard. Com. R. Civ. P. 54(b). *Teregeyo v. Lizama*, 1997 MP 12 ¶ 3

Whether the Superior Court's Rule 54(b) judgment is final is a question of law reviewed de novo. Com. R. Civ. P. 54(b). *Teregeyo v. Lizama*, 1997 MP 12 ¶ 3

After appellate court determines whether trial court orders directing entry of judgment involving fewer than all claims presented or all parties involved in action are final, appealable orders, it must determine whether trial court abused its discretion in determining that there was no just reason for delay. Com. R. Civ. P. 54(b). *Ito v. Macro Energy, Inc.*, 2 N.M.I. 459 (1992).

Issue of whether trial court orders directing entry of judgment involving fewer than all claims presented or all parties involved in action were final, appealable orders was subject to de novo review. Com. R. Civ. P. 54(b). *Ito v. Macro Energy, Inc.*, 2 N.M.I. 459 (1992).

——Motion for Reconsideration

The denial of a motion for reconsideration is reviewed under the abuse of discretion standard. *Angello v. Louis Vuitton Saipan, Inc.*, 2000 MP 17 ¶ 3

On appellate review, the lower court's denial of a motion for reconsideration is reviewed for abuse of discretion. Under this standard, the lower court's decision need only be reasonable to be upheld. *Angello v. Louis Vuitton Saipan, Inc.*, 2000 MP 17 ¶ 24

There is no clear error where the trial court's decision to dismiss the appellant's claims was based upon the agreement of the parties that the court lacked subject matter jurisdiction. *Angello v. Louis Vuitton Saipan, Inc.*, 2000 MP 17 ¶ 25

——Opening or Vacating Judgment

The Supreme Court reviews for an abuse of discretion the trial court's denial of a motion to alter or amend judgment. *Century Ins. Co., Ltd. v. Guerrero Bros., Inc., et al.*, 2010 MP 13 ¶ 6 (2010).

The N.M.I. Supreme Court reviews a decision to grant or deny a motion to vacate under an abuse of discretion standard. It is not enough for an appellant to show that the grant of the motion might have been permissible or warranted; rather the decision to deny the motion must have been sufficiently unwarranted as to amount to an abuse of discretion. *Merci Corp. v. World Int'l Corp.,* 2005 MP 10 ¶ 20

Whether to grant a post-judgment motion to reopen a case and receive additional evidence is a matter within the discretion of the trial court and will not be disturbed on appeal unless there has been a clear abuse of discretion. *Olopai v. Fitial*, 3 N.M.I. 101 (1992).

——Order in Aid of Judgment

The Supreme Court reviews the trial court decision denying a motion to modify an Order in Aid of Judgment for abuse of discretion. *Highsmith & O'Mallan, P.C. v. Leon Guerrero*, 2003 MP 4 ¶ 2

—— Prejudgment Interest

An award of prejudgment interest is reviewed for an abuse of discretion. This standard clearly vests the trial court with considerable deference in the prejudgment interest decision. Generally stated, the abuse of discretion standard does not authorize an appellate court to merely substitute its judgment for that of the trial court. Thus, in cases where the evidence supports the trial court's decision, no abuse of discretion is found. *Manglona v. Commonwealth*, 2010 MP 10 ¶ 20 (2010).

The appellate court should have the benefit of the trial court's plenary findings with regard to factual and legal issues subsumed in the decision to grant discretionary prejudgment interest, such as the wrongfulness of the defendant's conduct and the plaintiff's full damages, as well as other matters of equity bearing on the merits of the litigation. *Manglona v. Commonwealth*, 2010 MP 10 ¶ 26 (2010).

—Judgment Notwithstanding Verdict

——Denial of Motion

If a motion for a directed verdict pursuant to Rule 50(a) of the Commonwealth Rules of Civil Procedure is not made at the close of the evidence, then the standard on appeal is plain error, not sufficiency of the evidence. *Guerrero v. Tinian Dynasty Hotel,* 2006 MP 26 ¶ 40

In reviewing a denial of a motion for a judgment notwithstanding the verdict, the N.M.I. Supreme Court's inquiry is identical to that of the lower court's and it views the evidence as a whole and in the light most favorable to the nonmoving party and

determines whether there is substantial evidence supporting the jury's verdict or, on the contrary, whether the only reasonable conclusion that could be drawn from the evidence is that the moving party is entitled to a judgment as a matter of law. *Mendiola v. Commonwealth Utils. Corp.*, 2005 MP 2 ¶ 26

When reviewing a denial of a motion for a judgment notwithstanding the verdict, the N.M.I. Supreme Court may not weigh the evidence and impose a result that it finds to be preferable where the jury's verdict is supported by substantial evidence. *Mendiola v. Commonwealth Utils. Corp.*, 2005 MP 2 ¶ 26

NMI Supreme Court reviews de novo a denial of a judgment notwithstanding the verdict. *Mendiola v. Marianas Agupa Enter.*, 1998 MP 10 ¶ 2

The denial of a motion for judgment notwithstanding the verdict involves, on appeal, a de novo review of the record. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

—Judicial Notice

Where complaining party did not object to trial court's taking judicial notice or request a hearing pursuant to Com. R. Evid. 201(e), trial court's actions are unreviewable except on a showing of plain error. Com. R. Evid. 103(d). *Norita v. Norita*, 4 N.M.I. 381 (1996).

—Jurisdiction

——Generally

The court reviews a trial court decision determining whether a plaintiff has met personal jurisdiction requirements *de novo*. *Waibel v. Farber*, 2006 MP 15 ¶ 12

The standard of review for determining whether a state court had personal jurisdiction over a CNMI citizen when it issued an order for child support is *de novo*, because the issue is a question of law. *Sullivan v. Tarope*, 2006 MP 11 ¶ 27

Standing is a jurisdictional issue; it is a question of law, reviewable *de novo*. *Falcon v. McCue*, 2005 MP 7 ¶ 32

Because the issue of standing is jurisdictional, whether a party had standing to bring an action is a question of law, reviewable *de novo* by the N.M.I. Supreme Court. *Department of Pub. Safety v. Civil Serv. Comm'n (Chong)*, 2005 MP 6 ¶ 9

The Supreme Court will review *de novo* whether the trial court has jurisdiction to determine the deportability of an alien. *Office of the Attorney Gen. v. Estel*, 2004 MP 20 ¶ 6

Whether the trial court had jurisdiction over a minor who was charged as an adult is a question of law subject to review *de novo*. *Commonwealth v. Repeki*, 2004 MP 19 ¶ 9

The trial court's determination that it lacked jurisdiction to hear the motion is an issue of law, reviewed de novo on appeal by the N.M.I. Supreme Court. *Commonwealth v. Diaz*, 2003 MP 14 ¶ 2

Whether the trial court properly assumed jurisdiction over a criminal information signed by an Acting Attorney General and without juvenile court certification is a question of law subject to de novo review. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 14

A question of jurisdiction is reviewed de novo on appeal. *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 13

The N.M.I. Supreme Court reviews de novo the jurisdiction of the trial court to issue sanctions. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 3

The issue of jurisdiction is a question of law subject to de novo review. *Bank of Saipan v. Superior Ct. (Attorneys' Liab. Assurance Soc'y, Inc.)*, 2001 MP 5 ¶ 3

Jurisdiction is a question of law, reviewed de novo. *Rosario v. Camacho*, 2001 MP 3 ¶ 36

Whether the Commonwealth courts may exercise jurisdiction over a defendant due to her partners' or her own contacts with the C.N.M.I. is a question of law subject to de novo review. *Bank of Saipan v. Superior Court (Connell)*, 2001 MP 1 ¶12

Review of dismissals for lack of jurisdiction, made pursuant to Com. R. Civ. P. 12(b)(1), is de novo. Com. R. Civ. P. 12(b)(1). *Angello v. Louis Vuitton Saipan, Inc.*, 2000 MP 17 ¶ 2

Review of dismissals for lack of jurisdiction, made pursuant to Com. R. Civ. P. 12(b)(1), is de novo. *Pac. Saipan Technical Contractors v. Rahman*, 2000 MP 14 ¶ 2

The issue of the jurisdiction of the Superior Court over a party is a question of law which the N.M.I. Supreme Court reviews de novo. *In re N.T.M.*, 1999 MP 24 ¶ 2

The issue of whether jurisdiction exists is a question of law, subject to de novo review. *Rajapaksha v. Jayaweera*, 1997 MP 13 ¶ 3

The exercise of personal jurisdiction is a question of law which is reviewable de novo by the NMI Supreme Court. *Montecillo v. Di-All Chemical Co.*, 1998 MP 15 ¶ 1

Dismissal of a complaint for lack of subject matter jurisdiction pursuant to Com. R. Civ. P. 12(b)(1) is subject to de novo review on appeal. *Rivera v. Guerrero*, 4 N.M.I. 79 (1993).

The issue of jurisdiction is a question of law, subject to de novo review. *Office of the Attorney General v. Rivera*, 3 N.M.I. 436 (1993).

DC App. Div. 1989. The appellate court reviews de novo the trial court's determination that it has in personam jurisdiction over a defendant when the underlying facts are undisputed. *Sablan v. Quarashi*, 3 CR 762.

DC App. Div. 1987. The decision to dismiss a complaint for lack of jurisdiction is reviewable by the Appellate Division de novo as a question of law. *Matsumoto v. Akiyama*, 3 CR 141.

DC App. Div. 1987. The determination of whether subject matter jurisdiction exists is a question of law reviewable de novo by the Appellate Division. *Seman v. Aldan*, 3 CR 152.

——Miscellaneous

Issue of whether trial court had jurisdiction to review Tinian Cockfighting Board's decision rejecting party's bid for cockfighting franchise was issue of law, reviewable de novo. *Aquino v. Tinian Cockfighting Bd.*, 3 N.M.I. 284 (1992).

—Juror Misconduct

A denial of a motion for a new trial based on alleged juror misconduct is reviewed for abuse of discretion. *Commonwealth v. Hanada*, 2 N.M.I. 343 (1991).

—Jury

——Ex Parte Communication, Criminal Cases

Whether, in criminal prosecution, ex parte communication between jury and trial judge during jury deliberation prejudiced defendant in violation of his constitutional right to a fair trial was subject to review under harmless error standard. *Commonwealth v. Esteves*, 3 N.M.I. 447 (1993).

——Issues for Jury, Civil Actions

Whether trial court erred in submitting issue of damages to jury was issue of law, reviewed de novo on appeal. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

——Polling of Jury, Criminal Cases

Propriety of trial court's assessment of results of polling of jury to ascertain unanimity of verdict under Com. R. Crim. P. 31(d) is reviewed on appeal for abuse of discretion. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

—Jury Instructions

——Generally

DC App. Div. 1987. In reviewing a trial judge's charge to the jury, the standard of review is whether or not the instructions taken as a whole were misleading or represented a statement inadequate to guide the jury's deliberations. *CNMI v. Magofna*, 3 CR 181, aff'd, 855 F.2d 860 (9th Cir. 1988).

DC App. Div. 1987. The appellate court reviews the adequacy of jury instructions in light of the whole trial. *CNMI v. Magofna*, 3 CR 181, aff'd, 855 F.2d 860 (9th Cir. 1988).

DC App. Div. 1987. If there was no objection at trial to the instructions, a claim of error relating to them is reviewed for an abuse of discretion, which requires a showing of plain error. *CNMI v. Magofna*, 3 CR 181, aff'd, 855 F.2d 860 (9th Cir. 1988).

——Civil Actions

When error in the formulation of jury instructions is alleged, the instructions are considered as a whole under an abuse of discretion standard to determine if they are misleading or inadequate. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 49 (2010).

Where an appellant claims that the trial court misstated the elements that must be proved, the issue is one of law and our review is de novo. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 49 (2010).

The failure to give a proper jury instruction is reviewed de novo for clear error and subject to the harmless error rule. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 49 (2010).

The credibility findings a trial court makes in a *Batson* inquiry are reviewed for clear error. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 49 (2010).

The appellate court reviews jury instructions either *de novo* or for abuse of discretion, depending on the nature of the claimed error. If jury instructions are challenged as a misstatement of the law, the court reviews the challenged instructions *de novo*. Otherwise, the court affords the trial court substantial latitude in tailoring jury instructions, and reviews the formulation of those instructions for abuse of discretion. *Guerrero v. Tinian Dynasty Hotel,* 2006 MP 26 ¶ 25

The standard of review on appeal for an alleged error regarding jury instructions depends on the nature of the claimed error. Where an error in the formulation of the jury instructions is alleged, the instructions are considered as a whole and an abuse of discretion standard is applied to determine if they are misleading or inadequate. *Mendiola v. Commonwealth Utils. Corp.*, 2005 MP 2 ¶ 21

Where an appellant fails to timely object to jury instructions, before the jury retires to consider its verdict, it will be barred from claiming on appeal that an error in the instructions as given or a failure to give different jury instructions occurred, Com. R. Civ. P. 51. *Mendiola v. Commonwealth Utils. Corp.*, 2005 MP 2 ¶ 22

When reviewing a jury instruction for a misstatement of law, the Court determines whether the instructions contained all the legal elements of the statute. *Guerrero v. Tinian Dynasty Hotel,* 2006 MP 26 ¶ 25

Whether trial court's jury instructions regarding statements of defendant were erroneous as a matter of law and whether instructions regarding punitive damages were inadequate as a matter of law involve questions of law and are reviewed de novo by NMI Supreme Court. *Jasper v. Quitugua*, 1999 MP 4 ¶ 2

Jury instructions are reviewed as a whole by the NMI Supreme Court under an abuse of discretion standard to determine if they are misleading or inadequate. *Mendiola v. Marianas Agupa Enter.*, 1998 MP 10 ¶ 2

The standard of appellate review for jury instructions differs depending on the nature of the purported error. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

Because party alleged that trial court erred in failing to give certain jury instructions, appellate court would review all instructions given to determine whether they were misleading or inadequate. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

Where appellant argues that trial court misstated the elements that must be proved at trial, question is reviewed de novo on appeal as a legal issue. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

No error in jury instructions will require a reversal of the judgment on a jury verdict where the verdict is more probably than not untainted by the error. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

——Criminal Cases

Where a defendant fails to contemporaneously object to a jury instruction we review for plain error. Plain error is a highly prejudicial error, which affects the defendant's substantial rights. *Commonwealth v. Cepeda*, 2009 MP 15 ¶ 30 (2009).

In reviewing the sufficiency of a jury instruction, the Supreme Court must consider whether the instructions as a whole were misleading or inadequate to guide the jury's determination. Whether the trial court erred in denying Castro's request for a specific unanimity instruction is reviewed for abuse of discretion. *Commonwealth v. Castro*, 2008 MP 18 ¶ 15 (2008).

An appeal regarding the reinstatement of criminal convictions is a question of law to be reviewed *de novo*. *Commonwealth v. Equia*, 2008 MP 17 ¶ 4 (2008).

In reviewing the sufficiency of a jury instruction, the appellate court must consider whether the instructions as a whole were misleading or inadequate to guide the jury's determination; whether the trial court erroneously instructed the jury on the law of self-defense is a question of law reviewed *de novo. Commonwealth v. Demapan*, 2008 MP 16 ¶ 12 (2008).

Whether a jury instruction misstates an element of a statutory crime is a question of law that we must review *de novo. Commonwealth v. Demapan*, 2008 MP 16 ¶ 12 (2008).

A defendant is entitled to jury instructions on his or her theory of defense, and if the court rejects the defendant's proposed instructions, the appellate court reviews the instructions actually given *de novo* to determine if they adequately covered the defense theory. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 12 (2008).

When an appeal is based upon error in the jury instructions, the N.M.I. Supreme Court must assess whether the jury instructions, as a whole, were misleading or inadequate to guide the jury's deliberation. *Commonwealth v. Manila*, 2005 MP 17 ¶ 12

In conducting a review of the adequacy or completeness of jury instructions on the essential elements of the offense, the court must consider whether the instructions as a whole were misleading or inadequate to guide the jury's determination. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 56

Even when both prongs of the two prong test for determining whether to give a lesser included offense instruction have been met, on appeal, the court would additionally have to determine whether the flaws amount to plain error. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 67

A defendant is entitled to reversal, based on the adequacy or completeness of jury instructions on the essential elements of the offense, only for plain error. Plain error is a highly prejudicial error, which affects the defendant's substantial rights. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 18

In appeal from criminal prosecution, issue of whether trial court erred by declining to instruct jury on lesser included offense within charged offense would be reviewed for an abuse of discretion. *Commonwealth v. Kaipat*, 4 N.M.I. 300 (1995), aff'd, 91 F.3d 151 (9th Cir. 1996).

In reviewing sufficiency of jury instructions, appellate court must assess whether instructions as a whole were misleading or inadequate to guide jury's deliberation. *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

Because criminal defendant alleging error in jury instructions did not object to instructions given at trial and did not proffer alternative instructions, on appeal NMI Supreme Court would review for plain error. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

Whether trial court properly instructed jury as to elements of offense in criminal prosecution is question of law, reviewed de novo on appeal, unless defendant failed to contemporaneously object to instruction, in which case instruction is reviewed for plain error. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

Whether jury instructions given as to the essential elements of the offense of assault with a dangerous weapon were complete or adequate was subject to review under plain error standard. *Commonwealth v. Esteves*, 3 N.M.I. 447 (1993).

—Jury Trial

——Demand or Request for, Civil Actions

The standard of review for the denial of a jury demand is *de novo*. *Matsunaga v. Matsunaga*, 2006 MP 25 ¶ 46

Whether trial court erred in denying defendant's motion to strike plaintiff's jury demand was issue of law, reviewed de novo on appeal. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

Issue of whether trial court erred in denying jury trial raised question of law reviewed de novo on appeal. *Deleon Guerrero v. Nabors*, 4 N.M.I. 31 (1993).

—Jury Verdicts

An appellate court's role is to determine if there is sufficient evidence to support the jury's verdict viewed in a light favorable to the prevailing party; its role is not to reweigh the evidence and re-decide the case. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 18 (2010).

——Civil Actions

If there is plain error apparent on the face of the record which would cause a manifest miscarriage of justice, we must review a jury verdict. Plain error review permits only extraordinarily deferential review that is limited to whether there was any evidence to support the jury's verdict, irrespective of its sufficiency. The court will reverse under plain error only if there is an absolute absence of evidence to support the jury's verdict. *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26 ¶ 41

A jury verdict is supported by the evidence where it is supported by substantial evidence. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

In review of a motion for a new trial based on a challenge to jury verdict, NMI Supreme Court determines whether substantial evidence supports the verdict. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

When party appeals denial of motion for new trial based on claim that jury verdict was against weight of evidence, appellate court must conduct limited review so as not to abridge right to jury trial. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

——Criminal Cases

Whether there was sufficient evidence for the jury to convict is a mixed question of law and fact which NMI Supreme Court reviews de novo. *Commonwealth v. Santos*, 1998 MP 6 ¶ 5

Whether jury's verdict that defendant was guilty of assault with dangerous weapon but innocent of illegal possession of firearm was inconsistent with its special finding that defendant was armed with firearm at time he committed assault, requiring reversal, was question of law, reviewable de novo. *Commonwealth v. Esteves*, 3 N.M.I. 447 (1993).

—Justiciability

Whether violations of Article III, Section 9(a) of the Commonwealth Constitution and 1 CMC § 7402(d) arising out of reprogramming and expenditure decisions constitute nonjusticiable political questions is a question of law and is reviewed de novo. N.M.I. Const. art III, § 9(a), 1 CMC § 7402(d). *Rayphand v. Tenorio*, 2003 MP 12 ¶ 3

—Juvenile Delinquency Proceedings

Whether the juvenile court correctly granted certification of a juvenile matter to the adult criminal court is reviewed for abuse of discretion. *In re J.J.C.*, 2000 MP 8 ¶ 3

The decision to transfer a juvenile to adult court is within the sound discretion of the juvenile court, and will not be disturbed absent an abuse of discretion. The court abuses its discretion when it fails to make required findings or its findings are clearly erroneous. *In re J.J.C.*, 2000 MP 8 ¶ 24

Trial court order deferring juvenile's fifty-day period of detention due to inoperability of juvenile detention facility was reviewed for abuse of discretion on appeal. *In re J.R., Jr.*, 4 N.M.I. 239 (1995).

—Laches

The standard of review for laches in the Commonwealth has varied over time. We previously stated that laches presents a mixed question of law and fact and is reviewed *de novo*. We have also characterized laches as strictly a question of law reviewed *de novo*. The United States District Court for the Northern Mariana Islands characterized laches as a finding of fact, subject to the trial court's discretion, which cannot be disturbed unless it is shown to be clearly erroneous so as to amount to an abuse of discretion. Whether laches applies to a given case depends upon the circumstances of the particular case and is a question primarily addressed to the discretion of the Trial Court. *In Re the Estate of Rios*, 2008 MP 5 ¶ 7 (2008).

We review *de novo* whether laches is available as a matter of law and for an abuse of discretion the trial court's decision whether to apply laches to the facts. *In Re the Estate of Rios*, 2008 MP 5 ¶ 8 (2008).

Issue of whether equitable doctrines of laches and estoppel barred party's heirship claim against estate presented mixed question of law and fact which appellate court would review de novo. *In re Estate of Deleon Guerrero*, 3 N.M.I. 253 (1992).

Issue of whether party's claim to land was barred by laches was question of law, reviewable de novo. *Santos v. Santos*, 3 N.M.I. 39 (1992).

—Land Alienation Restriction

Whether an assignment of a lease violates Article XII of the Commonwealth Constitution is a question of law, which the Supreme Court reviews *de novo*. *Stephanson v. Teregeyo*, 2008 MP 13 ¶ 13 (2008).

Issue of whether trial court erred in concluding that N.M.I. Const. art. XII (restricting acquisition of long-term interests in real property to persons of NMI descent) was not violated in action for breach of contract and fraud in property sale raised question of law reviewed de novo on appeal. *Deleon Guerrero v. Nabors*, 4 N.M.I. 31 (1993).

—Law of the Case

Whether, in the same case, a previous decision denying summary judgment bars a subsequent decision granting summary judgment pursuant to the law of the case doctrine is a question of law that is reviewed de novo. *Cushnie v. Arriola*, 2000 MP 7 ¶ 3.

—Leave to Amend

See **Standard of Review – Pleading**, this topic.

—Legal Conclusions

DC App. Div. 1989. Conclusions of law are reviewed by the appellate court de novo. *CNMI v. Delos Santos*, 3 CR 661.

DC App. Div. 1989. Conclusions of law are reviewed by the appellate court de novo. *Office of the Attorney General v. Jimenez*, 3 CR 827.

DC App. Div. 1989. The Appellate Division's review of conclusions of law is de novo. *Tokio Marine and Fire Insurance Co., Ltd. v. Marianas Ocean Enterprises, Inc.*, 3 CR 748.

DC App. Div. 1988. The Appellate Divisions reviews issues of law de novo on appeal. *Matagolai v. Pangelinan*, 3 CR 591.

DC App. Div. 1987. Where the trial court's decision is based on construction of a statute, and the question on appeal is whether the trial court correctly interpreted and applied the statute at issue, this is a question of law reviewed under the de novo standard. *NMI Attorney General v. Cubol*, 3 CR 64.

DC App. Div. 1987. The Appellate Division reviews questions of law under the non-deferential de novo standard. *Penny's Store v. Taisacan*, 3 CR 54.

DC App. Div. 1986. Conclusions of law are freely reviewable by the appellate court. *Marianas Public Land Trust v. Government NMI*, 2 CR 870, rev'd, 838 F.2d 341 (9th Cir. 1988).

DC App. Div. 1986. Conclusions of law made by the trial court are freely reviewable on appeal. *EDLF v. Pangelinan*, 2 CR 870.

DC App. Div. 1985. In light of appellant's failure to prove that application of Japanese laws of intestate distribution would produce a result other than the one reached by the trial court, which applied English common law principles, appellate court will not decide issue of which laws should be applied and will not overturn decision below. *Aldan v. Kaipat*., 2 CR 190, aff'd, 794 F.2d 1371 (9th Cir. 1986).

DC App. Div. 1984. If a trial court applies an incorrect legal standard to a question of fact, its finding is freely reviewable by an appellate court. *Elayda v. J & I Construction Co.*, 1 CR 1025.

—Legal Ethics

See **Standard of Review – Attorney Ethics**, this topic.

—Local Law

DC App. Div. 1989. The Appellate Division of the District Court reviews the trial court's interpretations of local law under a de novo standard. *CNMI v. Pangelinan*, 3 CR 839.

—Mandate

——Compliance with Mandate

Whether a lower court order violates the mandate issued by the Supreme Court is a question of law reviewed de novo. *In the Matter of the Estate of Malite*, 2010 MP 20 ¶ 28 (2010).

Issue of whether trial court judgment violated appellate court mandate was question of law, reviewable de novo on appeal. *Wabol v. Villacrusis*, 4 N.M.I. 314 (1995).

Issue of whether trial court erred in not following mandate of appellate court was question of law, subject to de novo standard of review. *Loren v. E'Saipan Motors, Inc.*, 1 N.M.I. 133 (1990).

—Marital Property

Whether the trial court correctly classified and distributed the parties' real property upon divorce is a mixed question of law and fact. *Sattler v. Mathis*, 2006 MP 6 ¶ 7

Whether property is characterized as marital, separate, or mixed pursuant to the Marital Property Act, 8 CMC § 1811, *et seq*., is a question of law that is reviewable *de novo*. *Sattler v. Mathis*, 2006 MP 6 ¶ 10

A bifurcated approach is necessary for the review of property division upon divorce: property characterization is reviewed *de novo*, since it is primarily a legal determination, while property division is reviewed for an abuse of discretion. While this approach works well for reviewing a trial courts' determination of the proper disposition of a single asset, it does not offer clear guidance on which review standard is appropriate when reviewing a trial court's decision to apportion a mixed asset into separate and marital parts. *Sattler v. Mathis*, 2006 MP 6 ¶ 10

Marital property apportionment, comes after the asset is characterized, but before it is divided. Apportionment would seem to be a more factual inquiry than asset characterization, because the trial court must trace marital and separate components. However, since the trial court, by law, only has authority to divide marital assets, and may only assign separate property to effectuate an equitable distribution of marital assets, a deferential review of mixed property apportionment might yield too much authority to a trial court's equitable considerations. Thus, property apportionment, allocating marital and separate interests in mixed property, seems to lie in the middle ground between *de novo* and discretionary review standards. *Sattler v. Mathis*, 2006 MP 6 ¶ 12

Property characterization issues are reviewed *de novo*, but when dealing with mixed property, the appellate court should give more deference to the trial court and should treated determinations relating to apportionment like issues of property division, and review for abuse of discretion. *Sattler v. Mathis*, 2006 MP 6 ¶ 13

The NMI Supreme Court determines, on a *de novo* basis, whether a retirement benefit was correctly categorized as separate, marital, or mixed property by the trial court. Then, if the retirement benefit is found to be mixed property, the Court must review the trial court's apportionment of the retirement benefit into marital and separate shares, as well as the trial courts division of the marital share, on a deferential abuse of discretion basis. *Sattler v. Mathis*, 2006 MP 6 ¶ 16

The appellate court reviews trial court orders made pursuant to the Commonwealth Marital Property Act of 1990, 8 CMC §§ 1811, *et seq*., for abuse of discretion. The division of marital property is subject to the broad discretion of the trial court, whose determinations will be upheld on appeal unless there is a clear showing of an abuse of discretion. 8 CMC §§ 1811, *et seq. Reyes v. Reyes*, 2004 MP 1 ¶ 3

Whether the trial court correctly classified and distributed the parties' real property upon divorce is a mixed question of law and fact. *Reyes v. Reyes*, 2004 MP 1 ¶ 3

The NMI Supreme Court reviews *de novo* the trial court's determination whether a retirement benefit is separate, marital, or mixed property. *Sattler v. Mathis*, 2006 MP 6 ¶ 17

Whether the trial court correctly classified and distributed several lots of real property is a mixed question of law and fact where the appellant questions the trial court's findings of fact, which supported the court's legal conclusion as to ownership of property. While mixed questions of law and fact are generally reviewed de novo, the trial court's factual findings are still reviewed for clear error, and will be affirmed unless the N.M.I. Supreme Court is left with a firm and definite conviction that a mistake has been made. *Santos v. Santos*, 2000 MP 9 ¶ 3

Issue of whether homestead lot was marital property under Marital Property Act was question of law, reviewed de novo on appeal. 8 CMC § 1811 et seq. *Hofschneider v. Hofschneider*, 4 N.M.I. 277 (1995).

—Mistrial

——Generally

DC App. Div. 1989. The reviewing court must accord the highest degree of respect to the trial judge's evaluation as to the ability of the jurors to be impartial but the appellate court has an obligation to satisfy itself that the trial judge exercised sound discretion in determining whether or not to declare a mistrial based on possible jury bias. *CNMI v. Delos Santos*, 3 CR 661.

——Motion for Mistrial

The Supreme Court reviews for an abuse of discretion the denial of a motion for a mistrial. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 49 (2010).

The trial court's denial of a motion for mistrial is reviewed for abuse of discretion on appeal. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 21

—Mixed Questions of Fact and Law

——Generally

The overall validity of a gift of real property is a mixed question of law and fact which the Supreme Court reviews de novo. *Fusco, et al. v. Matsumoto*, 2011 MP 17 ¶ 13 (2011).

A residency determination is a mixed question of law and fact; as is a domicile determination. Thus, the inlaid questions of law, such as questions of constitutional and statutory interpretation, are subject to de novo review, and the trial court's findings of fact are reviewed under the clearly erroneous standard. *Rebuenog v. Aldan*, 2010 MP 1 ¶ 15 (2010).

Whether a party to a contract breached the implied covenant of good faith and fair dealing, thereby causing damage to the other party in the contract, is a mixed question of law and fact. The Supreme Court will review application of contract law, as it applies to the covenant of good faith and fair dealing, under the de novo standard of review and any findings based on extrinsic evidence under the clear error standard of review. *Tano Group, Inc. v. Dep't of Publ. Works, et al.*, 2009 MP 18 ¶ 40 (2009).

Whether a person has been legally married to another is a mixed question of law and fact. The inlaid questions of law are subject to de novo review. However, the trial court's findings of fact are reviewed under the clearly erroneous standard. *Islam v. Islam*, 2009 MP 17 ¶ 7 (2009).

Whether the trial court erred in determining that a party to a divorce action's behavior rose to a level of cruel treatment, neglect or personal indignity is a question of law subject to de novo review. *Islam v. Islam*, 2009 MP 17 ¶ 7 (2009).

A trial court's determination of land ownership is a mixed question of law and fact. Mixed questions of law and fact are typically reviewed de novo. However, the Supreme Court adopts a "deferential review" of mixed questions of law and fact when it appears that the trial court is better positioned than the appellate court to decide the issue in question or that probing scrutiny will not contribute to the clarity of legal doctrine. *In re the Estate of De Castro*, 2009 MP 3 ¶ 28 (2009).

In reviewing mixed questions of law and fact, the Supreme Court reviews legal issues de novo, while the trial court's findings of fact are reviewed under the clearly erroneous standard. Under the clearly erroneous standard, the Supreme Court will not reverse a trial court's findings unless it is left with a firm and definite conviction that clear error has been made. *In re the Estate of De Castro*, 2009 MP 3 ¶ 28

Whether a criminal defendant's confession is voluntary is a mixed question of fact and law and is reviewed *de novo*. *Commonwealth v. Mettao*, 2008 MP 7 ¶ 15

While mixed questions of law and fact are reviewed *de novo*, the trial court's findings of fact are reviewed under the clearly erroneous standard, and this Court will not reverse those findings unless left with a firm and definite conviction that clear error has been made. *CPA v. Tinian Shipping*, 2007 MP 22 ¶ 14

Whether a criminal defendant's confession was voluntary is a mixed question of fact and law. Mixed questions of fact and law are reviewed *de novo*. *Commonwealth v. Shoiter*, 2007 MP 20 ¶ 6

Whether due process requires a voluntariness hearing for confessions to private individuals is thus reviewed *de novo. Commonwealth v. Shoiter*, 2007 MP 20 ¶ 6

Mixed questions of law and fact are reviewed *de novo* on the law, but the trial court's findings of fact are reviewed for clear error. We do not reverse trial court findings of fact unless we have a firm and definite conviction that a mistake has been made. *Matsunaga v. Matsunaga*, 2006 MP 25 ¶ 32

No universal review standard for mixed law and fact questions is appropriate; rather in each case, the pivotal question is do the concerns of judicial administration favor the district court or do they favor the appellate court. *Sattler v. Mathis*, 2006 MP 6 ¶ 8

Deferential review of mixed questions of law and fact is warranted when it appears that the trial court is better positioned than the appellate court to decide the issue in question or that probing scrutiny will not contribute to the clarity of legal doctrine. *Sattler v. Mathis*, 2006 MP 6 ¶ 9

Whether certain acts of reprogramming and expenditure of funds violate Article III, Section 9(a) of the Commonwealth Constitution and 1 CMC § 7204(d) is a mixed question of law and fact that will be reviewed de novo. N.M.I. Const. art III, § 9(a), 1 CMC § 7204(d). *Rayphand v. Tenorio*, 2003 MP 12 ¶ 3

Mixed questions of law and fact are reviewed de novo on appeal. *Bisom v. Commonwealth*, 2002 MP 19 ¶ 4

Whether the Superior Court erroneously determined that certain properties should be distributed in accordance with Carolinian law presents a mixed question of fact and law and is reviewed de novo. *In re Estate of Laropi*, 2002 MP 10 ¶ 9

Mixed questions of law and fact are generally reviewed de novo, although the trial court's findings of fact are reviewed for clear error. *Rosario v. Camacho*, 2001 MP 3 ¶ 40

Whether an individual's conduct was tortious and, consequently entitled another to punitive damages is a mixed question of law and fact subject to de novo review, except for the trial court's findings of fact, which are reviewed for clear error. *Rosario v. Camacho*, 2001 MP 3 ¶ 41

Laches presents a mixed question of law and fact, and is therefore reviewed de novo. *Rosario v. Camacho*, 2001 MP 3 ¶ 55

The trial court's determination that the Marianas Public Land Corporation did not have a duty to consummate a land exchange transaction with the appellant is a mixed question of law and fact reviewed de novo. *Benavente v. Marianas Pub. Land Corp.*, 2000 MP 13 ¶ 2

Whether the Superior Court improperly disregarded the doctrine of governmental estoppel involves mixed questions of law and fact which is reviewed de novo by the NMI Supreme Court. *Rasa v. Dep't of Lands and Resources*, 1998 MP 7 ¶ 2

The issue of whether there has been a delivery of a gift is a mixed question of law and fact reviewed de novo by the NMI Supreme Court. *Mendiola v. Marianas Agupa Enter.*, 1998 MP 10 ¶ 2

Questions of law and mixed questions of law and fact are subject to de novo review. *Ulloa v. Maratita*, 1997 MP 15 ¶ 2

Whether the Superior Court erred in finding that there were sufficient exigent circumstances to support the issuance of a "no-knock" search warrant is a mixed question of law and fact which NMI Supreme Court reviews de novo. *Commonwealth v. Aldan*, 1997 MP 31 ¶ 3

Issues involving mixed questions of law and fact are reviewed de novo on appeal. *Ito v. Macro Energy*, Inc., 4 N.M.I. 46 (1993).

Issues raising mixed questions of fact and law are reviewed de novo on appeal. *Agulto v. Northern Marianas Inv. Group, Ltd.*, 4 N.M.I. 7 (1993).

Standard of review for issue involving mixed question of law and fact is de novo. *Rosario v. Quan*, 3 N.M.I. 269 (1992).

Mixed questions of fact and law are reviewed de novo. *Trinity Ventures, Inc. v. Guerrero*, 1 N.M.I. 54 (1990).

——Miscellaneous

The question of the rate of interest for an inverse condemnation case is a mixed question of law and fact. While we review *de novo* the rule of law by which the trial court made its determination, the trial court's selection of the statutory rate of interest in an inverse condemnation case is a factual issue which requires a showing of clear error to be disturbed. The determination of a reasonable rate of interest for just compensation is a finding of fact, which should be disturbed only if clearly erroneous. *Estate of Muna v. Commonwealth*, 2007 MP 16 ¶ 7

The question of whether the defendant was denied effective assistance of counsel when the trial court refused to appoint an expert witness is a mixed

question of law and fact and is reviewed *de novo. Commonwealth v. Perez,* 2006 MP 24 ¶ 9

Issue of whether NMI Superior Court erred in finding that lessee was improper holdover tenant was mixed question of law and fact, reviewed de novo on appeal. *Camacho v. L & T Int'l Corp.*, 4 N.M.I. 323 (1996).

Issue of whether trial court erred in finding that Trust Territory government intended to issue party a permit to homestead certain land was mixed question of law and fact, reviewable de novo on appeal. *Sablan v. Cabrera*, 4 N.M.I. 133 (1994).

Issue of whether trial court erred in determining that homesteader was entitled to additional homestead land as compensation from government for prior taking of homestead land without compensation was mixed question of law and fact, reviewable de novo on appeal. *Sablan v. Cabrera*, 4 N.M.I. 133 (1994).

—Motion To Suppress

DC App. Div. 1989. The Appellate Division applies a clearly erroneous standard when the court reviews the findings of fact made by the trial court in a suppression hearing. *CNMI v. Cabrera*, 3 CR 655.

DC App. Div. 1987. The Appellate Division reviews de novo the trial court's conclusion that a reasonable suspicion for an investigative stop of the defendant without a warrant existed. *CNMI v. Malit*, 3 CR 190.

DC App. Div. 1987. An appellate court views the evidence in a light most favorable to the government when reviewing the denial of a motion to suppress evidence. *CNMI v. Atalig*, 2 CR 1006.

DC App. Div. 1987. On appeal of a denial of a motion to suppress, where there are no findings of fact and no request has been made for such findings, the lower court will be affirmed if there is a reasonable view of the evidence that will sustain it. *CNMI v. Atalig,* 2 CR 1006.

DC App. Div. 1987. A finding of fact made by the court at a motion to suppress evidence in a criminal proceeding is subject to reversal only if it is clearly erroneous. *CNMI v. Cabrera*, 2 CR 1092.

—Negligence

——Contributory

Issue of whether decedent was contributorily negligent in accident resulting in his death involved mixed questions of law and fact, and would therefore be reviewed de novo on appeal. Ito *v. Macro Energy, Inc.*, 4 N.M.I. 46 (1993).

—Negligent Entrustment

Challenge to sufficiency of evidence supporting trial court's finding of parental liability for negligent entrustment of motor vehicle to unlicensed minor questioned court's findings of fact, and would thus be reviewed for clear error on appeal. *Yoo v. Quitugua*, 4 N.M.I. 120 (1994).

—New Trial

——Denial of New Trial, Civil Actions

The N.M.I. Supreme Court reviews the trial court's denial of a motion for a new trial for manifest or gross abuse of discretion. *KTT Corp. v. Tomokane*, 2003 MP 17 ¶ 6

Whether the trial court erred in denying a motion for a new trial, made pursuant to Commonwealth Rules of Civil Procedure 59, involves reopening a case post-judgment, and is reviewed by the N.M.I. Supreme Court for abuse of discretion. Com. R. Civ. P. 59. *Manglona v. Commonwealth*, 2002 MP 7 ¶ 13

The N.M.I. Supreme Court will review the lower court's ruling on a motion for a new trial for manifest or gross abuse of discretion. *Fitial v. Kim Kyung Duk*, 2001 MP 9 ¶ 2

A trial court's denial of a motion for a new trial is reviewed for manifest or gross abuse of discretion. *Bank of Hawaii v. Sablan*, 1997 MP 9 ¶ 3

The denial of a motion for a new trial is reviewed for a manifest or gross abuse of discretion. Only where a substantial right of the movant has been infringed may appellate court reverse the trial court's order. Com. R. Civ. P. 61. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

Whether probate court erred in failing to hold new trial on remand of action would be reviewed for abuse of discretion on appeal. *In re Estate of Barcinas*, 4 N.M.I. 149 (1994).

Scope of review concerning issue of whether trial court abused its discretion in denying motion for new trial is limited to whether there has been manifest or gross abuse of discretion. *Robinson v. Robinson*, 1 N.M.I. 81 (1990).

Whether a trial court abused its discretion in denying a motion for a new trial is subject to two-part test: whether moving party was prejudiced by denial of motion, and, if so, whether party could have prevented such prejudice at trial. *Robinson v. Robinson*, 1 N.M.I. 81 (1990).

——Denial of New Trial, Criminal Cases

The N.M.I. Supreme Court reviews for abuse of discretion the trial court's denial of a motion for a new trial based on ineffective assistance of counsel and it reviews de novo the trial court's determination of whether the defendant received ineffective assistance of counsel. *Commonwealth v. Diaz*, 2003 MP 14 ¶ 2

The trial court's denial of a motion for a new trial is reviewed for abuse of discretion. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 22

Trial court's denial of criminal defendant's motion for new trial after post-trial discovery of evidence was subject to review under abuse of discretion standard. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

——Denial of New Trial, Generally

DC App. Div. 1987. Where there was no abuse of discretion on the part of the trial court in conducting the jury selection and a failure of counsel to request additional voir dire, together with a failure to show prejudicial error, it was not error for the trial court to deny the grant of a new trial. *Marfega v. Soo*, 2 CR 1031.

DC App. Div. 1985. In the absence of testimony or other evidence as to how defendant's name was entered into the plaintiff hospital's data banks eventually appearing on its cycle billings as "responsible party," the alleged liability of the defendant for decedent's hospital bills is mere conjecture and not established by a preponderance of the evidence; accordingly, the denial of plaintiffs motion for a new trial was not erroneous where it was based on the-grounds of manifest error of law or mistake of fact or that the verdict was against the weight of the evidence. Fed.R.Civ.P. 59(a). *Guam Memorial Hospital v. Dale*, 2 CR 291, aff'd, 81 1 F.2d 1507 (9th Cir. 1987).

DC App. Div. 1985. In reviewing a trial court's refusal to order a new trial, the appellate court has a very limited scope of review; an appellate court should not overturn a judgment absent manifest or gross abuse of discretion on the part of the trial judge. Fed.R.Civ.P. 59. *Guam Memorial Hospital v. Dale*, 2 CR 291, aff'd, 811 F.2d 1507 (9th Cir. 1987).

DC App. Div. 1985. To determine if there has been manifest or gross abuse of discretion at the trial level sufficient to justify reversal of the judgment, the appellate court should examine whether the trial court properly considered whether the moving party would actually be prejudiced by the denial of the new trial, and if so, whether the moving party could have prevented such prejudice at trial. Fed.R.Civ.P. 59. *Guam Memorial Hospital v. Dale*, 2 CR 291, aff'd, 811 F.2d 1507 (9th Cir. 1987).

DC App. Div. 1985. Where plaintiff hospital failed to have the necessary witnesses and documents present at trial to establish through competent evidence the liability of defendant for medical services rendered to the deceased, defendant's spouse, thereby causing the involuntary dismissal of the action following the plaintiffs presentation of its case, trial court did not abuse its discretion by refusing a new trial, even where at the motion for new trial the plaintiff produced an agreement accepting liability apparently signed by the defendant. *Guam Memorial Hospital v. Dale*, 2 CR 291, aff'd, 811 F.2d 1507 (9th Cir. 1987).

—Oral Conveyances

See **Standard of Review – Conveyances, Oral Conveyances**, this topic.

—Parties

Indispensible parties, see **Standard of Review – Indispensible Parties**, this topic.

—Plea Agreements

Whether the trial court erred as a matter of law, under Rule 11 of the Commonwealth Rules of Criminal Procedure, when it declined to intervene in a plea negotiation between an accused and the Government is a question of law and is reviewed *de novo*. *Commonwealth v. Attao*, 2005 MP 8 ¶ 8

A trial court's determination that a prosecutor's plea bargaining or charging decision had both a discriminatory effect and a discriminatory intent is a factual determinations which an appellate court reviews for clear error. *Commonwealth v. Attao*, 2005 MP 8 ¶ 18

Whether the Government has entered into a binding plea agreement, such that it may not withdraw its offer without entitling the defendant to some form of relief, is a mixed question of law and fact that is subject to de novo review on appeal. *Commonwealth v. Camacho*, 2002 MP 21 ¶ 2

Whether the trial court erred when it rejected a plea agreement and failed to allow the defendant to withdraw his guilty plea prior to imposing a sentence is a question of law that the N.M.I. Supreme Court reviews de novo. *Commonwealth v. Castro*, 2002 MP 13 ¶ 2

Alleged breach of plea agreement by government would be reviewed de novo on appeal. *Commonwealth v. Duenas*, 4 N.M.I. 377 (1996).

Trial court's interpretation of a plea agreement is reviewed for clear error on appeal. *Commonwealth v. Duenas*, 4 N.M.I. 377 (1996).

—Pleading

Issue of whether party properly pleaded doctrine of estoppel was mixed question of law and fact, reviewable de novo. *Aquino v. Tinian Cockfighting Bd.*, 3 N.M.I. 284 (1992).

Whether trial court erred in failing to sua sponte grant leave to amend a petition was reviewed for abuse of discretion, since an amendment to a pleading, other than one made as a matter of right or by written consent of the adverse party, can only be made by leave of court. Com. R. Civ. P. 15(a). *In re Adoption of Magofna*, 1 N.M.I. 449 (1990).

— Preemption

Preemption is a question of law reviewed de novo. *Commonwealth v. Minto*, 2011 MP 14 ¶ 16 (2011).

—Probate Proceedings/Rulings

Heirship determinations are reviewed de novo. *In re the Estate of Kaipat*, 2010 MP 17 ¶ 5 (2010).

Determining whether the land commission's decision became conclusive under res judicata principles is a question of law to be reviewed de novo. *In re the Estate of De Castro*, 2009 MP 3 ¶ 23 (2009).

The issue of whether certain grandchildren were or were not entitled to inherit as customary adopted children is an issue of law and is reviewed de novo. *In re Macaranas*, 2003 MP 11 ¶ 5

How the estate of an intestate decedent is to be distributed is a question of law which the NMI Supreme Court reviews de novo. *Estate of Aldan*, 1997 MP 3 ¶ 2

NMI Supreme Court reviews probate court's granting of attorney's fees and cost for manifest error. *Estate of Aldan*, 1997 MP 3 ¶ 2

Issue of whether an executor may use estate assets to defend against the heirship claims of alleged pretermitted heirs is a question of law which the NMI Supreme Court reviews de novo. *Estate of Hillblom*, 1996 MP 21 ¶ 3

Whether nature of probate proceeding changed on remand from intestacy proceeding to probate of oral will involved question of law and would therefore be reviewed de novo on appeal. *In re Estate of Barcinas*, 4 N.M.I. 149 (1994).

Whether probate court erred in distributing land to some of decedent's children but not others presented mixed question of law and fact, reviewed de novo on appeal. *In re Estate of Barcinas*, 4 N.M.I. 149 (1994).

Issue of whether claimant in probate proceeding should have brought independent paternity action was question of law, reviewable de novo. *In re Estate of Deleon Guerrero*, 3 N.M.I. 253 (1992).

Issue of whether trial court erred by failing to determine decedent's heirs and declare that each held equal undivided share in his estate was question of law, reviewable de novo. *In re Estate of Cabrera*, 2 N.M.I. 195 (1991).

Issue of whether trial court erred by approving administrator's proposed distribution of decedent's property to persons who were not his heirs was question of law, reviewable de novo. *In re Estate of Cabrera*, 2 N.M.I. 195 (1991).

Issue of whether trial court erred by approving administrator's proposal for distribution of decedent's estate without having been petitioned by heirs or administrator for partition of estate (i.e., with notice and hearing) pursuant to 8 CMC § 2803 was question of law, reviewable de novo. *In re Estate of Cabrera*, 2 N.M.I. 195 (1991).

Issue of whether trial court erred by rejecting objectors' counter-proposal for partition and distribution of estate was question of law, reviewable

de novo. *In re Estate of Cabrera*, 2 N.M.I. 195 (1991).

Issue of whether trial court could entertain a claim of customary adoption in a probate proceeding was issue of law, reviewable de novo. *In re Estate of Rofag*, 2 N.M.I. 18 (1991).

Issue of whether decedent's children by his first wife had interest in land covered by Trust Territory title determination was conclusion of law, reviewable de novo. *In re Estate of Dela Cruz*, 2 N.M.I. 1 (1991).

—Probation Ruling

NMI Supreme Court reviews a revocation of probation for an abuse of trial court's discretion. *Commonwealth v. Santos*, 4 N.M.I. 348 (1996).

—Prosecutorial Misconduct

Where a prosecutor argues the defendant failed to take the initiative and assert his defense of self-defense to either the police or to family members prior to his arrest, because the prosecutor's argument properly drew inferences from the evidence and merely responded to defendant's testimony, the defendant was not denied a fair trial. *Commonwealth v. Taitano,* 2005 MP 20 ¶ 37

Although the prosecutor may not use the silence of an accused individual against him, this proscription does not apply if the defendant has not yet received *Miranda* warnings, such as pre-arrest testimony. *Commonwealth v. Taitano,* 2005 MP 20 ¶ 37

The trial court's factual determination of the existence of a selective prosecution is reviewed for clear error. *Commonwealth v. Attao,* 2005 MP 8 ¶ 12

When counsel fails to object to a prosecutor's statement at trial, the Court has discretion to examine the statement to determine whether it was improper, and if so, whether it constitutes "plain error." *Commonwealth v. Rabauliman,* 2004 MP 12 ¶ 22

When statements of a prosecutor are reviewed under a plain error standard, they must be judged against the whole record and not in isolation. Each statement is reviewed in context so that the Court can more clearly understand its intended meaning and what harm, if any, came as a result. *Commonwealth v. Rabauliman,* 2004 MP 12 ¶ 25

When two defendants are tried together, the Court will only review a prosecutor's statements for error that were directed at the person bringing the appeal. *Commonwealth v. Rabauliman,* 2004 MP 12 ¶ 32

If an objection to an improper statement by a prosecutor at trial is timely, the Court will apply a harmless error test to determine whether it is more probable than not that the prosecutor's conduct materially affected the fairness of the trial. *Commonwealth v. Rabauliman,* 2004 MP 12 ¶ 40

In reviewing a question of the propriety of a prosecutor's statements, the Court's harmless error analysis consists of two parts. First, the Court will determine whether the statements, taken in context, affect a substantial right. If so, the Court will next review the record to determine whether the error was harmless beyond a reasonable doubt. *Commonwealth v. Rabauliman,* 2004 MP 12 ¶ 42

There is no automatic reversal of conviction for constitutional errors which, in the setting of a particular case, are of such unimportance that they may be deemed harmless. *Commonwealth v. Camacho,* 2002 MP 6 ¶ 19

Under the harmless error standard of review, the aim is to determine whether allegedly improper behavior, considered in the context of the entire trial affected the jury's ability to judge the evidence fairly. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 19

In reviewing improper statements made during closing arguments, the focus is whether, in the context of the entire trial, it is more probable than not that the misconduct had substantial and injurious effect or influence in determining the jury's verdict. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 72

Presuming that even a cautionary mention of defendant's silence is error, it is the government's burden to show that this misconduct was harmless beyond a reasonable doubt. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 78

In the context of comments on silence, the test for harmless error comprises the following factors: the extent of the comments made, whether inference of guilt from silence was stressed to the jury, and the extent of other evidence implicating the defendant's guilt. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 79

Prosecutorial comments on silence are harmless error beyond a reasonable doubt where the post-arrest comments were made only twice while explaining other statements, where there was no emphasis on the

post-arrest silence to establish defendant's guilt, where there was no inference that the jury relied on the statements to convict the defendant, and where the trial court issued a curative jury instruction. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 80

While improper, one lone plea for sympathy does not rise to the level of error compelling reversal of a defendant's conviction. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 83

In considering when prosecutorial vouching will result in reversal, courts consider: the form of vouching; how much the vouching implies that the prosecutor has extra-record knowledge of or the capacity to monitor the witness's trustfulness; any inference that the court is monitoring the witness's veracity; the degree of personal opinion asserted; the timing of the vouching; the extent to which the witness's credibility was attacked; the specificity and timing of a curative instruction; and the importance of the witness's testimony and the vouching to the case overall. *Commonwealth v. Camacho,* 2002 MP 6 ¶ 87

A trial court's quick intervention, preventing counsel from pursuing an argument predicated on evidence not admitted at trial, would make it highly unlikely that the jury's ability to determine the facts solely on the evidence would be affected. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 100

The N.M.I. Supreme Court will not reverse the lower court's denial of a motion for a new trial, without a showing that it is more probable than not that misconduct materially affected the verdict. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 129

When a review of the record discloses no prejudicial error, there is no reasonable probability that, had the errors been avoided, the result of the trial would have been different. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 130

Where, in criminal prosecution, defense counsel contemporaneously objected to prosecutor's allegedly improper arguments, on appeal NMI Supreme Court applies a harmless error test to assess whether it is more likely than not that prosecutor's conduct affected the fairness of the proceeding. *Commonwealth v. Delos Reyes*, 4 N.M.I. 340 (1996).

Because criminal defendant did not contemporaneously object to allegedly improper prosecutorial comment, NMI Supreme Court would review statement to determine whether it was improper; if statement was improper, Court would assess whether it constituted plain error. *Commonwealth v. Brel*, 4 N.M.I. 200 (1994).

If a timely objection was made at trial to an improper statement by a prosecutor, appellate court will apply a harmless error test in considering whether it is more probable than not that the prosecutor's conduct materially affected the fairness of the trial. Com. R. Crim. P. 52(a). *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

If counsel imposed no objections at trial to prosecutorial misconduct, appellate court may nonetheless look to each statement to determine whether it was improper and, if so, whether it constituted "plain error." Com. R. Crim. P. 52(b). *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

Because defense counsel did not object at trial to certain allegedly improper statements by prosecutor, appellate court would review statements for plain error. Com. R. Crim. P. 52(b). *Commonwealth v. Saimon,* 3 N.M.I. 365 (1992).

Because defense counsel objected at trial to allegedly improper statement by prosecutor, appellate court would review statement under harmless error standard. Com. R. Crim. P. 52(a). *Commonwealth v. Saimon,* 3 N.M.I. 365 (1992).

—Questions of Law

——Generally

Questions of law are review by the Supreme Court de novo. The Court does not need a transcript to decide questions of law reviewed de novo. *Hee v. Oh*, 2011 MP 18 ¶ 8 (2011).

The Supreme Court's review of questions of law is de novo. In Re the Matter of the Estate of Hillblom, 2011 MP 5 ¶ 11 (2011).

Whether the trial court applied the correct legal standard is a question of law reviewed de novo. *In Re the Estate of Malite*, 2011 MP 4 ¶ 9 (2011).

Questions of law are subject to a de novo standard of review. *In the Matter of the Estate of Roberto*, 2010 MP 7 ¶ 6 (2010).

Whether a defendant receives adequate notice of the charges is a question of law reviewed *de novo. Commonwealth v. Mettao*, 2008 MP 7 ¶ 31 (2008).

We review the question of whether a person is an alien subject to deportation *de novo*. *AGO/DOIS v. Phillip*, 2008 MP 1 ¶ 3 (2008).

Questions of law are reviewed *de novo*. *Triple J Saipan Inc. v. Sanchez*, 2007 MP 23 ¶ 11

Whether we have appellate jurisdiction is a question of law which must be resolved *de novo* before the merits of an appeal may be addressed. *Commonwealth v. Appleby*, 2007 MP 19 ¶ 5

The issue of whether a criminal sentence is improper is reviewed *de novo*. However, if an appellant fails to challenge the sentence in the trial court then the sentence is reviewed for plain error. *Commonwealth v. Yao*, 2007 MP 12 ¶ 6

Appellate courts generally have a duty to review public figure status *de novo*. *Tan v. Younis*, 2007 MP 11 ¶ 39

The appellate court reviews the application of collateral estoppel *de novo*. *Commonwealth v, Crisostomo*, 2007 MP 7 ¶ 10

Issues relating to multiple punishments are reviewed under a double jeopardy analysis and, therefore, are reviewed *de novo*. *Commonwealth v, Crisostomo*, 2007 MP 7 ¶ 11

Interpretation of contract terms, such as this settlement provision, is a question of law reviewable *de novo*. *Malite v. Tudela, et al.*, 2007 MP 3 ¶ 23

Whether an order is final for purposes of appeal is a purely legal determination, and is reviewed *de novo*. *Bank of Guam v. Mendiola et al*, 2007 MP 1 ¶ 3

Whether there was jury bias based on an improper jury array from which the individual jurors were selected is a question of law reviewed *de novo*. *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26 ¶ 18

The clearly erroneous standard accords high deference to the lower court. *Liu v. CNMI*, 2006 MP 5 ¶17

A writ is not appropriate if a rational and substantial legal argument can be made in support of the questioned ruling even though on normal appeal a reviewing court may find reversible error, therefore, the question the court should consider when presented with a writ is whether the lower court rationally could have found as it did, not whether the appellate court would have ruled differently. *Liu v. CNMI*, 2006 MP 5 ¶ 17

In order for the N.M.I. Supreme Court to issue a writ, it must be firmly convinced that the Superior Court has erred and that the challenged order is clearly erroneous as a matter of law. *Liu v. CNMI*, 2006 MP 5 ¶ 19

The N.M.I. Supreme Court reviews *de novo* whether a person is an indispensable party to litigation. *In Sik Chang v. Estate of Norita*, 2006 MP 2 ¶ 32

The issue of appellate jurisdiction must always be resolved before the merits of an appeal are examined or addressed. Whether jurisdiction can be exercised is a question of law subject to a *de novo* review. *Pacific Amusement, Inc. v. Villanueva*, 2005 MP 11 ¶ 7

A trial court's determination that a prosecutor's plea bargaining or charging decision had both a discriminatory effect and a discriminatory intent is a factual determinations which an appellate court reviews for clear error. *Commonwealth v. Attao*, 2005 MP 8 ¶ 18

Whether the trial court erred in ruling that a plaintiff could not recover anticipatory lost profits when those profits originate from an illegal business practice and whether the trial court erred in finding that the plaintiff did not have standing to sue for wages his former employees had allegedly lost because no wages were actually paid by the plaintiff, both are questions of law which the Supreme Court reviews *de novo*. *Falcon v. McCue*, 2005 MP 7 ¶ 19

The C.N.M.I. Supreme Court reviews *de novo* a trial court's granting of immunity. *Bank of Saipan, Inc. v. Atalig*, 2005 MP 3 ¶ 2

A substantial question of law is one that is fairly debatable or doubtful. *Commonwealth v. Blas*, 2004 MP 26 ¶ 8

Clear and convincing evidence is required to protect society from the consequences of grave decisions too lightly reached. The clear and convincing standard requires more evidence than a preponderance, and less than beyond a reasonable doubt. *Office of the Attorney Gen. v. Estel*, 2004 MP 20 ¶ 23

The trial court's findings in a *Kastigar* proceeding will be upheld unless clearly erroneous. *Commonwealth v. Repeki*, 2004 MP 19 ¶ 18

APPEAL AND ERROR

The trial court's legal conclusions and the factual determination that the Department of Labor and Immigration's Hearing Officer's decision was based on substantial evidence are reviewed de novo on appeal. *Ramos V. Magusa, Inc.*, 2002 MP 25 ¶ 2

Whether the trial court correctly applied a statute presents a question of law and is reviewed de novo on appeal. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 2

Whether the trial court violated double jeopardy by convicting a defendant for both Disturbing the Peace and Assault and Battery presents a question of law and is reviewed de novo on appeal. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 2

Whether the trial court misapplied a statute presents a question of law and is reviewed de novo on appeal. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 2

Whether the trial court violated the confrontation clause by limiting questioning presents a question of law and is reviewed de novo on appeal. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 2

Whether the trial court misunderstood intent as it relates to Assault and Battery and Disturbing the Peace charge is a question of law and is reviewed de novo on appeal. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 2

The issue of whether the trial court's award of damages and attorney fees is proper is a question of law, which the N.M.I. Supreme Court reviews de novo. *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 4

The N.M.I. Supreme Court reviews issues of law denovo. *Cabrera v. Young*, 2001 MP 19 ¶ 3

Whether the evidence was sufficient to sustain defendants' convictions based solely upon her written admission that she was working under a false name, or whether the admission needed to be corroborated by independent evidence under the corpus delicti rule raises a question of law and thus is reviewed de novo. *Commonwealth v. Caja*, 2001 MP 6 ¶ 3

Deed interpretation is a question of law, reviewed de novo. *Rosario v. Camacho*, 2001 MP 3 ¶ 38

Whether siblings are entitled to rent from their sibling is a legal question which is reviewed de novo. *Rosario v. Camacho*, 2001 MP 3 ¶ 39

The validity of a quitclaim deed is a question of law reviewed de novo. *Rosario v. Camacho*, 2001 MP 3 ¶ 42

Whether the trial court correctly applied the law to the facts is a legal question to be reviewed de novo. *Santos v. Santos*, 2000 MP 9 ¶ 3

Whether the trial court properly precluded the appellant from claiming that checks presented by appellee were forged is a legal conclusion, reviewed de novo on appeal. *Yang Jae Oh v. Angel Ent., Inc.*, 2000 MP 6 ¶ 3

Review of the application of administrative res judicata is de novo. *Estate of Muna v. Commonwealth*, 2000 MP 2 ¶ 2

Whether the lower court correctly determined that a claim is barred by collateral estoppel is a question of law, which the N.M.I. Supreme Court reviews de novo. *In re Estate of De Leon Guerrero v. Quitugua*, 2000 MP 1 ¶ 2

Dismissal for lack of subject matter jurisdiction is reviewed de novo. *In re Estate of De Leon Guerrero v. Quitugua*, 2000 MP 1 ¶ 3

The Superior Court's application of the doctrine of collateral estoppel and of the statute of limitations are reviewed de novo. *In re Estate of De Leon Guerrero v. Quitugua*, 2000 MP 1 ¶ 4

The issue of jurisdiction is a question of law subject to de novo review. *Nakatsukasa v. Superior Court*, 1999 MP 25 ¶ 3

Where a defendant enters into a written plea agreement pursuant to Com. R. Crim. P. 11(e)(1)(C), whether the trial court erred when it imposed a sentence less severe than that contained in a plea agreement is a question of law which the N.M.I. Supreme Court reviews de novo. *Commonwealth v. Ge Ai Ping*, 1999 MP 16 ¶ 2

NMI Supreme Court reviews questions of law de novo. *Weathersbee v. Weathersbee*, 1998 MP 14 ¶ 2; Pellegrino v. Commonwealth, 1999 MP 10 ¶ 5

NMI Supreme Court reviews conclusions of law de novo. *Commonwealth v. Aguon*, 1997 MP 22 ¶ 3

Questions of law and mixed questions of law and fact are subject to de novo review. *Ulloa v. Maratita*, 1997 MP 15 ¶ 2

Issues raising questions of law are reviewed de novo on appeal. *Agulto v. Northern Marianas Inv. Group, Ltd.*, 4 N.M.I. 7 (1993).

Standard of review for issue involving question of law is de novo. *Rosario v. Quan*, 3 N.M.I. 269 (1992).

Questions of law are reviewable de novo. *Commonwealth v. Oden*, 3 N.M.I. 186 (1992), aff'd, 19 F.3d 26 (9th Cir. 1994).

Questions of law are reviewed de novo. *In re Discipline of Lizama*, 2 N.M.I. 360 (1991).

——Miscellaneous

Whether Superior Court erred in granting judgment in favor of plaintiffs; whether Superior Court erred by granting inconsistent remedies; whether Superior Court erred in taking judicial notice of documents in the case file which had not been admitted into evidence; whether defendants were entitled to judgment for the balance due; and whether the Superior Court erred in ordering the defendants to pay plaintiffs' attorney's fees are issues of law reviewed de novo by the NMI Supreme Court. *Mi Sook Seol v. Saipan Honeymoon Corp.*, 1999 MP 9 ¶ 4

Whether the Superior Court erred in denying appellants reimbursement for the value of improvements or, in the alternative, for the expenditure of funds and labor for improvements is a question of law, reviewable de novo by the NMI Supreme Court. *Commonwealth v. Anglo*, 1999 MP 6 ¶ 4

Whether the Superior Court erred in finding that game is included in the definition of bingo as established in the rules and regulations of the Commonwealth Lottery Commission and Saipan Municipal Ordinance involves a question of law and is reviewed de novo by the NMI Supreme Court. *Commonwealth ex rel. Dunlap v. Island Amusement Corp.*, 1998 MP 12 ¶ 2

The determination of which factors the court is required by law to consider in awarding alimony under Commonwealth law is a question of law, reviewable de novo by the NMI Supreme Court. *Thornburgh v. Thornburgh*, 1997 MP 27 ¶ 2

Issue concerning propriety of trial court's deciding of factual matters in context of ruling on cross-motions for summary judgment and a preliminary injunction would be reviewed de novo on appeal. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

Trial court ruling that plaintiff, surviving spouse in wrongful death action, waived loss of consortium claim because her counsel "admitted" at summary judgment hearing that plaintiff had no consortium claim was conclusion of law, reviewed de novo on appeal. *Ito v. Macro Energy, Inc.*, 4 N.M.I. 46 (1993).

Issue of whether admission by plaintiff in letter admitted into evidence warranted summary reversal of judgment in plaintiff's favor raised question of law, reviewed de novo on appeal. *Sonoda v. Villagomez*, 4 N.M.I. 34 (1993).

Issue of whether trial court erred in ruling that purchase sum for property was not tendered back to buyer after seller attempted to disaffirm sale raised question of law reviewed de novo on appeal. *Deleon Guerrero v. Nabors*, 4 N.M.I. 31 (1993).

Whether defendant NMI officials and agencies were legally prohibited from disclosing plaintiff Commonwealth taxpayers' tax returns and related information to Inspector General of U.S. Department of the Interior in audit was question of law, reviewed de novo by appellate court. *Sablan v. Inos*, 3 N.M.I. 418 (1993).

Issue of whether party's claim to land was barred by past disclaimer of any interest in land was question of law, reviewable de novo. *Santos v. Santos*, 3 N.M.I. 39 (1992).

— Real Property

—— Foreclosure

We review de novo the issue of when a purchaser of property at a foreclosure sale assumes the obligation to pay assessment fees. *Saipan Achugao Resort Members Assoc. v. Yoon*, 2011 MP 12 ¶ 12 (2011).

—Recording of Interest

Effect of recording of title to land prior to issuance of certificate of title by NMI Land Commission was issue of law, reviewable de novo. *Pangelinan v. Tudela*, 3 N.M.I. 233 (1992).

—Recusal Motion

Appellate court reviews a trial judge's failure to recuse himself under abuse of discretion standard. *Santos v. Santos*, 3 N.M.I. 39 (1992).

Issue as to whether motion to recuse Superior Court judge was timely filed was question of law, subject to de novo review. *Sablan v. Iginoef*, 1 N.M.I. 190 (1990), appeal dismissed sub nom., *Sablan v. Manglona*, 938 F.2d 970 (9th Cir. 1991).

—Regulations

——Adoption of Regulations

Whether NMI government regulation was properly certified under 17 TTC § 5(1) prior to adoption of Commonwealth Code in 1984 was question of law which appellate court would review de novo. *Commonwealth v. Lizama*, 3 N.M.I. 400 (1992), aff'd, 27 F.3d 444 (9th Cir. 1994).

Whether NMI government regulation should have been refiled and republished (pursuant to 1 CMC § 9102(d) of NMI Administrative Procedure Act) upon adoption of the Commonwealth Code in 1984 was question of law which appellate court would review de novo. *Commonwealth v. Lizama*, 3 N.M.I. 400 (1992), aff'd, 27 F.3d 444 (9th Cir. 1994).

—Release of Liability

Effect of release from liability on question of liability would be reviewed de novo on appeal. *Ito v. Macro Energy, Inc.*, 4 N.M.I. 46 (1993).

—Relief from Judgment

——Motion for Relief from Judgment

The N.M.I. Supreme Court reviews for abuse of discretion, a trial court's denial of a motion for relief from judgment for excusable neglect brought under Commonwealth Rule of Civil Procedure 60(b)(1). Com. R. Civ. P. 60(b)(1). *Reyes v. Reyes*, 2001 MP 13 ¶ 22

NMI Supreme Court reviews trial court's denial of Rule 60(b) motion for relief from judgment under the abuse of discretion standard. Com. R. Civ. P. 60(b). *Ferreira v. Borja*, 1999 MP 2 ¶ 3

NMI Supreme Court reviews trial court's denial of motion for relief from judgment under an abuse of discretion standard. Com. R.Civ.P. 60(b). *Aldan-Pierce v. Mafnas*, 1999 MP 11 ¶ 3

— Remedies

—— Specific Performance

When specific performance is the appropriate remedy sought, the Supreme Court reviews the trial court's decision to deny that relief for an abuse of discretion. *Century Ins. Co., Ltd. v. Guerrero Bros., Inc., et al.*, 2010 MP 13 ¶ 6 (2010).

—Reopening Case

See **Standard of Review – Judgment, Opening or Vacating Judgment**, this topic.

—Res Judicata

——Administrative Res Judicata

The setting aside of a certificate of title by the trial court concerns principles of administrative res judicata, which is an issue of law reviewed de novo. *Arriola v. Arriola*, 1999 MP 13 ¶ 3

——Generally

Res judicata is a legal question which we review de novo. *Rosario v. Camacho*, 2001 MP 3 ¶ 37

The trial court's conclusion regarding the application of res judicata is an issue of law and is reviewed de novo. *Piteg v. Piteg*, 2000 MP 3 ¶ 2

Issue involving application of administrative res judicata principles would be reviewed de novo on appeal. *In re Estate of Ogumoro*, 4 N.M.I. 124 (1994).

Whether res judicata applies in an action is a legal question subject to de novo review on appeal. *In re Estate of Deleon Castro*, 4 N.M.I. 102 (1994).

Whether issuance of certificate of land title to party's deceased mother based on government survey violated principle of res judicata was issue of law, reviewed de novo on appeal. *Estate of Taisacan v. Hattori*, 4 N.M.I. 26 (1993).

Whether litigation of an issue is barred by res judicata is a question of law, reviewable de novo on appeal. *In re Estate of Camacho*, 4 N.M.I. 22 (1993).

Trial court ruling hinging on principle of administrative res judicata, a question of law, was reviewable de novo. *In re Estate of Kaipat*, 3 N.M.I. 494 (1993).

Trial court's conclusions regarding application of res judicata are questions of law, reviewed de novo. *Santos v. Santos*, 3 N.M.I. 39 (1992).

Issue as to whether party was barred by doctrine of res judicata from bringing action was question of law, subject to de novo review. *Sablan v. Iginoef*, 1 N.M.I. 190 (1990), appeal dismissed sub nom., *Sablan v. Manglona*, 938 F.2d 970 (9th Cir. 1991).

—Restitution

Whether a defendant who is convicted of a Title 9 traffic offense has to make restitution to a third party, other than the victim, is a matter of constitutional and statutory interpretation, which the N.M.I. Supreme Court will review de novo. *Commonwealth v. Saburo*, 2002 MP 3 ¶ 2

Whether the Superior Court erred in sentencing defendant to make restitution for out-of-pocket expenses to victim's wife involves a question of law and is reviewable de novo. *Commonwealth v. Mitchell*, 1997 MP 4 ¶ 2

NMI Supreme Court would review trial court's decision not to award restitution to party for an abuse of discretion. *Camacho v. L & T Int'l Corp.*, 4 N.M.I. 323 (1996).

Trial court's decision requiring party to repay sum received pursuant to invalid conveyance of land to grantee was subject to review under abuse of discretion standard. *Rosario v. Quan*, 3 N.M.I. 269 (1992).

—Restraining Orders

Whether a restraining order complies with the terms of the Family Protection Act of 1986, 8 CMC §§ 1221, et seq. (amended by PL 12-19, effective Sept. 20, 2000), is a question of law, reviewed de novo. 8 CMC §§ 1221, et seq. (amended by PL 12-19, effective Sept. 20, 2000). *Olupomar v. Mahora*, 2001 MP 17 ¶ 2

Issue of whether restraining order issued pursuant to Family Protection Act complies with terms of Act is a question of law, reviewed de novo on appeal. 8 CMC § 1221 et seq. *Norita v. Norita*, 4 N.M.I. 381 (1996).

Risk

Assumption of Risk, see **Standard of Review – Assumption of Risk**, this topic.

—Sanctions

——Generally

The N.M.I. Supreme Court reviews the appropriateness of sanctions, including those for dilatory prosecutions, under the abuse of discretion standard. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 4

The N.M.I. Supreme Court reviews de novo questions of law such as whether counsel should have been afforded a hearing prior to sanctions by a trial court. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 4

The N.M.I. Supreme Court reviews for an abuse of discretion the trial court's imposition of civil contempt and contempt sanctions. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 3

The N.M.I. Supreme Court reviews, de novo, whether the trial court provided an alleged contemnor with due process. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 3

The N.M.I. Supreme Court reviews the imposition of sanctions by the Superior Court under the abuse of discretion standard. *Ferreira v. Borja*, 1999 MP 23 ¶ 3.

NMI Supreme Court reviews imposition of sanctions by the trial court under the abuse of discretion standard. Com. R. Civ. P. 11(c). *Ferreira v. Borja*, 1999 MP 2 ¶ 3

Issues concerning imposition of sanctions by trial court under inherent power to sanction and Com. R. Civ. P. 11 were subject to review under the abuse of discretion standard. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 343 (1992).

Appellate court reviews trial court's imposition of sanctions applying the abuse of discretion standard. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

Appellate review of a ruling imposing sanctions pursuant to Com. R. Civ. P. 11 is made under an abuse of discretion standard. It would be an abuse of discretion if a court based its ruling on an erroneous view of the law or on a clearly erroneous assessment

of the evidence. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79 (1992).

——Miscellaneous

Issue of whether attorney should have been given opportunity for a hearing prior to imposition of sanction by trial court was question of law which appellate court would review de novo. *Sonoda v. Villagomez*, 3 N.M.I. 535 (1993).

Whether local counsel associated with off-island counsel pursuant to Com. R. Admiss. 4 could be sanctioned for off-island counsel's lack of preparation for trial and failure to inform court and opposing counsel of need for continuance of trial was question of law which appellate court would review de novo. *Sonoda v. Villagomez*, 3 N.M.I. 535 (1993).

—Sentencing

Whether the trial court correctly interpreted and applied a sentencing statute is a question of law and is reviewed de novo. *Commonwealth v. Lin*, 2010 MP 2 ¶ 3 (2010).

In reviewing the trial court's application of sentencing guidelines, the reviewing court must construe any perceived statutory ambiguity strictly against the government. However, a misstatement of the understanding of the minimum sentence by the trial judge necessitates a new sentencing hearing only when it appears that the mistaken belief of the judge arguably influenced the sentencing decision. *Commonwealth v. Lin*, 2010 MP 2 ¶ 11 (2010).

Whether a defendant can invoke the provisions of 6 CMC § 4113 is a question of law which the court will review *de novo*. *Commonwealth v. Monton*, 2008 MP 14 ¶ 6 (2008).

Under the plain error rule, reversal is proper when two factors are met: (1) substantial rights of appellant are affected, and (2) it is necessary to safeguard the integrity and reputation of the judicial process or to forestall a miscarriage of justice. *Commonwealth v. Yao*, 2007 MP 12 ¶ 18

We construe the maximum term of a sentence that may be imposed by the trial court to mean the combined length of any prison term plus any suspended portion (and resulting probation) which is to follow any prison term. *Commonwealth v. Yao*, 2007 MP 12 ¶ 19

The legality of a sentence is a question of law which the N.M.I. Supreme Court reviews de novo. *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 13

The Superior Court's sentencing discretion is reviewed for abuse of discretion on appeal. *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 13

The fine and fees imposed by the trial court, when not objected to at trial, are reviewed for plain error by the N.M.I. Supreme Court on appeal. *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 13

In reviewing what evidence the trial court should have considered in imposing a sentence, the N.M.I. Supreme Court will look for abuse of discretion. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 24

The legality of a sentence is a question of law which the NMI Supreme Court reviews de novo. *Commonwealth v. Sablan*, 1996 MP 22 ¶ 2

—Standard of Care

Issue of whether trial court applied correct standard with respect to scuba diving instruction duty of care involved mixed questions of law and fact, and would therefore be reviewed de novo on appeal. *Ito v. Macro Energy, Inc.*, 4 N.M.I. 46 (1993).

—Standing

Standing is a jurisdictional issue and a question of law the Supreme Court reviews de novo. *Pacific Financial Corp. v. Sablan*, 2011 MP 19 ¶ 23 (2011).

Standing is a question of law reviewable de novo. Because standing is jurisdictional, this Court may raise it as an issue sua sponte. *Cody v. NMI Retirement Fund*, 2011 MP 16 ¶ 23 (2011).

The essence of the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute. The essential element of standing is that a plaintiff personally has suffered either actual injury or threat of injury as a result of the defendant's conduct. Moreover, the plaintiff must show that the injury fairly can be traced to the challenged action and is likely to be redressed by a favorable decision. The burden of proof for standing is at all times on the party bringing the action. *Cody v. NMI Retirement Fund*, 2011 MP 16 ¶ 24 (2011).

Since standing is a jurisdictional issue, it is a question of law, reviewable de novo by the NMI Supreme Court. *Commonwealth v. Anglo*, 1999 MP 6 ¶ 3

Since standing is jurisdictional, issue of whether party had standing to bring action was question of law, reviewable de novo. *Mafnas v. Commonwealth*, 2 N.M.I. 248 (1991).

DC App. Div. 1988. Although advocacy group has the statutory power to move for declaratory relief even without a client, where present action was not a declaratory judgment action, but an appeal from an involuntary commitment proceeding in which the aggrieved party chose not to appeal, the advocacy group, as amicus curiae, cannot force the person involuntarily committed to be carried through the appellate process while it attempts to vindicate its position regarding the constitutionality of the law. *In re the Matter Duncan*, 3 CR 587.

DC App. Div. 1988. Where advocacy group that participated in lower court proceedings: (1) drafted and submitted the motion and proposed order granting intervention as an amicus; (2) its involvement in the trial court more closely resembled that of an amicus rather than an intervenor; and (3) party subjected to the order of commitment had not appealed the order of commitment, but advocacy group did, the government's motion to dismiss the appeal on the grounds that group as amicus curiae does not have standing to appeal would be granted. *In Re the Matter Duncan*, 3 CR 454, aff'd, 3 CR 587 (DNMI App. Div. 1988).

—Statutes: Interpretation and Construction

The meaning of the term "successor in interest" is an issue of statutory interpretation that we review de novo. The Supreme Court's principle responsibility in statutory construction is not judicial speculation, but to give effect to the author's intent." *Pacific Financial Corp. v. Sablan*, 2011 MP 19 ¶ 9 (2011).

When an agency has given a statute inconsistent interpretations, the Court has authority to resolve the conflicting interpretations and to determine whether the interpretations are contrary to clear legislative intent. The applicable standard of review is de novo. *Cody v. NMI Retirement Fund*, 2011 MP 16 ¶ 36 (2011).

Issues of statutory interpretation are reviewed de novo. *Cody v. NMI Retirement Fund*, 2011 MP 16 ¶ 28 (2011).

Determining whether impossibility is a cognizable defense under the Commonwealth's solicitation statute presents a question of statutory construction, which is reviewed de novo. *Commonwealth v. Minto*, 2011 MP 14 ¶ 33 (2011).

Statutory interpretation is an issue of law which we review de novo. *Deleon Guerrero v. Dep't Publ. Lands*, 2011 MP 3 ¶ 19 (2011).

Statutory interpretation is an issue of law, and thus, the Supreme Court standard of review is de novo. *Deleon Guerrero v. Dep't Publ. Lands*, 2011 MP 3 ¶ 9 (2011).

The Supreme Court reviews questions of statutory construction de novo. *Marianas Eye Institute v. Moses*, 2011 MP 1 ¶ 5 (2011).

Whether a statute confers a private right of action is reviewed de novo. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 39 (2010).

Whether a specific act complies with or violates the Consumer Protection Act is reviewed de novo. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 21 (2010).

The Supreme Court reviews de novo whether a sua sponte award of liquidated damages is justified because it turns on a matter of statutory construction. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 29 (2010).

Statutory interpretation is subject to de novo review. *Rebuenog v. Aldan*, 2010 MP 1 ¶ 32 (2010).

Issues of statutory construction are subject to a de novo review. *Century Ins. Co., Ltd. v. Guerrero, et al.*, 2009 MP 16 ¶ 2 (2009).

The Supreme Court reviews grants of summary judgment de novo. The Court likewise reviews matters of statutory and constitutional interpretation de novo. *Pangelinan v. NMI Retirement Fund*, 2009 MP 12 ¶ 9 (2009).

Interpreting the mandatory minimum sentencing provision set forth in 6 CMC § 4102(a) is a question of law to be reviewed *de novo*. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 50 (2008).

The Court's review of the Commonwealth Rules of Civil Procedure regarding a trial court's authority to amend an order or judgment after an appeal has been

filed is an issue of law subject to *de novo* review. *Torres v. Fitial*, 2008 MP 15 ¶ 8 (2008).

We review *de novo* statutory interpretation. *Triple J Saipan, Inc. v. Norita*, 2007 MP 26 ¶ 4 (2007).

——Generally

An appeal involving the application of a provision of the U.S. or N.M.I. Constitution is reviewed *de novo*. *Matsunaga v. Matsunaga*, 2006 MP 25 ¶ 17

The appellate court reviews statutes *de novo*. *Northern Marianas Housing Corp. v. Flores*, 2006 MP 23 ¶ 4

The appellate court reviews issues hinging on statutory interpretation *de novo*. *Indalecio v. Yarofalir*, 2006 MP 18 ¶ 7

The issue of whether, and under what circumstances, an agency has standing to seek judicial review of an administrative proceeding is a matter of statutory interpretation reviewed *de novo*. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 6

An appellate court reviews the lower court's interpretation of a statute *de novo*. *Commonwealth v. Palacios*, 2004 MP 23 ¶ 8

The interpretation of court rules and statutes is subject to *de novo* review on appeal. *Commonwealth v. Jai Hoon Yoo*, 2004 MP ¶ 2

A trial court's interpretation of a statute is reviewed de novo. *Commonwealth v. Diaz*, 2003 MP 14 ¶ 2

Questions of statutory construction are reviewed de novo. *Town House, Inc. v. Saburo*, 2003 MP 2 ¶ 3

Construction of rules and statutes is an issue of law, which is reviewed de novo on appeal. *In re Estate of Roberto*, 2002 MP 23 ¶ 21

Whether the trial court correctly applied a statute presents a question of law and is reviewed de novo on appeal. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 2

Whether the trial court misapplied a statute presents a question of law and is reviewed de novo on appeal. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 2

Issues involving construction and application of a statute are reviewed de novo on appeal. *Bisom v. Commonwealth*, 2002 MP 19 ¶ 4

The N.M.I. Supreme Court reviews de novo issues of statutory construction. *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 10

A trial court's interpretation of a constitutional or statutory provision, such as whether the two-year statute of limitations provision of the Commonwealth Code applies to a claim filed under Article I, Section 3(c) of the N.M.I. Constitution, is reviewed de novo. *Zhang Gui Juan v. Commonwealth*, 2001 MP 18 ¶ 10

Whether, and under what authority, a trial court could grant relief from a property division order is an issue of statutory interpretation which the N.M.I. Supreme Court reviews de novo. *Reyes v. Reyes*, 2001 MP 13 ¶ 3

The lower court's construction of a statute is reviewed de novo. *Commonwealth v. Abuy*, 2001 MP 8 ¶ 5

The determination of the applicability of a particular law is a legal question and is thus reviewed de novo. *Commonwealth v. Abuy*, 2001 MP 8 ¶ 19

Whether the trial court correctly interpreted and applied a statute is a question of law reviewed de novo by the NMI Supreme Court. *Commonwealth v. Taisacan*, 1999 MP 8 ¶ 18

A trial court's interpretation of a statute is subject to de novo review. *Triple J. Saipan, Inc. v. Rasiang*, 1999 MP 7 ¶ 2

NMI Supreme Court reviews the interpretation of a statute de novo. *Northern Marianas Hous. Corp. v. Marianas Pub. Land Trust*, 1998 MP 1 ¶ 2

Interpretation of a statute is a question of law which the NMI Supreme Court reviews de novo. *Commonwealth v. Cabrera*, 1997 MP 18 ¶ 2

NMI Supreme Court reviews de novo the trial court's interpretation of a statute. *Commonwealth v. Cabrera*, 1997 MP 1 ¶ 2

Trial court's interpretation of a statute is subject to de novo review on appeal. *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

Issue of whether a particular statute applies in an action is a legal question, reviewed de novo on appeal. *Yoo v. Quitugua*, 4 N.M.I. 120 (1994).

Issue involving construction and application of a statute would be reviewed de novo on appeal. *In re*

Estate of Tudela, 4 N.M.I. 1 (1993), appeal dismissed, 43 F.3d 1479 (9th Cir. 1994).

Interpretations of statutes are subject to de novo review. *In re "S.S.,"* 3 N.M.I. 177 (1992).

Where trial court's decision is based on construction of a statute, the question on appeal is whether court correctly interpreted and applied the statute at issue, a question of law reviewed under the de novo standard. *Commonwealth v. Kaipat*, 2 N.M.I. 322 (1991).

——Miscellaneous

The issue of whether the Patient's Rights Act, 3 CMC §§ 2551-2564, applies to persons detained on criminal charges is an issue of statutory construction and is subject to de novo review. *Commonwealth v. Sibetang*, 2002 MP 9 ¶ 9

Whether the issue of adult certification was properly before the juvenile court involves statutory interpretation and is reviewed de novo. *In re J.J.C.*, 2000 MP 8 ¶ 3

Whether the Public Purpose Land Exchange Act creates a judicial cause of action is a question of law which the NMI Supreme Court reviews de novo. 2 CMC §§ 4141, et seq. *Pua v. Marianas Pub. Land Corp.*, 1998 MP 4 ¶ 3; *Taman v. Marianas Pub. Land Corp.*, 1998 MP 13 ¶ 2

Whether the Public Purpose Land Exchange Authorization Act creates a judicial cause of action is a question of law which the NMI Supreme Court reviews de novo. 2 CMC §§ 4141, et seq. *Castro v. Div. of Public Lands*, 1997 MP 29 ¶ 3

Issue of whether an erroneous title determination issued by the Land Commission, in favor of a private party, can constitute a taking compensable under the Public Purpose Land Exchange Authorization Act of 1987 is a question of law which is reviewed de novo. 2 CMC §§ 4141, et seq. *Manalisay v. Marianas Public Land Corporation*, 1997 MP 6 ¶ 3

NMI Supreme Court reviews de novo statutory sufficiency of deportation proceedings. *Office of the Attorney General v. Honrado*, 1996 MP 15 ¶ 3

Issue of whether probate code statute concerning claims against estate applied to either land ownership claim or paternity claim in probate proceedings was question of law subject to de novo review on appeal. 8 CMC § 2924. *In re Estate of Tudela*, 4 N.M.I. 1 (1993), appeal dismissed, 43 F.3d 1479 (9th Cir. 1994).

Issue of whether newspaper publication requirement for notice of invitation to bid for franchise under Tinian Cockfighting Act of 1988 (10 CMC § 2411 et seq.) is mandatory was question of law, reviewed de novo by appellate court. *Aquino v. Tinian Cockfighting Bd.*, 3 N.M.I. 284 (1992).

Issue of whether Uniform Parentage Act applied to case involving heirship determination called for statutory construction, and was therefore reviewable de novo. *In re Estate of Deleon Guerrero*, 3 N.M.I. 253 (1992).

—Statutes of Limitation

The application of the statute of limitations is a question of law that this Court reviews de novo. *Aldan, et al. v. Pangelinan, et al.*, 2011 MP 10 ¶ 17 (2011).

A trial court's application of the statute of limitations is reviewed de novo. *New Shintani Corp. v. Quitugua*, 2011 MP 9 ¶ 8 (2011).

——Generally

Whether a federal tolling statute, 28 U.S.C. § 1367(d), saves a plaintiff's claims from being barred by the C.N.M.I. statute of limitations is a question of law subject to de novo review. 28 U.S.C. § 1367(d). *Oden v. N. Marianas College*, 2003 MP 13 ¶ 6

Whether the doctrine of equitable tolling saves a plaintiff's claims from being barred by the statute of limitations is a question of law subject to de novo review. *Oden v. N. Marianas College*, 2003 MP 13 ¶ 6

Whether a plaintiff's claims are saved by a federal tolling statute or, alternatively, the equitable tolling doctrine are questions of law subject to de novo review. *Zhang Gui Juan v. Commonwealth*, 2001 MP 18 ¶9

Issue of whether party's claim to land was barred by relevant statutes of limitation was question of law, reviewable de novo. *Santos v. Santos*, 3 N.M.I. 39 (1992).

——Miscellaneous

The question of whether, in an agreement which indemnifies against both loss and liability, there is only one cause of action or whether the covenants are separate and the question of when the statute of limitations begins to accrue on this type of agreement are both questions of law, which the NMI Supreme Court will review *de novo*. *Century Ins. Co., Ltd. v. TAC Int'l Constructors, Inc*., 2006 MP 10 ¶ 8

Issue of whether statutes of limitation in Uniform Parentage Act barred inheritance claims in estate was question of law, reviewable de novo. 8 CMC §§ 1706(a)(2), 1707. *In re Estate of Aldan*, 2 N.M.I. 288 (1991).

Issue of whether trial court erred in requiring plaintiff to negate the affirmative defense of statute of limitations without first requiring defendant to establish the defense was question of law, subject to de novo review. *Dilutaoch v. C & S Concrete Block Prods.*, 1 N.M.I. 478 (1991).

—Statutory Construction

See **Standard of Review – Statutes: Interpretation and Construction**, **Generally** and **Miscellaneous**, this topic.

—Striking of Filings

Issue of whether trial court erred in striking affidavits supporting opposition to summary judgment motion due to untimely filing was subject to review for abuse of discretion. Com. R. Civ. P. 56(c); Com. R. Civ. P. 6(d). *Estate of Mendiola v. Mendiola*, 2 N.M.I. 233 (1991).

—Successor in Interest

Issue of whether party owned land as successor in interest and was bound by previous owner's acts raised mixed questions of fact and law, reviewed de novo on appeal. *Estate of Taisacan v. Hattori*, 4 N.M.I. 26 (1993).

—Sufficiency of Evidence

See also **Standard of Review – Evidence, Sufficiency of Evidence**, this topic.

The standard of review when examining sufficiency of the evidence is whether the evidence, viewed in a light most favorable to the prevailing party, is sufficient to support the conclusion of the fact-finder. *In Re the Estate of Malite*, 2011 MP 4 ¶ 17 (2011).

The Supreme Court's review of the sufficiency of the evidence is de novo. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 32 (2010).

Sufficiency of the evidence is a question of law which is reviewed de novo. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 33 (2010).

Sufficiency of the evidence is reviewed de novo. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 21 (2010).

Sufficiency of the evidence is a question of law which is reviewed de novo. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 19 (2010).

Sufficiency of the evidence is a question of law which is reviewed de novo. Specifically, when considering sufficiency of the evidence questions the Supreme Court determines if the evidence viewed in the light most favorable to the prevailing party is sufficient to support the conclusion of the finder of fact. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 12 (2010).

DC App. Div. 1989. On a challenge to the sufficiency of evidence, the standard of reiew is whether there is substantial evidence to support conviction. *CNMI v. Delos Santos*, 3 CR 661.

DC App. Div. 1989. In reviewing a challenge to the sufficiency of the evidence in a criminal case, the appellate court must consider evidence in a light most favorable to the government and determine whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *CNMI v. Delos Santos*, 3 CR 661.

DC App. Div. 1989. In reviewing a challenge to the sufficiency of the evidence to sustain a conviction an appellate court views the evidence and draws all inferences in favor of the government and asks whether any reasonable trier of fact could have found beyond a reasonable doubt the essential elements of the offense. *CNMI v. Tenorio*, 3 CR 679.

—Summary Judgment

The Supreme Court reviews a trial court's grant of summary judgment de novo. The Court must examine the evidence in the light most favorable to the non-moving party and affirm the trial court if there are no genuine issues of material fact and the

trial court correctly applied the substantive law. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 35 (2011).

The Supreme Court reviews de novo the grant of judgment as a matter of law. Judgment as a matter of law is appropriate when a party fails to establish a legally sufficient evidentiary basis for a reasonable jury to find for that party and it is not proper unless all the evidence points one way and is susceptible to no reasonable inferences sustaining the position of the non-moving party. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 39 (2010).

The Supreme Court reviews de novo a trial court's grant of a motion for judgment as a matter of law made pursuant to Commonwealth Rule of Civil Procedure 50(b). *Century Ins. Co., Ltd. v. Guerrero Brothers, Inc.*, 2010 MP 4 ¶ 6 (2010).

The review of a trial court's grant of a motion for judgment as a matter of law pursuant to Commonwealth Rule of Civil Procedure 50(b) is de novo. Judgment as a matter of law is appropriate when a party fails to establish a legally sufficient evidentiary basis for a reasonable jury to find for that party. It is not proper unless all the evidence points one way and is susceptible to no reasonable inferences sustaining the position of the non-moving party. *Century Ins. Co., Ltd. v. Guerrero Brothers, Inc.*, 2010 MP 4 ¶ 18 (2010).

On appeal, the Supreme Court reviews the trial court's grant of summary judgment de novo. In so doing, the court examines the evidence in the light most favorable to the non-moving party and affirms the trial court if there is no genuine issue of material fact and the trial court correctly applied the substantive law. *Century Ins. Co., Ltd. v. Hong Kong Entm't. (Overseas) Inv., Ltd., et al.*, 2009 MP 4 ¶ 14 (2009).

An appeal from a decision on a motion for summary judgment is reviewed *de novo*. We review the evidence in a light most favorable to the non-moving party. We affirm if there is no issue of material fact and the trial court applied the relevant substantive law correctly. If the trial court applied the incorrect substantive law, we determine if the result is correct under a different theory. *CDA v. Guerrero Bros., Inc.*, 2007 MP 32 ¶ 10 (2007).

The standard of review for orders granting summary judgment is *de novo*. However, we review rulings on discovery disputes under an abuse of discretion standard. *Estate of Muna v. Commonwealth*, 2007 MP 16 ¶ 6

Our review of the legal issues in a summary judgment order is *de novo*. *Estate of Muna v. Commonwealth*, 2007 MP 16 ¶ 6

An order granting summary judgment is reviewed *de novo*, although we review any legal determination underlying the trial court's decision under the standard applicable to that determination. *Park v. Kim*, 2007 MP 13 ¶ 7

Summary judgment motions are affirmed if we determine that: (1) there was no genuine issue of material fact; and (2) the trial court correctly applied the substantive law. Additionally, summary judgment may be affirmed if we find the result is correct under a different theory. *Park v. Kim*, 2007 MP 13 ¶ 8

Appellate courts have an obligation to independently examine the record and ensure against forbidden intrusions into the field of free expression. In our independent examination of this summary judgment motion, we apply a clear and convincing evidence standard involving the issue of actual malice. In this examination, the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor. *Tan v. Younis*, 2007 MP 11 ¶ 32

A grant of summary judgment is subject to *de novo* review. *Demapan v. Bank of Guam*, 2006 MP 16 ¶ 1

The court reviews summary judgment orders *de novo*. *Waibel v. Farber*, 2006 MP 15 ¶ 22

The NMI Supreme Court reviews *de novo* the granting of summary judgment by the trial court. *Aplus Co., Ltd. v. Niizeki Intern'l Saipan, Co., Ltd.*, 2006 MP 13 ¶ 9

The trial court's grant of summary judgment is subject to *de novo* review. *Sullivan v. Tarope*, 2006 MP 11 ¶ 27

The N.M.I. Supreme Court reviews a trial court decision awarding summary judgment on the *de novo* standard. *Merci Corp. v. World Int'l Corp*., 2005 MP 10 ¶ 15

On review of a trial court decision awarding summary judgment, if the N.M.I. Supreme Court determines no genuine issue of material fact exists, then analysis shifts to whether the substantive law was correctly applied. *Merci Corp. v. World Int'l Corp.*, 2005 MP 10 ¶ 15

APPELLATE PROCEDURE

The appellate court will review a trial court's grant of summary judgment *de novo*. *Commonwealth Dev. Auth. v. Tenorio,* 2004 MP 22 ¶ 8

The NMI Supreme Court reviews questions of law *de novo*. *Commonwealth Dev. Auth. v. Tenorio,* 2004 MP 22 ¶ 8

A reviewing court will affirm a grant of summary judgment if, viewing the evidence and inferences in favor of the non-moving party, no genuine issue of material fact appears and the moving party was entitled to judgment as a matter of law. *Flores v. Commonwealth,* 2004 MP 9 ¶ 2

The grant of summary judgment is reviewed de novo on appeal. *KTT Corp. v. Tomokane*, 2003 MP 17 ¶ 6

The grant of a summary judgment is reviewed de novo. *Rayphand v. Tenorio,* 2003 MP 12 ¶ 3

The trial court's grant of summary judgment is reviewed de novo. *Iglesias v. Realty Trust Corp*., 2003 MP 7 ¶ 2

The Supreme Court reviews a grant of summary judgment de novo, and will affirm the trial court's judgment if there was no genuine issue of material fact, and the trial court correctly applied the substantive law. *Iglesias v. Realty Trust Corp*., 2003 MP 7 ¶ 7

The N.M.I. Supreme Court reviews trial court dismissal and summary judgment motions de novo on appeal. *In re Estate of Roberto,* 2002 MP 23 ¶ 4

The N.M.I. Supreme Court reviews grants of summary judgment de novo. *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builders*, 2002 MP 15 ¶ 2

The N.M.I. Supreme Court reviews a grant of summary judgment de novo. *Triple J Saipan Inc. v. Agulto*, 2002 MP 11 ¶ 2

Whether the trial court erred in granting a motion for partial summary judgment is reviewed de novo by the N.M.I. Supreme Court on appeal. *Manglona v. Commonwealth*, 2002 MP 7 ¶ 12

Issues raised on appeal with respect to the granting of summary judgment are reviewed de novo and the N.M.I. Supreme Court reviews the evidence in the light most favorable to the nonmoving party. *Furoka v. Dai-Ichi Hotel*, 2002 MP 5 ¶ 3

The N.M.I. Supreme Court reviews lower court orders granting summary judgment de novo. *Cabrera v. Young*, 2001 MP 19 ¶ 3

The N.M.I. Supreme Court reviews de novo orders granting summary judgment. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 3

On appeal, the N.M.I. Supreme Court reviews a grant of summary judgment de novo. *Bank of Saipan v. Superior Ct. (Carlsmith)*, 2001 MP 7 ¶ 2

Whether the trial court properly granted summary judgment dismissing an action, is reviewed de novo. *Aguon v. Marianas Pub. Land Corp.*, 2001 MP 4 ¶ 4

On review of a summary judgment ruling, where there is no genuine issue of fact, the analysis shifts to whether the substantive law was correctly applied. *Aguon v. Marianas Pub. Land Corp.*, 2001 MP 4 ¶ 23

A trial court's ruling on a summary judgment motion is reviewed de novo. *Rosario v. Camacho,* 2001 MP 3 ¶ 37

The N.M.I. Supreme Court reviews the Superior Court's grant of summary judgment de novo. To affirm, it must be found that there was no genuine issue of material fact and that the court below correctly applied the substantive law. *Cushnie v. Arriola*, 2000 MP 7 ¶ 5

The N.M.I. Supreme Court reviews an order granting or denying summary judgment de novo. *Sekisui House, Ltd. v. Superior Court (Hiraga)*, 1999 MP 21 ¶ 3

NMI Supreme Court reviews a summary judgment motion de novo. *Transamerica (Saipan) Corp. v. Wabol*, 1999 MP 1 ¶ 2

NMI Supreme Court reviews an order granting summary judgment de novo. To affirm, Court must find that there was no genuine issue of material fact and that the court below correctly applied the substantive law. Court may also affirm if it finds that the result is correct under a different theory. NMI Supreme Court views evidence and inferences to be drawn in favor of the non-moving party. *Pellegrino v. Commonwealth*, 1999 MP 10 ¶ 3

The fact that the trial court addressed a disputed peripheral issue in making its summary judgment decision does not render the ruling erroneous. The admission of irrelevant evidence does not constitute grounds for reversal if it does not affect the

substantial rights of the parties. *Pellegrino v. Commonwealth*, 1999 MP 10 ¶ 12

On appeal from a summary judgment, NMI Supreme Court may determine, as a matter of law, the legislature's intent. *Pellegrino v. Commonwealth*, 1999 MP 10 ¶ 21

An order granting summary judgment is reviewed de novo by the NMI Supreme Court. The summary judgment shall be affirmed on appeal if the Court determines that as to the legal basis relied upon: (1) there is no genuine issue of material fact; and (2) the substantive law was correctly applied. *Rasa v. Dep't of Lands and Resources*, 1998 MP 7 ¶ 2

Issues as to whether the trial court erred in denying appellants' motions for summary judgment, directed verdict, and for judgment notwithstanding the verdict that are raised with respect to a motion for summary judgment are reviewed de novo by the NMI Supreme Court. *Mendiola v. Marianas Agupa Enter.*, 1998 MP 10 ¶ 2

Orders granting or denying summary judgment are reviewed de novo on appeal. Summary judgment may be granted only when the court, after viewing the facts and inferences therefrom in a light most favorable to the non-moving party, finds as a matter of law that the moving party is entitled to judgment as a matter of law. An order granting or denying summary judgment will be affirmed on appeal only if there are no genuine issues of material fact and the substantive law was correctly applied. Summary judgment must be granted against a party who fails to make a showing sufficient to establish the existence of an essential element to the party's case. *Charfauros v. Board of Elections*, 1998 MP 16 ¶ 33

NMI Supreme Court had jurisdiction, pursuant to 1 CMC § 3102 (a), over appeal from Superior Court order granting motion for summary judgment. *Milne v. Estate of Hillblom*, 1997 MP 11 ¶ 1

In de novo review of a grant of summary judgment by the NMI Supreme Court, the evidence and inferences are drawn in favor of the non-moving party. *Milne v. Estate of Hillblom*, 1997 MP 11 ¶ 3

NMI Supreme Court reviews de novo an order granting summary judgment. It will affirm summary judgment motions if it determines that, as to the legal basis relied upon: (1) there was no genuine issue of material fact, and (2) the trial court correctly applied the substantive law. It may also affirm if it finds the result is correct under a different theory. *Dela Cruz v. Hotel Nikko Saipan, Inc.*, 1997 MP 16 ¶ 3

In de novo review of a summary judgment motion, NMI Supreme Court views the evidence and inferences to be drawn in favor of the non-moving party. *Dela Cruz v. Hotel Nikko Saipan, Inc.*, 1997 MP 16 ¶ 3

NMI Supreme Court reviews a trial court's ruling on a motion for summary judgment de novo. *Mitchell v. Estate of Hillblom*, 1997 MP 30 ¶ 1

NMI Supreme Court reviews de novo an order granting summary judgment. NMI Supreme Court will affirm the trial court's order granting summary judgment if it determines that, as to the legal basis relied upon: (1) there is no genuine issue of material fact; and (2) the trial court correctly applied the substantive law. *Sablan Enter. v. New Century, Inc.*, 1997 MP 32 ¶ 3

NMI Supreme Court reviews de novo trial court's decision to grant summary judgment. *Lifoifoi v. Lifoifoi-Aldan*, 1996 MP 14 ¶ 2

Issues arising within context of trial court's grant of summary judgment is reviewed de novo on appeal. In its review, NMI Supreme Court examines evidence in light most favorable to nonmoving party and affirms if there was no genuine issue of material fact and trial court correctly applied the substantive law. *Wabol v. Camacho*, 4 N.M.I. 388 (1996).

Trial court order granting summary judgment on claim would be reviewed de novo on appeal. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

NMI Supreme Court would conduct de novo review of partial grant of summary judgment certified for appeal pursuant to Com. R. Civ. P. 54(b). *Taman v. Marianas Pub. Land Corp.*, 4 N.M.I. 287 (1995).

In appeal from grant of summary judgment, NMI Supreme Court views evidence in light most favorable to nonmoving party and affirms if there was no genuine issue of material fact and trial court correctly applied the substantive law. *Taman v. Marianas Pub. Land Corp.*, 4 N.M.I. 287 (1995).

NMI Supreme Court may affirm grant of summary judgment on legal grounds other than those relied upon by trial court where there are no genuine issues of material fact pertaining to the newly relevant grounds. *Taman v. Marianas Pub. Land Corp.*, 4 N.M.I. 287 (1995).

Issue of whether trial court erred in granting summary judgment was question of law, reviewed de novo on appeal. *Eurotex (Saipan), Inc. v. Muna*, 4 N.M.I. 280 (1995).

A reviewing court will affirm a grant of summary judgment if, viewing the evidence and inferences in favor of the non-moving party, no genuine issue of material fact appears and the moving party was entitled to judgment as a matter of law. *Eurotex (Saipan), Inc. v. Muna*, 4 N.M.I. 280 (1995).

Issues raised with respect to trial court's grant of summary judgment would be reviewed de novo on appeal. *Castro v. Hotel Nikko Saipan, Inc.*, 4 N.M.I. 268 (1995), appeal dismissed, 96 F.3d 1259 (9th Cir. 1996).

On appeal from trial court's grant of summary judgment, NMI Supreme Court reviews evidence in light most favorable to nonmoving party and affirms decision if there was no genuine issue of material fact and trial court correctly applied the substantive law. *Castro v. Hotel Nikko Saipan, Inc.*, 4 N.M.I. 268 (1995), appeal dismissed, 96 F.3d 1259 (9th Cir. 1996).

Issue of whether trial court erred in granting summary judgment would be reviewed de novo on appeal. *Estate of Faisao v. Tenorio*, 4 N.M.I. 260 (1995).

NMI Supreme Court reviews orders granting summary judgment de novo. *Diamond Hotel Co., Ltd. v. Matsunaga*, 4 N.M.I. 213 (1995), aff'd, 99 F.3d 296 (9th Cir. 1996).

On appeal of order granting summary judgment, if appellate court determines that no genuine issue of material fact exists, court's analysis shifts to whether the substantive law was correctly applied. *Santos v. Santos*, 4 N.M.I. 206 (1994).

An order granting summary judgment is reviewed de novo on appeal. *Santos v. Santos*, 4 N.M.I. 206 (1994).

Grant of a motion for summary judgment is reviewed de novo on appeal. Appellate court examines whether there are genuine issues of material fact and, if not, whether trial court correctly applied substantive law. *Cushnie v. Bank of Guam*, 4 N.M.I. 198 (1994).

Orders granting summary judgment are reviewed de novo on appeal. *Riley v. Public Sch. Sys.*, 4 N.M.I. 85 (1994).

On appeal from order granting summary judgment, the evidence in the record is viewed in the light most favorable to the nonmoving party. *Riley v. Public Sch. Sys.*, 4 N.M.I. 85 (1994).

Appellate court reviews order granting summary judgment de novo. It will affirm order if it finds that, as to legal basis relied upon, (1) there was no genuine issue of material fact and (2) court correctly applied the substantive law. It may also affirm if it finds that the result is correct under a different theory. *Rios v. Marianas Pub. Land Corp.*, 3 N.M.I. 512 (1993).

In de novo review of a grant of summary judgment, appellate court views evidence and inferences to be drawn therefrom in favor of non-moving party. *Rios v. Marianas Pub. Land Corp.*, 3 N.M.I. 512 (1993).

Trial court's ruling on a motion for summary judgment is reviewable de novo. *Manglona v. Kaipat*, 3 N.M.I. 322 (1992).

On an appeal from a grant of summary judgment, the standard of review is limited to determining whether there is a genuine issue of material fact, and, if there is none, whether the law was correctly applied. *Ada v. K. Sadhwani's, Inc.*, 3 N.M.I. 303 (1992).

An order granting summary judgment is reviewed de novo. If appellate court agrees that there is no genuine issue of material fact, the analysis shifts to whether the substantive law was correctly applied. *Santos v. Santos*, 3 N.M.I. 39 (1992).

A grant of summary judgment is reviewed de novo. If there is no genuine issue of material fact, the analysis shifts to whether the substantive law was correctly applied. If incorrect substantive law was applied, the appellate court should determine whether the result is correct under a different theory. The evidence and the inferences are viewed in a light most favorable to the non-moving party. *Ferreira v. Borja*, 2 N.M.I. 514 (1992), vacated, 1 F.3d 960 (9th Cir. 1993).

An appeal of a grant of summary judgment is subject to de novo review. If there is no genuine issue of material fact, the analysis shifts to whether the substantive law was correctly applied. *King v. Board of Elections*, 2 N.M.I. 398 (1991).

A grant of summary judgment is reviewed de novo. *Marianas Pub. Land Corp. v. Guerrero*, 2 N.M.I. 301 (1991).

Issue of whether trial court erred in granting summary judgment was subject to de novo review. *Estate of Mendiola v. Mendiola*, 2 N.M.I. 233 (1991).

Since there were no genuine issues of material fact raised in summary judgment proceeding, appellate court would review whether the substantive law was correctly applied. *Estate of Mendiola v. Mendiola*, 2 N.M.I. 233 (1991).

A grant of summary judgment is reviewed de novo. If there is no genuine issue of material fact, the analysis shifts to whether the substantive law was correctly applied. *Commonwealth Ports Auth. v. Hakubotan Saipan Enters., Inc.*, 2 N.M.I. 212 (1991).

A grant of summary judgment is reviewed de novo. If there is no genuine issue of material fact, the analysis shifts to whether the substantive law was correctly applied. *Aldan-Pierce v. Mafnas*, 2 N.M.I. 122 (1991), rev'd, 31 F.3d 756 (9th Cir. 1994), cert. denied, 513 U.S. 1116, 115 S. Ct. 913, 130 L. Ed. 2d 794 (1995).

An order granting summary judgment is reviewed de novo. If there is no genuine issue of material fact, the analysis shifts to whether the substantive law was correctly applied. *Marianas Pub. Land Corp. v. Kan Pacific Saipan, Ltd.*, 1 N.M.I. 431 (1990).

A grant of summary judgment is reviewed de novo. If there is no genuine issue of material fact, the analysis shifts to whether the substantive law was correctly applied. *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362 (1990).

A grant of summary judgment is reviewed de novo. If there is no genuine issue of material fact, the analysis shifts to whether the substantive law was correctly applied. *Borja v. Rangamar*, 1 N.M.I. 347 (1990).

A trial court order granting summary judgment is reviewed de novo. Review is limited to a determination of whether there is a genuine issue of material fact and, if there is none, whether the trial court correctly applied the substantive law. [Dela Cruz, C.J., concurring, 1 N.M.I. 229, 230] [Hillblom, S.J., concurring, 1 N.M.I. 245]. *Borja v. Goodman*, 1 N.M.I. 225 (1990).

On an appeal from a grant of summary judgment, the standard of review is limited to determining whether there is a genuine issue of material fact, and if there is none, whether the law was correctly applied. It is a de novo review. *Cabrera v. Heirs of De Castro*, 1 N.M.I. 172 (1990).

An order granting summary judgment is reviewed de novo. Reviewing court's role is limited to determining whether there is a genuine issue of material fact and, if not, whether the substantive law was applied correctly. *Apatang v. Marianas Pub. Land Corp.*, 1 N.M.I. 140 (1990).

DC App. Div. 1989. The Appellate Division reviews the grant of summary judgment de novo. *CNMI v. Micronesian Insurance Underswriters, Inc.*, 3 CR 731.

DC App. Div. 1988. The Appellate Division reviews a grant of summary judgment de novo, viewing the evidence and inferences to be drawn therefrom in a light most favorable to the nonmoving party to determine whether the trial court correctly found that there was no genuine issue of material fact and that the moving party was entitled to judgment as a matter of law. *Agulto v. Villaluz*, 3 CR 534.

DC App. Div. 1988. The Appellate Division reviews the grant or denial of a motion for summary judgment de novo. *Aldan-Pierce v. Mafnas*, 3 CR 326.

DC App. Div. 1988. A counsel's own failure to conduct discovery cannot be a basis for reversal or grant of summary judgment. Com.Tr.C.R.Civ.P. 56(c). *Aldan-Pierce v. Mafnas*, 3 CR 326.

DC App. Div. 1987. An appellate court reviews the grant or denial of a motion for summary judgment de novo. *David v. CNMI*, 3 CR 157.

DC App. Div. 1987. An appellate court reviews the propriety of a grant of summary judgment on a de novo basis. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 1164.

DC App. Div. 1983. The appellate court's role in reviewing a motion for summary judgment is limited to determining whether there is a genuine issue of material fact and, if not, whether the substantive law was applied correctly. *Manglona v. Camacho*, 1 CR 820.

DC App. Div. 1983. The appellate court reviewing a grant of summary judgment is limited to determining whether there is a genuine issue of material fact and,

if not, whether the substantive law was correctly applied. Fed.R.Civ.P. 56(c). *Marianas General Corporation v. Government CNMI*, 1 CR 408.

CTC 1985. On appeals from summary judgment, the standard of review, and the only question for appellate review, is whether the allegations in the pleadings raise a material or genuine issue of fact. *Palacios v. Trust Territory of the Pacific Islands*, 2 CR 256, aff'd, 2 CR 904 (DNMI App. Div. 1986), aff'd, 838 F.2d 474 (9th Cir. 1988).

CTC 1985. The appellate court is not called upon to decide factual issues on appeals from summary judgment, but shall only determine whether there may be factual issues to be tried. *Palacios v. Trust Territory of the Pacific Islands*, 2 CR 256, aff'd, 2 CR 904 (DNMI App. Div. 1986), aff'd, 838 F.2d 474 (9th Cir. 1988).

CTC 1985. A court of appeals can affirm a summary judgment on any ground that appears from the record, whether or not the trial court relied on it. *Palacios v. Trust Territory of the Pacific Islands*, 2 CR 256, aff'd, 2 CR 904 (DNMI App. Div. 1986), aff'd, 838 F.2d 474 (9th Cir. 1988).

—Superior Court Review of Agency Action

The N.M.I. Supreme Court's review of the superior court's review of the agency action is de novo. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 3

—Timeliness of Motion

Trial court's denial of motion to dismiss complaint for failure to join indispensable parties as untimely would be reviewed for abuse of discretion on appeal. *Sablan v. Cabrera*, 4 N.M.I. 133 (1994).

—Title to Real Property

See also **Standard of Review – Determination of Ownership**, this topic.

Whether the Superior Court erred in determining ownership of property is a question of fact which is reviewable under the clear error standard. *Manalisay v. Marianas Public Land Corporation*, 1997 MP 6 ¶ 2

Issue of whether trial court erred in determining that party acquired ownership interest in land was mixed question of law and fact, reviewable de novo on appeal. *Sablan v. Cabrera*, 4 N.M.I. 133 (1994).

Trial court's conclusion as to ownership of real property in probate proceeding was a legal conclusion, subject to de novo review. *In re Estate of Mueilemar*, 1 N.M.I. 441 (1990).

—Traffic Citation

Whether the Superior Court erred in dismissing a traffic case that was brought by way of a criminal information instead of a traffic citation is a question of law and is reviewed de novo. *Commonwealth v. Babauta*, 2001 MP 10 ¶ 2

—Unenforceable Contracts

The issue of whether a promissory note is enforceable is a question of law, which the N.M.I. Supreme Court reviews de novo. *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 2

—Void Judgment

——Motion for Relief from Void Judgment

When a motion is brought for relief from a void judgment, pursuant to Commonwealth Rule of Civil Procedure 60(b)(4), and the judgment is in fact void, there is no discretion on the part of the court, thus the N.M.I. Supreme Court reviews a trial court's denial of a Rule 60(b)(4) motion de novo. Com. R. Civ. P. 60(b)(4). *Reyes v. Reyes*, 2001 MP 13 ¶ 24

— Waiver

The applicability of a legal doctrine is a question of law that is reviewed de novo. Waiver is a legal doctrine, and the applicable standard of review is thus de novo. *Commonwealth v. Minto*, 2011 MP 14 ¶ 11 (2011).

—Witness Credibility

Credibility determinations are reviewed under the "clearly erroneous" standard because the trial judge in this case had the opportunity to observe the demeanor of the witnesses. *Rebuenog v. Aldan*, 2010 MP 1 ¶ 62 (2010).

In reviewing a trial court decision, the Supreme Court must be mindful that the trier of fact has wide latitude in deciding which witnesses to believe and disbelieve. It is a well settled notion that it is the exclusive function of the trier of fact to determine the credibility of witnesses, to resolve evidentiary conflicts, and to draw reasonable inference from

proven facts. *Islam v. Islam*, 2009 MP 17 ¶ 17 (2009).

In assessing the credibility of witnesses, the trial judge's determinations are given due regard. The trial judge is in a much better position to assess a witness's credibility than an appellate court, especially when the evidence at trial consists largely of oral testimony that is contradictory in nature. Consequently, the Supreme Court will not disturb factual findings which hinge on the trial court's assessment of a witness's credibility. *Commonwealth v. Zhang*, 2009 MP 6 ¶ 17 (2009).

DC App. Div. 1989. Where trial court believed the testimony of a police officer and not the testimony of the defendant or defendant's father, the Appellate Division, reviewing a bare record of conflicting testimony between adversaries, would not declare the trial court's determination to be erroneous and would not substitute its own finding in place of the trial court's. *CNMI v. Cabrera*, 3 CR 655.

DC App. Div. 1988. Where trial court admitted evidence of conversations between defendant and deceased brother and considered it, trial court was certainly entitled to view it with some reluctance given both the impossibility of corroboration and the surrounding circumstances which made its veracity highly doubtful. *Matagolai v. Pangelinan*, 3 CR 591.

APPELLATE PROCEDURE

Attorney's Fees and Costs

—Particular Cases

NMI Supreme Court held that since appeal was continuation of dispute arising from marital settlement agreement and wife was clearly prevailing party, wife was entitled to attorney's fees where agreement stated: "If any party to this Agreement institutes legal proceedings to resolve a dispute arising out of this Agreement, then the prevailing party shall be entitled to recover the cost of suit including reasonable attorney's fees." *Weathersbee v. Weathersbee*, 1998 MP 14 ¶ 12

DC App. Div. 1987. Where party raised issue for first time on appeal and claim was frivolous, opposing party is entitled to costs and attorney fees for time spent addressing the issue. District Court Rule App. P. 18. *Bank of Guam v. Demapan*, 2 CR 977, rev'd, 839 F.2d 1344 (9th Cir. 1988).

DC App. Div. 1986. An appeal is frivolous when the arguments are entirely without merit and when the result is obvious. Dist.Court R.App.Pro. 18. *David v. Camacho*, 2 CR 718.

Briefs

—Extraneous Material

Exhibits were extraneous and improperly included in appellant's reply brief and appellees' request to strike was granted where appellees' response brief contained no references to exhibits included in appellant's reply brief. Com. R. App. P. 28(c). *Commonwealth ex rel. Dunlap v. Island Amusement Corp.*, 1998 MP 12 ¶ 11

—Incorporation by Reference Prohibited

Commonwealth Rule of Appellate Procedure 28(r) prohibits incorporation by reference in a brief, previously filed arguments and failure to observe this rule may result in sanctions. Com. R. App. P. 28(r). *Rayphand v. Tenorio*, 2003 MP 12 ¶ 18

—Issues, Statement of

See **APPEAL AND ERROR – Issue Not Raised in Brief or Petition**

—Particular Cases

Pursuant to NMI Supreme Court Rule 31(c), an appellee who fails to file a brief will not be heard at oral argument unless the Court grants permission. *Commonwealth v. Minto*, 2011 MP 14 ¶ 12 (2011).

Under Federal Rule of Appellate Procedure 31(c), the answering brief address every relevant, non-frivolous issue presented by the appellant or petitioner. The answering brief must address every relevant, non-frivolous issue presented by the appellant or petitioner. If the answering brief neglects to address some of the appellant or petitioner's substantive arguments, it is as if the answering party did not file a brief with regard to each non-frivolous argument made by the appellant. Therefore, the greatest sanction available against the answering party for failing to address issues in its responsive brief would be to restrict its oral argument to the issues it briefed, as provided for by NMI Supreme Court Rule 31(c). *Commonwealth v. Minto*, 2011 MP 14 ¶ 13 (2011).

The Commonwealth Rules of Appellate Procedure clearly state that the brief of the appellant *shall contain* the contentions of the appellant with respect

to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied upon. *Commonwealth v. Castro*, 2008 MP 18 ¶ 24 (2008).

Extensions of time for filing briefs are not automatically granted; they are permissive and subject to certain procedural requirements. Emergency motions for extension of time filed *ex parte* contain other procedural requirements. *Babauta v. Babauta*, 2004 MP 2 ¶ 7

Notwithstanding counsel's proffered explanation for the lack of progress on the brief, appellant's motion for another extension was denied where appellant had 40 days, along with an additional 52 days extension, to file her brief. The Court found that 92 days was sufficient time to research, draft, and file a routine brief. *Babauta v. Babauta*, 2004 MP 2 ¶ 8

—Reviewability and Standard of Review

Although we may hear issues raised for the first time on appeal, we have no obligation to do so, particularly when the issue is raised only at oral argument. *Commonwealth v. Castro*, 2008 MP 18 ¶ 24 (2008).

Com. R. App. P. 28(o) requires the appellant to identify the applicable standard of review, with citations. *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362 (1990).

—Statement of Jurisdiction

——Particular Cases

Although Com. R. App. P. 28(l)(2), referring to judgments or orders that are "otherwise appealable," relates to appeals from interlocutory orders, rule did not permit appeal from orders denying motions to suppress evidence because no statute or rule expressly permitted such appeals. *Commonwealth v. Hasinto*, 1 N.M.I. 377 (1990).

Consolidation

The N.M.I. Supreme Court has the authority to consolidate appeals concerning the same interests. Com. R. Civ. P. 3(b). *Arriola v. Arriola*, 1999 MP 13 ¶ 2

Continuance

—Generally

No continuance in scheduling is automatic. It is a procedural matter which must be sought by motion pursuant to Com. R. Civ. P. 27 and Com. R. Civ. P. 34. *In re Estate of Deleon Castro*, 4 N.M.I. 78 (1993).

—Particular Cases

If the point of a motion to "take case off the calendar" was merely to obtain more time to decide whether to proceed with an appeal, the court did not abuse its discretion in determining that it had granted sufficient time already. *Office of the Attorney Gen. v. Senido*, 2004 MP 6 ¶ 14

In appeal in which, four days before scheduled hearing, counsel for parties filed stipulated request for continuance with unsigned order, unaccompanied by motion seeking continuance, and then failed to determine whether order had been signed and failed to appear at scheduled hearing, court would order appeal submitted on briefs. Com. R. App. P. 34. *In re Estate of Deleon Castro*, 4 N.M.I. 78 (1993).

Dismissal, Involuntary

—Errors by Appellant

The dismissal of an appeal does not, *ipso facto*, moot the issue of whether appellant and or his counsel should be sanctioned for failing to prosecute the appeal. *Office of the Attorney Gen. v. Senido*, 2004 MP 6 ¶ 19

Dismissal of an appeal is an appropriate sanction for an appellant who fails to show cause why he or his counsel should not be sanctioned for failure to prosecute an appeal. *Office of the Attorney Gen. v. Senido*, 2004 MP 6 ¶ 21

Violations of rule requiring appellant challenging finding or conclusion as unsupported by or contrary to evidence to include transcript of all relevant evidence in record may, in extreme cases, warrant dismissal of appeal. Com. R. App. P. 10(b)(2). *Villagomez v. Sablan*, 4 N.M.I. 396 (1996).

While an appellant's failures to comply with particular procedural deadlines or adhere to particular orders may not, taken in isolation, warrant dismissal of appeal, NMI Supreme Court may view repeated, unexcused and prejudicial errors and rules violations as basis for dismissing appeal. *Villagomez v. Sablan*, 4 N.M.I. 396 (1996).

Improper filing of motion for retrial or arguing merits in brief when expressly instructed not to by appellate court amount to technical errors which, standing alone, do not affect validity of appeal. *Villagomez v. Sablan*, 4 N.M.I. 396 (1996).

DC App. Div. 1987. Where appellant failed to timely pay for transcript, the denial of an extension of time effectively dismissed the appeal and was too harsh a sanction. Dist.Com R.App.P. 7(a). *CNMI v. Park*, 2 CR 1176.

DC App. Div. 1986. An appealing party's failure to order the transcript within the time prescribed by the rule is, within the Court's discretion, sufficient grounds for dismissal of an appeal. *CNMI v. Bordallo*, 2 CR 473, rev'd, 822 F.2d 61 (9th Cir. 1987).

DC App. Div. 1986. Where the appellant failed to timely order the transcript, in contravention of both the appellate rules and a stipulation it entered into that assured the appellee that the appellant would proceed expeditiously, and where appellants failed to timely respond to the motion to dismiss, the appellee's motion to dismiss would be granted. *CNMI v. Bordallo*, 2 CR 473, rev'd, 822 F.2d 61 (9th Cir. 1987).

DC App. Div. 1986. Where appellants were 6 days late in filing the designation of the record, 17 days late in ordering the reporter's transcript, and did not pay for the transcript until 3 months later, appeal would be dismissed for failure to comply with the Rules of Appellate Procedure. Dist. Court R. App.P. 6. *Nakazato v. Micronesian Development Company, Inc.*, 2 CR 515.

DC App. Div. 1981. "Oversight" on the part of government counsel and "the press of other urgent matters" do not constitute good cause for the failure timely to file a designation of the record and, accordingly, the government's appeal would be dismissed. District Court R.App.Proc. 1 l(b). *Mendiola v. Government NMI*, 1CR 118

—Generally

No appeal may be dismissed by a single justice of NMI Supreme Court. Com. R. App. P. 27(d). *Commonwealth v. Lu*, 4 N.M.I. 93 (1994).

—Particular Cases

NMI Supreme court would dismiss appeal of pro se appellants who failed to timely present adequate record on appeal in compliance with plain, express language of court order in which they were cautioned (following repeated procedural errors and rule violations) that they had one final, limited opportunity to present adequate record. Unexcused error, combined with earlier lapses and prejudice to appellee caused by appellants' failure to meet deadline, warranted dismissal. Com. R. App. P. 10(b)(2), 42(c). *Villagomez v. Sablan*, 4 N.M.I. 396 (1996).

—Jurisdiction, Lack of

Generally, a corporation without counsel cannot be a party to an appeal. Instead, it must be represented by an attorney and not its president appearing pro se on its behalf. Where a corporation is not represented by an attorney on appeal, the corporation is not properly before the appellate court and appeal is subject to dismissal for lack of jurisdiction. Com. R. App. P. 11; Com. R. App. P. 42(c). *Benavente v. Double One Enters., Inc.*, 4 N.M.I. 299 (1995).

Dismissal, Voluntary

—Improper Purpose

——Particular Cases

Since only purpose of motion for dismissing appeal without prejudice or holding it in abeyance was to provide appellant with opportunity to pursue appeal to the U.S. Ninth Circuit Court of Appeals, which lacked jurisdiction, motion was denied. *Vaughn v. Bank of Guam*, 1 N.M.I. 160 (1990), stay denied, 1 N.M.I. 318 (1990).

—Generally

No appeal may be dismissed by a single justice of NMI Supreme Court. Com. R. App. P. 27(d). *Commonwealth v. Lu*, 4 N.M.I. 93 (1994).

Unless parties have stipulated to dismissal of appeal, with terms as to payment of costs, appellant seeking dismissal must file motion to dismiss with NMI Supreme Court. Com. R. App. P. 42(b), 27(a). *Commonwealth v. Lu*, 4 N.M.I. 93 (1994).

—Stipulation

Once an appeal has been docketed with NMI Supreme Court, it may be dismissed, upon stipulation, by the clerk only where the parties have specified the terms as to payment of costs. Com. R.

App. P. 42(b). *Commonwealth v. Lu*, 4 N.M.I. 93 (1994).

——Particular Cases

Because parties stipulating to dismissal of interlocutory appeal (without terms as to payment of costs) failed to file motion to dismiss with stipulation, instead filing document styled as stipulation and order, matter was not properly before NMI Supreme Court. Com. R. App. P. 42(b), 27(a). *Commonwealth v. Lu*, 4 N.M.I. 93 (1994).

Although parties in interlocutory appeal stipulating to dismissal failed to comply with appellate rules concerning dismissal, because appeal stemmed from pending criminal case NMI Supreme Court would dismiss appeal pursuant to rule permitting court to suspend rules in particular case in interest of justice, to expedite a decision, or for other good cause shown. Com. R. App. P. 2. *Commonwealth v. Lu*, 4 N.M.I. 93 (1994).

Evidentiary Burden

On review, the appellate court applies the same evidentiary burden employed at trial. *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 21

Filing and Service

—Mail, By

Language of Com. R. App. P. 25(a) plainly means that the act of appropriately depositing a brief in a U.S. Post Office or in a U.S. Postal Service letter box up to and including the date that it is due constitutes the required "mailing," provided that the brief is within an enclosure bearing the proper address and sufficient postage for first class delivery—"the most expeditious form of delivery." *Mafnas v. Commonwealth*, 1 N.M.I. 400 (1990).

Com. R. App. P. 25(a) does not require that filings by mail bear a postmark as proof of timeliness. *Mafnas v. Commonwealth*, 1 N.M.I. 400 (1990).

—Notice of Appeal

See **Notice of Appeal**, this topic.

—Striking of Late Filings

——Particular Cases

Motion to strike response (as untimely filed) to motion to dismiss appeal would be denied where motion to dismiss was served by both facsimile transmission and by mail, and response to motion to dismiss was timely filed after party received motion via mail. Com. R. App. P. 26(c), 27(a). *Lucky Dev. Co., Ltd. v. Tokai U.S.A., Inc.*, 2 N.M.I. 450 (1992).

Opposition memorandum would be stricken where party failed to file memorandum no later than three days prior to hearing in compliance with rule. Com. R. App. P. 27(b). *Lucky Dev. Co., Ltd. v. Tokai U.S.A., Inc.*, 2 N.M.I. 81 (1991).

Finality Rule

Under a normal appeal, the appellate court is asked to evaluate the actions of a particular judge after a final judgment has been entered. *Office of the Attorney General v. Superior Court (Fabricante)*, 1999 MP 14 ¶ 8

Finality rule is intended to save time and resources. Prudent appellate procedure requires that NMI Supreme Court not sever some issues that can be decided from those that cannot be decided. A case should be taken as a whole whenever possible. *Feliciano v. Superior Court (In re Estate of Hillblom)*, 1999 MP 3 ¶ 25

Issue Not Presented Below

It is for the Court to evaluate the issues presented by the appellant or petitioner. *Commonwealth v. Minto*, 2011 MP 14 ¶ 14 (2011).

Issue Not Raised In Brief or Petition

An issue may not be raised on appeal if it was not discussed at trial. *Fitial v. Kim Kyung Duk*, 2001 MP 9 ¶ 16

Jurisdiction

—Particular Cases

NMI Supreme Court had jurisdiction pursuant to general jurisdictional statute over appeal challenging trial court judgment, issued on remand from earlier appeal in same action, on basis that court failed to comply with Supreme Court mandate. 1 CMC § 3102(a). *Wabol v. Villacrusis*, 4 N.M.I. 314 (1995).

Mandate

—Jurisdiction

Where a mandate is issued prior to a request for a full panel review, the NMI Supreme Court has no jurisdiction to consider the request. *Pacific Amusement, Inc. v. Villanueva III*, 2006 MP 8 ¶ 3
A mandate brings the proceedings in a case on appeal to a close and removes it from the jurisdiction of the appellate court, returning it to the court below. *Pacific Amusement, Inc. v. Villanueva III*, 2006 MP 8 ¶ 6

Where a mandate is issued before the filing of a request for a full panel review, a procedural problem exists. As a mandate is a jurisdictional issue, the court must first determine whether or not it would like to exercise its inherent authority to recall the mandate *sua sponte* before considering the request for review. *Pacific Amusement, Inc. v. Villanueva III*, 2006 MP 8 ¶ 28

To determine whether an order is final, and thus capable of being appealed, a court must examine whether the order fully informed the losing party of the extent of the remedy entered against it. *Pacific Amusement, Inc. v. Villanueva*, 2005 MP 11 ¶ 9

An order that establishes liability without fixing the amount of recovery may be final and immediately appealable only if the determination of damages will be mechanical and uncontroversial, i.e. a ministerial task. Any issue sought to be appealed before such a damage determination is made must not be susceptible to becoming moot or altered by the damage determination. *Pacific Amusement, Inc. v. Villanueva*, 2005 MP 11 ¶ 11

Practical, not technical, considerations are to govern the application of principles of finality. This is known as the Gillespie doctrine, after the U.S. Supreme Court case in which it was determined, and is applicable in the Commonwealth, however, it is a very narrow exception to the final judgment rule. *Pacific Amusement, Inc. v. Villanueva*, 2005 MP 11 ¶ 14

An appellate court may review an otherwise non-final decision under the Gillespie doctrine if: the decision is a marginally final order; the order disposes of an unsettled issue of national significance; and the finality issue is not presented to the appellate court until argument on the merits (thereby ensuring that policies of judicial economy would not be served by remanding the case with an important unresolved issue). *Pacific Amusement, Inc. v. Villanueva*, 2005 MP 11 ¶ 16

The Gillespie doctrine only applies to orders involving unsettled issues of national importance where immediate review would serve the purpose of judicial economy. *Pacific Amusement, Inc. v. Villanueva*, 2005 MP 11 ¶ 17

—Operation and Effect

It is well-settled in the CNMI that the trial court must comply strictly with the mandate of the appellate court. The lower court, upon receiving the mandate of the appellate court, is under a duty to strictly comply with the mandate and to obey the directions therein without variation. Actions of the lower court not in conformity with the directions of the mandate are void. *In the Matter of the Estate of Malite*, 2010 MP 20 ¶ 29 (2010).

The opinion issued by a court can be considered when determining the meaning of the mandate. In the absence of a specific remand directive the trial court could take action as long as it would not be inconsistent with the mandate of the earlier opinion as gleaned from the judgment together with the accompanying opinion. While an order issued after remand may, in some instances, diverge from the appellate court's mandate, it must be consistent with the spirit of the appellate decision and within the scope of the remand. *In the Matter of the Estate of Malite*, 2010 MP 20 ¶ 30 (2010).

While a lower court must execute the terms of the mandate, the lower court may consider issues not foreclosed by the mandate. The trial court's ultimate task is to distinguish between matters that have been decided on appeal, and are therefore beyond the jurisdiction of the lower court, from matters that have not. *In the Matter of the Estate of Malite*, 2010 MP 20 ¶ 33 (2010).

The transmittal of a mandate to the lower court re-vests the lower court with the jurisdiction over the case. *Pacific Amusement, Inc. v. Villanueva III*, 2006 MP 8 ¶ 6

A mandate is a final order. *Pacific Amusement, Inc. v. Villanueva III*, 2006 MP 8 ¶ 6

Courts of appeals have inherent power to recall their mandates, subject to review for an abuse of discretion, but in light of the profound interests in

repose attaching to the mandate of a court of appeals, the power can be exercised only in extraordinary circumstances, and is one of last resort, to be held in reserve against grave, unforeseen contingencies. *Pacific Amusement, Inc. v. Villanueva III*, 2006 MP 8 ¶ 7

The power to recall mandates should be exercised sparingly and is not be availed of freely as a basis for granting rehearings out of time for the purpose of changing decisions, even assuming the court becomes doubtful of the wisdom of the decision that has been entered and become final. *Pacific Amusement, Inc. v. Villanueva III,* 2006 MP 8 ¶ 8

The reason for parsimony in the exercise of the appellate court's power to recall a mandate is the need to preserve finality in judicial proceedings. *Pacific Amusement, Inc. v. Villanueva III,* 2006 MP 8 ¶ 8

A court of appeal's authority to recall mandate should be exercised sparingly and only upon showing of exceptional circumstances, and this resort to recall power should not be used simply as a device for granting late rehearing. *Pacific Amusement, Inc. v. Villanueva III*, 2006 MP 8 ¶ 9

A mandate once issued will not be recalled by an appellate court except by order of the court for good cause shown; the good cause requisite for recall of mandate is the showing of need to avoid injustice. *Pacific Amusement, Inc. v. Villanueva III,* 2006 MP 8 ¶ 9

The power of an appellate court to recall its mandate should be exercised sparingly to be availed of freely as the basis for granting re-hearings out of time for purpose of changing decision even assuming court becomes doubtful of the wisdom of its decision. *Pacific Amusement, Inc. v. Villanueva III,* 2006 MP 8 ¶ 9

In determining whether to recall its mandate an appellate court should adhere to the principle that there must be a special reason, exceptional circumstances in order to override the strong policy of repose, that there be an end to litigation. *Pacific Amusement, Inc. v. Villanueva III,* 2006 MP 8 ¶ 9

An appellate court may revise its mandate to prevent injustice when the judgment contains an instruction on point or in an application not deliberately intended by the court that would operate, unless changed to require the lower court to issue an unjust order. *Pacific Amusement, Inc. v. Villanueva III*, 2006 MP 8 ¶ 9

Whether the power to recall a mandate is exercised at all falls within the discretion of the appellate court, but such discretion should be employed only when good cause or unusual circumstances exists sufficient to justify modification or recall of a prior judgment. *Pacific Amusement, Inc. v. Villanueva III*, 2006 MP 8 ¶ 10

There are limited circumstances in which a court may exercise the power to recall a mandate. These circumstances are: when there was a clerical error, fraud on the court, avoidance of differences in results to cases pending at the same time, or a need to revise unintended instruction to trial court that produces unjust result, or other grounds of injustice. *Pacific Amusement, Inc. v. Villanueva III*, 2006 MP 8 ¶ 11

The clearest reason for recall or revision of an appellate mandate is to correct clerical mistakes. This power is expressly confirmed for district courts by Commonwealth Rule of Civil Procedure 60, thus, it is also an inherent power of the NMI Supreme Court. *Pacific Amusement, Inc. v. Villanueva III*, 2006 MP 8 ¶ 12

A court can always set aside a decision that was obtained by fraud because the deep-rooted policy in favor of the repose of judgments and the interest in finality, must yield to the overriding interest of correcting injustices which, in certain instances, are deemed sufficiently gross to demand a rigid adherence to the term rule where enforcement of the judgment is manifestly unconscionable. *Pacific Amusement, Inc. v. Villanueva III,* 2006 MP 8 ¶ 13

A court may recall a mandate where it was procured by effecting a fraud on the court, whenever the integrity of the judicial process or functioning has been undercut, and certainly in any instance of misconduct by a party. *Pacific Amusement, Inc. v. Villanueva III,* 2006 MP 8 ¶ 14

Appellate courts are willing to disturb finality by recalling a mandate in the interest of justice, where they seek to avoid differences of result for cases pending at the same time and also were a higher court had changed the state of law. *Pacific Amusement, Inc. v. Villanueva III,* 2006 MP 8 ¶ 15

A court may recall a mandate to prevent injustice that may result where an appellate judgment contains an instruction that was not deliberately intended by the appellate court, and that would operate, unless

changed, to require the lower court to issue an unjust order because the lower court is prohibited from departing from the appellate instruction without special leave. *Pacific Amusement, Inc. v. Villanueva III*, 2006 MP 8 ¶ 17

A court may recall a mandate to restrain enforcement of a judgment in order to avoid an unconscionable injustice in exceptional circumstances, being mindful that the sparing use of the power demonstrates it is one of last resort, to be held in reserve against grave, unforeseen contingencies. *Pacific Amusement, Inc. v. Villanueva III*, 2006 MP 8 ¶ 18

Specific to the rule of mandate, the lower court, upon receiving the mandate of an appellate court, is under a duty to strictly comply with the mandate and to obey the directions therein without variation. Actions of the lower court not in conformity with the directions are void, this is true even though the mandate may be erroneous. *Wabol v. Villacrusis*, 2000 MP 18 ¶ 12

It is not for the trial court to pass judgment on and disregard the decision of the reviewing court. Rather, the trial court has a duty to comply with the decision remanded by the mandate. Regardless of its perception of the propriety of the decision, it is required to comply with the mandate. *Wabol v. Villacrusis*, 2000 MP 18 ¶ 15

The duty of a lower court on remand is to comply with the mandate of the appellate court, and to obey the directions therein without variation, even though the mandate may be erroneous. However, while a mandate is controlling as to matters within its compass, on remand a lower court is free as to other issues. An order issued after remand may, in some instances, diverge from the appellate court's mandate, but it must be consistent with the spirit of the appellate decision and within the scope of the remand. *Wabol v. Villacrusis*, 2000 MP 18 ¶ 16

The absence of a specific remand directive does not bar the lower court from ordering a new trial, as long as the new trial would not be inconsistent with the mandate of the appellate court. *Wabol v. Villacrusis*, 2000 MP 18 ¶ 16

The policy underlying the law of mandate is one of finality of court decisions. *Aldan-Pierce v. Mafnas*, 1999 MP 11 ¶ 17

Specific to the rule of mandate, the lower court, upon receiving the mandate of an appellate court, is under a duty to strictly comply with the mandate and to obey the directions therein without variation. Actions of the lower court not in conformity with the directions are void. This is true even though the mandate may be erroneous. *Aldan-Pierce v. Mafnas*, 1999 MP 11 ¶ 14

On remand from appellate court, trial court must proceed in accordance with appellate court mandate and such law of the case as was established by the appellate court. *Wabol v. Villacrusis*, 4 N.M.I. 314 (1995).

Specific to the rule of mandate, the lower court, upon receiving the mandate of an appellate court, is under a duty to strictly comply with the mandate and to obey the directions therein without variation. Actions of the lower court not in conformity with the directions are void; this is true even though the mandate may be erroneous. *Wabol v. Villacrusis*, 4 N.M.I. 314 (1995).

Only those matters left open by appellate court mandate may be reviewed by trial court on remand. *Wabol v. Villacrusis*, 4 N.M.I. 314 (1995).

While an order issued after remand may, in some instances, diverge from the appellate court's mandate, it must be consistent with the spirit of the appellate decision and within the scope of the remand. *Wabol v. Villacrusis*, 4 N.M.I. 314 (1995).

Trial court has duty to strictly comply with the mandate of an appellate court. *Loren v. E'Saipan Motors, Inc.*, 1 N.M.I. 133 (1990).

——Particular Cases

Because trial court failed to follow NMI Supreme Court mandate issued on remand from earlier appeal in same action, trial court judgment would be vacated and Supreme Court would remand for further proceedings. *Wabol v. Villacrusis*, 4 N.M.I. 314 (1995).

In action challenging lease as violative of N.M.I. Const. art. XII, restricting ownership of long-term interests in real property to persons of NMI descent, on remand trial court violated law of the case doctrine by failing to follow appellate court mandate directing it to consider lessor's obligations arising under quasi-contract, periodic tenancy and unjust enrichment theories. *Wabol v. Villacrusis*, 4 N.M.I. 314 (1995).

—Predecessor Court

NMI Supreme Court will not question, absent reasons mandating an exception to the law of the case doctrine, the propriety of an NMI District Court Appellate Division mandate in the same case. *Wabol v. Villacrusis*, 4 N.M.I. 314 (1995).

—Stay

Despite the language of Commonwealth Rule of Appellate Procedure 41, a timely request for full panel review will not automatically stay the issuance of a mandate. Instead, the mandate will only be stayed under these circumstances when requested by the parties or upon the order of the Court. *Pacific Amusement, Inc. v. Villanueva III*, 2006 MP 8 ¶ 4

Appellants are entitled to a stay of Superior Court order if they show: (1) a combination of probable success on the merits and the possibility of irreparable injury, or (2) that serious questions are raised and the balance of hardship tips sharply in the appellants' favor. *Manglona v. Aldan*, 1998 MP 5 ¶ 3

A party moving for a stay of an appellate court mandate must show: (1) a combination of probable success on the merits and the possibility of irreparable injury; or (2) that serious questions are raised and the balance of hardships tips sharply in its favor. *Vaughn v. Bank of Guam*, 1 N.M.I. 318 (1990).

An order granting summary judgment is reviewed de novo by the NMI Supreme Court. The summary judgment shall be affirmed on appeal if the Court determines that as to the legal basis relied upon: (1) there is no genuine issue of material fact; and (2) the substantive law was correctly applied. *Rasa v. Dep't of Lands and Resources*, 1998 MP 7 ¶ 2

Issues as to whether the trial court erred in denying appellants' motions for summary judgment, directed verdict, and for judgment notwithstanding the verdict that are raised with respect to a motion for summary judgment are reviewed de novo by the NMI Supreme Court. *Mendiola v. Marianas Agupa Enter.*, 1998 MP 10 ¶ 2

Orders granting or denying summary judgment are reviewed de novo on appeal. Summary judgment may be granted only when the court, after viewing the facts and inferences therefrom in a light most favorable to the non-moving party, finds as a matter of law that the moving party is entitled to judgment as a matter of law. An order granting or denying summary judgment will be affirmed on appeal only if there are no genuine issues of material fact and the substantive law was correctly applied. Summary judgment must be granted against a party who fails to make a showing sufficient to establish the existence of an essential element to the party's case. *Charfauros v. Board of Elections*, 1998 MP 16 ¶ 33

Mootness

As a general rule, mootness represents an obstacle to the considerations of an appeal. However, in exceptional situations, mootness is not an obstacle. When the question involved effects the public interest, and it is likely that similar questions arising in the future would likewise become moot before a needed authoritative determination by an appellate court can be made, an exception to the rule is justified. *Office of the Attorney General v. Sagun*, 1999 MP 19 ¶ 7

An order granting summary judgment is reviewed de novo by the NMI Supreme Court. The summary judgment shall be affirmed on appeal if the Court determines that as to the legal basis relied upon: (1) there is no genuine issue of material fact; and (2) the substantive law was correctly applied. *Rasa v. Dep't of Lands and Resources*, 1998 MP 7 ¶ 2

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Motions

In criminal cases, motions to stay sentence based on Commonwealth Rules of Appellate Procedure 8(c), also implicates Commonwealth Rules of Appellate

Procedure 9(c). *Commonwealth v. Blas*, 2004 MP 26 ¶ 4

Three factors determine whether a defendant is eligible for release pending his appeal: whether he can establish that he will not flee the jurisdiction or pose a danger to any other person or to the community; whether his appeal is a mechanism to delay incarceration; and whether the appeal raises a substantial question of law or fact likely to result in reversal or an order for a new trial. Com. R. App. P. 9(c); Com. R. Crim. P. 46(c). *Commonwealth v. Blas*, 2004 MP 26 ¶ 5

As a threshold requirement, the Commonwealth Rules of Appellate Procedure require a defendant to file an initial application for a stay of his conviction in the trial court. *Commonwealth v. Blas*, 2004 MP 26 ¶ 6

—Particular Cases

An improper citation by itself, or any number of other procedural flaws, will not necessarily render a party's motion inadequate. Technical deficiencies may be considered by the Supreme Court, but they do not control its decision whether to grant the requested relief. It is the substance and timeliness of pleadings, rather than strict adherence to procedure that controls. *Commonwealth Dev. Auth. v. Atalig, et al.*, 2009 MP 5 ¶ 5 (2009).

Rule 31(d) of the Commonwealth Rules of Appellate Procedure states that a motion to extend time for filing a brief may be granted only upon written motion supported by a showing of diligence and substantial need. Com. R. App. P. 31(d). The motion must be supported by an affidavit that includes, among other things, a statement that opposing counsel does or does not object to the extension or why the moving party has been unable to determine any such party's position. Com. R. App. P. 31(d)(7). *Commonwealth Dev. Auth. v. Atalig, et al.*, 2009 MP 5 ¶ 6 (2009).

Rule 31(d) of the Commonwealth Rules of Appellate Procedure requires a showing of diligence and substantial need before a motion to enlarge time is granted. *Commonwealth Dev. Auth. v. Atalig, et al.*, 2009 MP 5 ¶ 7 (2009).

Motion for an extension to file the opening brief was procedurally deficient where appellant failed to certify whether counsel for the other parties was notified or served. Declaration and certification that other party's counsel has been notified of appellant's motion for an extension is more than a mere formality; it ensures that all parties are fairly apprised of all information presented to the Court. *Babauta v. Babauta*, 2004 MP 2 ¶ 9

Notice of Appeal

—Adequacy of Notice

When an appellant attaches a copy of the order being appealed to the notice of appeal, as required by Com. R. App. P. 3(c), the notice of appeal is adequate, and need not be dismissed for informality of form or title of the notice of appeal, regardless of whether the notice reflects the appeal being taken against all parties. Com. R. App. P. 3(c). *Rosario v. Camacho*, 2001 MP 3 ¶ 46

—Decisions Included

A request for costs is a collateral matter which is not part of a previously-entered judgment. A notice of appeal perfecting an appeal from a judgment does not also perfect the appeal of a subsequently-entered order taxing costs pursuant to the judgment. *Tanki v. S.N.E. Saipan Co., Ltd.*, 4 N.M.I. 69 (1993).

—Docketing

Clerk of NMI Supreme Court dockets an appeal upon receipt of copy of notice of appeal. Com. R. App. P. 12(a). *Commonwealth v. Lu*, 4 N.M.I. 93 (1994).

—Entry of Judgment

See **CIVIL PROCEDURE – Final Judgment – Entry of Judgment**

—Errors

Where the petitioner files a notice of appeal from the denial of a motion to vacate the judgment and to amend the complaint, but fails to designate the underlying judgment of dismissal in the notice of appeal, the appeal should be treated as an effective, although inept, attempt to appeal from the judgment sought to be vacated. So long as the petitioner's intention to seek review of both the dismissal and the denial of the motions is manifest, it would be contrary to the spirit of the Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities. *Angello v. Louis Vuitton Saipan, Inc.*, 2000 MP 17 ¶ 15

Where it is apparent that the appellant intended to appeal the judgment below, although he fails to

specifically designate which order is the subject of the appeal, there is no prejudice to the appellee where the appellee's brief fully argues the merits of the disputed order. *Angello v. Louis Vuitton Saipan, Inc.*, 2000 MP 17 ¶ 16

A policy of liberal construction of notices of appeal prevails in situations where the intent to appeal an unmentioned or mislabeled ruling is apparent and there is no prejudice to the adverse party. The party who makes a simple mistake in designating the judgment appealed from, does not forfeit his right of appeal where the intent to pursue it is clear. Also, where claims or issues are inextricably entwined, each may be reviewed even though not referred to in the notice of appeal. *Angello v. Louis Vuitton Saipan, Inc.*, 2000 MP 17 ¶ 16

The N.M.I. Supreme Court has liberally construed notices of appeal which failed to properly designate the ruling appealed from, noting that it would overlook such a technical error. *Angello v. Louis Vuitton Saipan, Inc.*, 2000 MP 17 ¶ 17

Where the appellant fully argued the merits of the order of dismissal in her opening brief, it is clear that the appellant intended to appeal the order. And, where the appellee has also fully argued the merits of the order, it is not prejudiced by the appellant's failure to designate the order of dismissal in her notice of appeal and the court will overlook the appellant's technical error and grant review of both the order of dismissal and the order denying plaintiff's motion for reconsideration. *Angello v. Louis Vuitton Saipan, Inc.*, 2000 MP 17 ¶ 18

Failure to specify party or parties taking the appeal in a notice of appeal is not automatically grounds for dismissal of appeal. If omission was unintentional, and good cause can be shown for the omission, or there is no prejudice to the appellee, then the omitted party should be included in the appeal. Com. R. App. P. 3(c). *Lucky Dev. Co., Ltd. v. Tokai U.S.A., Inc.*, 2 N.M.I. 81 (1991).

Where omission of name of attorney appealing sanction from notice of appeal was (1) unintentional, and (2) it was clear since date of filing that attorney was appellant (documents put trial court and opposing party on notice that attorney was appealing sanction), and (3) there was no prejudice to appellee, appeal would not be dismissed. Com. R. App. P. 3(c). *Lucky Dev. Co., Ltd. v. Tokai U.S.A., Inc.*, 2 N.M.I. 81 (1991).

— Excusable Neglect

Pursuant to the excusable neglect standard in NMI Supreme Court Rule 4(a), litigants who fail to file a timely notice of appeal lose their ability to pursue an appeal just as litigants who run afoul of Rule 31-1(b) effectively lose their opportunity to have their appeal heard if the out-of-time brief is a principal or cross-appeal brief. Relief will not be granted unless the party can show "unique" or "extraordinary" circumstances. *Owens v. Commonwealth Health Center*, 2011 MP 6 ¶ 16 (2011).

The ordinary meaning of neglect is to give little attention or respect to a matter, or, closer to the point for our purposes, to leave undone or unattended to especially through carelessness. *Owens v. Commonwealth Health Center*, 2011 MP 6 ¶ 18 (2011).

While excusable neglect is a somewhat flexible concept, inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute excusable neglect. *Owens v. Commonwealth Health Center*, 2011 MP 6 ¶ 18 (2011).

Circumstances under which counsel might be able to overcome the "highly disfavored" standard include i) erroneous action taken by this court, on which counsel relied in good faith and subsequently failed to meet the filing deadline; ii) illness of the attorney responsible for the filing or an severe illness or death in that attorney's immediate family; iii) a problem caused by the Court's electronic filing system. While this list is not exhaustive, these categories share a common feature: they represent events beyond the control of the attorney responsible for the filing. It is possible that attorney mistake or inadvertence might overcome the "highly disfavored" standard, but the Supreme Court is generally disinclined to allow filing of late briefs when an attorney fails to exercise ordinary care. *Owens v. Commonwealth Health Center*, 2011 MP 6 ¶ 20 (2011).

—Extension for Filing

NMI Supreme Court Rule 4(a) provides that the lower court may extend the time to file a notice of appeal if, regardless of whether the motion to extend time is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause. *Owens v. Commonwealth Health Center*, 2011 MP 6 ¶ 15 (2011).

The plain meaning of Com. R. App. P. 4(a)(5) is that no extension of time may be granted to file a notice of appeal, even for "good cause," unless the extension is requested within the thirty-day filing deadline. *Tudela v. Marianas Pub. Land Corp.*, 1 N.M.I. 179 (1990).

Superior Court may, upon a showing of good cause, extend the time for filing a notice of appeal upon a motion filed not later than thirty days after the entry of the judgment or order appealed from. Com. R. App. P. 4(a)(5). *Tudela v. Marianas Pub. Land Corp.*, 1 N.M.I. 179 (1990).

Extensions for filing a notice of appeal are granted only upon motion by one of the parties. The motion must be in writing unless made during a hearing, must state with particularity the grounds for the extension, and must give adequate notice. The Superior Court may not entertain such a notice after the deadline has expired. Com. R. App. P. 4(a)(5). *Tudela v. Marianas Pub. Land Corp.*, 1 N.M.I. 179 (1990).

A motion for an extension of time for filing a notice of appeal must be directed to the Superior Court—it cannot be directed to the NMI Supreme Court. Com. R. App. P. 4(a)(5). Tu*dela v. Marianas Pub. Land Corp.*, 1 N.M.I. 179 (1990).

If no motion for an extension of time for filing a notice of appeal is filed in the Superior Court and the time for filing has expired, the NMI Supreme Court cannot grant an extension or remand to the Superior Court for a determination of whether an extension was warranted. Com. R. App. P. 26(b). *Tudela v. Marianas Pub. Land Corp.*, 1 N.M.I. 179 (1990).

Com. R. App. P. 2, which provides that NMI Supreme Court may, upon motion and for good cause, provide extensions for doing any act, does not empower court to permit suspension of thirty-day time limit specified in Com. R. App. P. 4(a)(1) for filing notice of appeal. Com. R. App. P. 26(b) forbids court from extending time for filing notice of appeal. *Tudela v. Marianas Pub. Land Corp.*, 1 N.M.I. 179 (1990).

—Generally

The N.M.I. Supreme Court may treat a notice of appeal as a petition for a writ of mandamus, if it is so inclined. *Kaainoa v. Cabrera*, 2003 MP 18 ¶ 13

It would be inequitable for the N.M.I. Supreme Court to treat a matter as a petition for a writ of mandamus after it had been briefed and argued as an appeal, because Commonwealth Rule of Appellate Procedure 21(b) requires the Supreme Court to afford the trial court the opportunity to respond to the writ, if it is not denied outright. Com. R. App. P. 21(b). *Kaainoa v. Cabrera*, 2003 MP 18 ¶ 14

The thirty-day limit in which to file a notice of appeal in a civil case pursuant to Commonwealth Rule of Appellate Procedure 4(a)(1) is both mandatory and jurisdictional. Com. R. App. P. 4(a)(1). *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 11

DC App. Div. 1981. Where a notice of appeal is timely filed, any other party may file a notice of appeal within the original 30 day period or within 14 days after the filing of the first notice of appeal, whichever last expires. Dist. Court R. App. Pro. 4(a). *South Seas Corporation v. Sablan*, 1 CR 122.

—Particular Cases

Because notice of appeal of summary judgment order failed to designate subsequently-issued trial court orders taxing costs and attorney's fees and affirming amounts assessed, notice did not give NMI Supreme Court jurisdiction to review subsequently-issued orders. Com. R. App. P. 3(c). *Tanki v. S.N.E. Saipan Co., Ltd.*, 4 N.M.I. 69 (1993).

Despite fact that appellant's notice of appeal erroneously stated that he was appealing order denying motion for new trial in divorce action, NMI Supreme Court would overlook error and consider appeal as being from Superior Court decree. *Robinson v. Robinson*, 1 N.M.I. 81 (1990).

Although parties did not specifically raise issue of whether trial court abused its discretion in denying appellant's motion for a new trial, NMI Supreme Court would consider appellant's notice of appeal as raising issue. *Robinson v. Robinson*, 1 N.M.I. 81 (1990).

—Timeliness

There is nothing unfair about the seven-day limit in which to file an appeal imposed by Commonwealth Rule of Criminal Procedure 33. However, there might be an exception in the unique circumstances doctrine which holds that court may act on untimely motions when judges induce parties to rely to their detriment on erroneous extensions of time. Com. R. Crim. P. 33. *Commonwealth v. Diaz*, 2003 MP 14 ¶ 13

Every party has a minimum of 14 days to file an appeal. Once the first party has filed a timely notice of appeal, all other parties have either the balance of 30 days from the date of entry of the judgment or order, or 14 days from the first notice of appeal, whichever is greater. Com. R. App. P. 4(a)(1)&(3). *Rosario v. Camacho*, 2001 MP 3 ¶ 44

A notice of appeal filed more than 30 days after the order from which the appeal is taken, but less than 14 days after another party has filed a notice of appeal, is timely. The deadline for filing an appeal is extended past the 30-day period so that subsequent filers can consider the effect of the appeal filed by a prior filer in their own decision to appeal. To deprive a subsequent filer of the extra 14 days would be to defy common sense and lead to an absurd result. Com. R. App. P. 4(a)(3). *Rosario v. Camacho*, 2001 MP 3 ¶ 47

Until the court issues an order disposing of any motions brought pursuant to Com. R. Civ. P. 59, the 30-day period for appealing a judgement pursuant to Com. R. App. P. 4(a)(4) does not begin to run, and any notice of appeal filed while the Rule 59 motions are pending is of no effect and must be re-filed once the 30-day period has begun to run. Com. R. Civ. P. 59; Com. R. App. P. 4(a)(4). *Saipan Lau Lau Dev., Inc. v. Superior Ct. (San Nicolas)*, 2000 MP 16 ¶ 13

Until a judgment is final, a party cannot appeal it. *Saipan Lau Lau Dev., Inc. v. Superior Ct. (San Nicolas)*, 2000 MP 16 ¶ 15

Until a judgment is clearly and unambiguously final on its face, the parties cannot definitively know when the crucial 10-day period for filing post-trial motions begins. Until a judgment is clearly and unambiguously final, the parties cannot know when to file an appeal. And until a judgment is clearly and unambiguously final, the parties cannot seek to execute it. *Saipan Lau Lau Dev., Inc. v. Superior Ct. (San Nicolas)*, 2000 MP 16 ¶ 17

Notice of appeal must be filed within thirty days of date of entry of judgment or order. This requirement is mandatory and jurisdictional. Every party has this right. Com. R. App. P. 4(a)(1). *Lucky Dev. Co., Ltd. v. Tokai U.S.A., Inc.*, 2 N.M.I. 450 (1992).

Com. R. App. P. 4(a)(1), requiring filing of notice of appeal within thirty days after date of entry of judgment or order appealed from, should be read together with Com. R. App. P. 4(a)(3), permitting other party to file a notice of appeal within fourteen days after the date on which first notice of appeal was filed. Latter rule gives a party a minimum of fourteen days in which to file an appeal if another party has already filed an appeal and the first appeal was filed during the last fourteen days of the original thirty-day filing period. Once a party has filed a timely notice of appeal, all other parties have either the balance of thirty days or fourteen days, whichever is greater, to file an appeal. *Lucky Dev. Co., Ltd. v. Tokai U.S.A., Inc.*, 2 N.M.I. 450 (1992).

Thirty-day time limit for filing notice of appeal is mandatory and jurisdictional. Com. R. App. P. 4. *Tudela v. Marianas Pub. Land Corp.*, 1 N.M.I. 179 (1990).

——Particular Cases

Appeal from trial court order imposing sanctions filed more than thirty days after issuance of order but within thirty days after issuance of order setting amount of sanctions was timely. Order imposing sanctions did not become final until trial court determined the amount of the sanctions. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79 (1992).

Payment of Fees

DC App. Div. 1981. Where Commonwealth government was told by Clerk of the District Court that no docket fee was required, the appeal will not be dismissed for failure of the government to pay the fee. District Court R.App.Proc. 8. *Mendiola v. Government NMI*, 1 CR 118.

Record on Appeal

—Deficiencies in Record

The Commonwealth Rules of Appellate Procedure state that when an appeal is based upon a challenge to the admission or exclusion of evidence a copy of the relevant pages of the transcript at which the evidence, offer of proof, ruling, or order and any necessary objection are recorded should be included. Com. R. App. P. 30(c)(1). Additionally, any reference in an appellate brief made to evidence, the admissibility of which is in controversy shall be made to the pages of the excerpt at which the evidence was identified, offered, and received or rejected. Com. R. App. P. 28(e). *Commonwealth v. Camacho*, 2009 MP 1 ¶ 34 (2009).

Just as the Supreme Court must have the trial transcript to review a claim of insufficient evidence, *see* Com R. App. P. 10(b)(2), the Court likewise must have an adequate record to review the trial court's

denial of a motion for acquittal, which is analyzed under a sufficiency of the evidence standard. *See* Com. R. Crim. P. 29(a). *Commonwealth v. Camacho*, 2009 MP 1 ¶ 37 (2009).

The Commonwealth Rules of Appellate Procedure require appellants to submit an evidentiary record on appeal. The record on appeal must contain the original papers and exhibits filed in the Superior Court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the Superior Court. Com. R. App. P. 10(a). *Commonwealth v. Camacho*, 2000 MP 1 ¶ 13 (2009).

The Commonwealth Rules of Appellate Procedure require an appellant challenging a trial court finding or conclusion based on a claim of insufficient evidence to submit a transcript of all relevant trial court proceedings. To properly review a claim of insufficient evidence, the Supreme Court must be free to review the entire relevant evidentiary record to determine whether or not it supports the court's finding or conclusion. *Commonwealth v. Camacho*, 2000 MP 1 ¶ 14 (2009).

An appellant should not feel free to argue that a court's decision is based on insufficient evidence without proffering that very evidence before this Court in its excerpts of the record. Otherwise, the burden of providing the record on appeal to this Court would unduly be placed upon the appellee and the reviewing court. *Commonwealth v. Camacho*, 2000 MP 1 ¶ 14 (2009).

An appellant bears the burden of providing an adequate record for review, and the Supreme Court is under no obligation to remedy an appellant's failure to fulfill that responsibility. *Commonwealth v. Camacho*, 2000 MP 1 ¶ 15 (2009).

Where an appellant argues that a trial court finding or conclusion is unsupported by the evidence, without submitting before this Court the relevant evidentiary record, dismissal or a presumption of sufficient evidence may be warranted. *Commonwealth v. Camacho*, 2000 MP 1 ¶ 15 (2009).

When the Supreme Court is unable, from the record provided it, to adequately examine the actions of the trial court, the Court is unable to find error. *Commonwealth v. Camacho*, 2000 MP 1 ¶ 17 (2009).

The CNMI's interpretation of Com. R. App. P. 10(b)(2) mirrors federal courts' interpretation of Fed. R. App. P 10(b)(2), which holds that where an appellant fails to submit an adequate evidentiary record on appeal, Fed. R. App. P. 10(b)(2) requires summary affirmance, dismissal, or non-consideration of the issue in question. *Commonwealth v. Camacho*, 2000 MP 1 ¶ 18 (2009).

The Superior Court record does not automatically become part of the excerpt of record which comes before this Court for consideration. Instead, counsel must extract the documents, transcripts, etc. which we need to consider on appeal. Clerk's Notes from the Superior Court are an inadequate substitute for a necessary and relevant document. *Chen's Corporation v. Hambros*, 2007 MP 4 ¶ 10

It is not permissible to cite to a transcript which is not part of the appellate record. A transcript does not automatically become part of an appellate record: counsel must make it part of the record. Failure to include transcript testimony in an appellate record, especially after the Appellant fails to supplement the record or explain why a transcript is not necessary for meaningful review will lead to dismissal of an argument. *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26 ¶ 23

If an appellant fails to provide a sufficient record to review by not including the relevant portions of the transcripts in the excerpts of record, the Court may not reach the merits of the claim. *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26 ¶ 24

Failure to include a transcript in an appellate record in violation of Rule 10(b)(2) of the Commonwealth Rules of Appellate Procedure is a ground for the appellate court to presume sufficient evidence existed below in support of appellee or dismiss an appeal outright. Com. R. App. P. 10(b)(2). *Villanueva v Tinian Shipping and Transp., Inc.*, 2005 MP 12 ¶ 8

Where an appellant submits the trial court's written decision without a transcript of the hearing, the N.M.I. Supreme Court may review the matter with the presumption that the appellant accepts any evidentiary findings made by the judge, which might have been challenged by use of that transcript. *Villanueva v Tinian Shipping and Transp., Inc.*, 2005 MP 12 ¶ 8

Failure to apply for a stay of a defendant's sentence in the trial court leaves the appellate court without an adequate record from which to evaluate whether or not the defendant would be eligible for release pending appeal of his conviction. *Commonwealth v. Blas*, 2004 MP 26 ¶ 6

Without adequate record, the appellate court is unable to determine whether defendant is a flight risk

or a danger to the community; whether the appeal was a tactic to delay sentence and whether the appeal raises a substantial question of law or fact likely to result in reversal or an order for a new trial. *Commonwealth v. Blas*, 2004 MP 26 ¶ 7

Where a defendant fails to provide any record or cite to any legal authority to support his contention that a jury instruction was inconsistent with the verdict, the appellate court will be unable to determine the potential legal impact on his conviction. *Commonwealth v. Blas*, 2004 MP 26 ¶ 9

The appellate court will be unable to determine whether the trial court's sentencing was in error where a defendant fails to provide excerpts of relevant portions of the transcript to support his contention that sentence was inconsistent with the statute. *Commonwealth v. Blas*, 2004 MP 26 ¶ 10

Where a defendant fails to provide an adequate record, the defendant will not meet his burden of establishing the appeal raises a serious question of fact or law that would likely result in reversal or an order for a new trial and thus the defendant will not be entitled to release pending appeal. *Commonwealth v. Blas*, 2004 MP 26 ¶ 11

Failure to provide relevant trial court order or transcript for the appellate court, not only violates appellate procedure; it prevents the appellate court from having the adequate evidence to formulate a sound legal analysis. *Health Prof'l Corp. v. Superior Court*, 2004 MP 25 ¶ 14

The appellate court cannot find clear error if a petitioner for a writ fails to provide copies of the trial court's orders or transcripts. *Health Prof'l Corp. v. Superior Court*, 2004 MP 25 ¶ 15

Inadequate record prevented an appellate court from finding whether trial court's decision to declare a mistrial was a clear error as a matter of law. *Health Prof'l Corp. v. Superior Court*, 2004 MP 25 ¶ 16

Where counsel's briefs and declarations are inadequate to prove the trial court committed error, in keeping with the court's policy of disfavoring piecemeal appeals, the appellate court will not speculate as to the factual and legal validity of the trial court's analysis. *Health Prof'l Corp. v. Superior Court*, 2004 MP 25 ¶ 16

Where the government does not restate the evidence in its brief, the Court has the authority to review the record to make this determination. *Commonwealth v. Rabauliman*, 2004 MP 16 ¶ 11

The relevant pages of the transcript that an appellant must provide when challenging the admissibility of testimony are more than merely the pages on which the testimony in question is recorded. The appellant must provide the court with the pages of the transcript which prove to the court that the evidence was improperly admitted. It is not sufficient to point to a snippet of testimony and then ask the court to agree that the excerpt qualifies as improperly admitted hearsay. *Commonwealth v. Lucas*, 2003 MP 9 ¶ 20

Out-of-court statements are not inadmissible per se, and without a proper context for evaluating the statements in question, the court cannot rule that the trial court abused its discretion in admitting the testimony. Hearsay is a statement made out of the presence of the court, that also is used for the truth of the matter asserted. Absent sufficient material enabling the court to determine the use of the statement at trial, therefore, the appellate court is unable to conclude whether a particular statement qualifies as hearsay. *Commonwealth v. Lucas*, 2003 MP 9 ¶ 21

An appellant's failure to present the entire transcript when challenging the sufficiency of the evidence makes it extremely difficult, if not impossible, for the appellant to meet his burden of convincing the court that the trier of fact lacked sufficient evidence to convict him. *Commonwealth v. Lucas*, 2003 MP 9 ¶ 27

The N.M.I. Supreme Court could not review the trial court's reasons for closing a portion of a trial to the public where no transcript of the hearing on the matter was provided to the Court, and therefore found no constitutional violation of the defendant's right to a public trial. *Commonwealth v. Repeki*, 2003 MP 1 ¶ 20

Regardless of whether the transcript required by Commonwealth Rule of Appellate Procedure 10(b)(1), or the statement of issues required by Commonwealth Rule of Appellate Procedure 10(b)(3), would be helpful to the Court, the appellant still has the duty to provide an adequate record for review. It is the responsibility of appellant's counsel to ensure that the excerpts of record are sufficient for consideration and determination of the issues on appeal. Com. R. App. P. 10(b)(1); Com. R. App. P. 10(b)(3). *Pac. Saipan Technical Contractors v. Rahman*, 2000 MP 14 ¶ 12

Despite the appellant's failure to provide a procedurally adequate record for appeal, the N.M.I. Supreme Court may proceed to hear a case on its merits, if it finds important constitutional issues at stake. *Pac. Saipan Technical Contractors v. Rahman*, 2000 MP 14 ¶ 13

It is incumbent upon the appellant to assist in assembling the available record on appeal and to comply with Com. R. App. P. 10(b)(2). A reviewing court must be free to review the entire relevant evidentiary record to determine whether or not it supports the trial court's finding or conclusion. An appellant should not feel free to argue that a court's decision is not supported by the evidence without proffering that very evidence before the reviewing court in its excerpts of the record. Com. R. App. P. 10(b)(2). *Benavente v. Marianas Pub. Land Corp.*, 2000 MP 13 ¶ 27

Where the evidence at trial revolved around the oral testimony of relatives and documentary evidence supporting each parties' contention that the land in question had been transferred to them, the factual findings of the trial court were not explicit enough to give a clear understanding of the basis of its decision and to enable the reviewing court to determine the grounds on which the trial court reached its decision. *Arriola v. Arriola*, 1999 MP 13 ¶ 17

There must be findings, stated either in the court's opinion or separately, which are sufficient to indicate the factual basis for the ultimate conclusion. *Arriola v. Arriola*, 1999 MP 13 ¶ 24

NMI Supreme Court could not review Superior Court's reasoning in dismissing complaint and therefore found no error where Superior Court's written order was entered based on "the reasons set forth in open court" and counsel for appellant failed to comply with Com. R. App. P. 10(b) by failing to provide the Court with that portion of the trial transcript in which the court states its findings and order. *Sablan v. Blake*, 1998 MP 9 ¶ 6

Where defendant failed to provide NMI Supreme Court with transcript of any testimony presented by the government, Court could not properly review the reasoning behind the Superior Court's decision to deny motion for directed verdict at conclusion of government's case and, accordingly, found no error in Superior Court's decision. *Commonwealth v. Santos*, 1998 MP 6 ¶ 12

Violations of rule requiring appellant challenging finding or conclusion as unsupported by or contrary to evidence to include transcript of all relevant evidence in record may, in extreme cases, warrant dismissal of appeal. Com. R. App. P. 10(b)(2). *Villagomez v. Sablan*, 4 N.M.I. 396 (1996).

Failure of an appellant to submit the evidentiary record relevant to an issue warrants summary affirmance, dismissal or nonconsideration of the issue. These actions may be taken under Com. R. App. P. 3(a) for an appellant's failure to comply with Com. R. App. P. 10(b). Com. R. App. P. 10(b)(2). *In re Estate of Deleon Castro*, 4 N.M.I. 102 (1994).

It is counsel's responsibility to see that the record excerpts are sufficient for consideration and determination of the issues on appeal and appellate court is under no obligation to remedy any failure of counsel to fulfill that responsibility. *In re Estate of Deleon Castro*, 4 N.M.I. 102 (1994).

Where an appellant argues on appeal that a finding or conclusion is either unsupported by, or contrary to, the evidence, without submitting the relevant evidentiary record before NMI Supreme Court, dismissal or a presumption of sufficient evidence may be warranted. Dismissal is not mandatory, but permitted, as is any action court deems appropriate; action taken should be warranted by the circumstances of case. Com. R. App. P. 3(a). *In re Estate of Deleon Castro*, 4 N.M.I. 102 (1994).

——Particular Cases

NMI Supreme court would dismiss appeal of pro se appellants who failed to timely present adequate record on appeal in compliance with plain, express language of court order in which they were cautioned (following repeated procedural errors and rule violations) that they had one final, limited opportunity to present adequate record. Unexcused error, combined with earlier lapses and prejudice to appellee caused by appellants' failure to meet deadline, warranted dismissal. Com. R. App. P. 10(b)(2), 42(c). *Villagomez v. Sablan*, 4 N.M.I. 396 (1996).

Appellants' failure to provide NMI Supreme Court with relevant portions of transcript of proceedings as part of excerpts of record precluded Court's review of appellants' arguments concerning oral trial court order. Com. R. App. P. 30(b)(3), (c)(1). *Norita v. Norita*, 4 N.M.I. 381 (1996).

Because appellants challenging probate court's authentication of document did not furnish NMI Supreme Court with relevant evidentiary record on appeal, Supreme Court would presume that sufficient evidence supported authentication. *In re Estate of Deleon Castro*, 4 N.M.I. 102 (1994).

Because probate court was required to use sufficient evidence test for purposes of authenticating testamentary document, subsequent appeal by parties challenging authentication of document directly implicated procedural rule requiring appellant to include evidence relevant to disputed finding or conclusion in record of appeal. Com. R. App. P. 10(b)(2). *In re Estate of Deleon Castro*, 4 N.M.I. 102 (1994).

In appeal from probate proceeding in which appellants argued that insufficient evidence supported probate court's authentication of testamentary document, because appellants submitted only order authenticating document and not portions of relevant evidentiary record, NMI Supreme Court would presume that sufficient evidence supported court's ruling. Com. R. App. P. 10(b)(2). *In re Estate of Deleon Castro*, 4 N.M.I. 102 (1994).

—Extraneous Matter

——Particular Cases

Where, on appeal from grant of summary judgment, appellees submitted documents in supplemental excerpts of record that were not expressly included in record of case below, NMI Supreme Court would not consider documents because it was not clear that trial court had relied upon them. *Santos v. Santos*, 4 N.M.I. 206 (1994).

—Generally

In order to review factual determinations made by trial courts, an appellant must provide this Court with an adequate evidentiary record. *Hee v. Oh*, 2011 MP 18 ¶ 8 (2011).

An appellate court may only review issues which are argued specifically and distinctly in a party's opening brief. The court will not manufacture arguments for an appellant; a bare assertion does not prove a claim. Appellants must submit the relevant evidentiary record before this Court and identify the parts of the record which support the appeal. *Saipan Achugao Resort Members Assoc. v. Yoon*, 2011 MP 12 ¶ 50 (2011).

The available record on appeal is that from which counsel may extract relevant information to bring to the Court=s attention through inclusion in the appellate record. *Chen's Corporation v. Hambros,* 2007 MP 4 ¶ 10

The available record on appeal is that from which counsel may extract relevant information to bring to the Court=s attention through inclusion in the appellate record. *Guerrero v. Tinian Dynasty Hotel,* 2006 MP 26 ¶ 22

An appellant should not feel free to argue that a court's decision is not supported by the evidence without proffering that very evidence before this Court in its excerpts of the record. Otherwise, the burden of furnishing the record on appeal to this Court would unduly be placed upon the appellee and the reviewing court. *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26 ¶ 22

It is the appellant's burden to submit the relevant evidentiary record before this Court and identify the parts of the record which support the appeal. *Guerrero v. Tinian Dynasty Hotel,* 2006 MP 26 ¶ 28

Where an appellant makes no showing that he was prejudiced by the failure to record sidebar conferences and a review of the record reflects none, the failure of recording will not constitute reversible error. *Commonwealth v. Taitano,* 2005 MP 20 ¶ 38

Where the record provided on appeal does not provide reference to any objection made to testimony, the record cannot support a finding that the trial court erred or that the appellant preserved the issue for appeal through a timely and sustained objection in accordance with Commonwealth Rule of Evidence 103(a)(1). Com. R. Evid. 103(a)(1). *Santos v. STS Enters., Inc*., 2005 MP 4 ¶ 20

The Rules of Appellate Procedure place the burden of assembling a proper record on the appellant and the court is not able to reach the merits of an appellant's claim where the appellant fails to provide the court with a sufficient record to review. Com. R. App. P. 10(b)(2), Com. R. App. P. 11(a), Com. R. App. P. 30(b)(3). *Commonwealth v. Repeki*, 2003 MP 1 ¶ 18

Com. R. App. P. 11 places duty on appellants to assemble the record on appeal. *Villagomez v. Sablan*, 4 N.M.I. 396 (1996).

Where a party appeals from an order delivered in open court without the issuance of a written memorandum, a transcript of the proceedings (or other statement on the evidence if no transcript is available) provides the only factual basis on which NMI Supreme Court may review the matter. Com. R. App. P. 30(b)(3), (c)(1). *Norita v. Norita*, 4 N.M.I. 381 (1996).

Appellant's duty to assemble the record is not discharged simply by ordering a transcript of proceedings. Rather, the relevant portions of the transcript must be provided to the appellate court as part of the excerpts of record. Com. R. App. P. 30(b)(3), (c)(1). *Norita v. Norita*, 4 N.M.I. 381 (1996).

Parties in court proceedings bear the burden of ensuring that the record they compile will preserve their arguments for review should they choose to appeal. *Commonwealth v. Delos Reyes*, 4 N.M.I. 340 (1996).

Pursuant to Com. R. App. P. 11(a), it is incumbent upon an appellant to assist in assembling the available record on appeal. *In re Estate of Deleon Castro*, 4 N.M.I. 102 (1994).

Rehearing

—Generally

A petition for rehearing must state with particularity each point of law or fact that the petitioner believes the Court has overlooked or misapprehended. A petition should not be a rehash of an issue and argument already raised and decided. *Marine Revitalization Corp., et al. v. DLNR*, 2011 MP 2 ¶ 2 (2011).

A petition for rehearing may be filed when the Court ignores or incorrectly construes legal issues or factual matters when reaching its decision. A petitioner may not ordinarily repeat arguments used previously in an attempt to have a second chance to argue a case. In addition, the Commonwealth Rules of Appellate Procedure require that a petition shall state with particularity the points of law or fact which in the opinion of the petitioner the Court has overlooked or misapprehended. Com. R. App. P. 40. *Bank of Guam v. Ruben*, 2009 MP 7 ¶ 4 (2009).

Under Com. R. App. P. 40, a petition for rehearing must state with particularity the points of law or fact which in the opinion of the petitioner the court has overlooked or misapprehended. *In re Estate of Deleon Guerrero*, 1 N.M.I. 324 (1990).

Com. R. App. P. 40 does not ordinarily allow the petitioner to raise the same issues and repeat the same arguments already heard and decided on appeal, nor does it allow the raising of new issues or contentions not formerly raised on appeal, except under extraordinary circumstances. *In re Estate of Deleon Guerrero*, 1 N.M.I. 324 (1990).

A petitioner for rehearing should at least state that the court overlooked or misapprehended a point of law or fact and then explain why this is so. *In re Estate of Deleon Guerrero*, 1 N.M.I. 324 (1990).

A petition for rehearing should not be made routinely or as a matter of course. *In re Estate of Deleon Guerrero*, 1 N.M.I. 324 (1990).

Remand

CTC 1985. If there is a remand from a granting of a summary judgment, the remand shall be for a full trial. *Palacios v. Trust Territory of the Pacific Islands*, 2 CR 256, aff'd, 2 CR 904 (DNMI App. Div. 1986), aff'd, 838 F.2d 474 (9th Cir. 1988).

Rules

—Construction

See **Rules – Interpretation and Construction**, this topic. Interpretation and Construction of Counterpart Federal Rules, see **Rules – Counterpart Federal Rules**, this topic.

—Counterpart Federal Rules

Commonwealth Rules of Civil Procedure Rules 50 and 59 mirror the corresponding Federal Rules of Civil Procedure. It is therefore appropriate to look to federal interpretations of these rules. Com. R. Civ. P. 50; Com. R. Civ. P. 59. *Ishimatsu et al. v. Royal Crown Ins. Corp.*, 2006 MP 9 ¶ 7

Although interpretations by federal courts of federal procedural rules similar to Commonwealth procedural rules are helpful, they are not binding. *Lucky Dev. Co., Ltd. v. Tokai U.S.A., Inc.*, 2 N.M.I. 81 (1991).

It is appropriate to consult interpretation of counterpart federal rules in interpreting Commonwealth procedural rules. The interpretation

of such rules can be highly persuasive. *Tudela v. Marianas Pub. Land Corp.*, 1 N.M.I. 179 (1990).

In interpreting NMI rules of appellate procedure, NMI Supreme Court looks to federal appellate rules for guidance in discerning purpose behind a particular rule. *Tenorio v. Superior Ct.*, 1 N.M.I. 112 (1990).

——Particular Cases

NMI Supreme Court would turn to counterpart federal rules for guidance in interpreting Commonwealth Rule of Appellate Procedure. *Commonwealth v. Martinez*, 4 N.M.I. 18 (1993).

—Generally

A petition for rehearing may be filed when this Court ignores or incorrectly construes legal issues or factual matters while reaching its decision. N.M.I. R. App. P. 40 requires that a petition shall state with particularity the points of law or fact which in the opinion of the petitioner the Court has overlooked or misapprehended. *Chen's Corp. v. Hambros,* 2008 MP 9 ¶ 3 (2008).

A petition for rehearing may be filed when the Court ignores or incorrectly construes legal issues or factual matters while reaching its decision. Com R. App. P. 40 requires that a petition shall state with particularity the points of law or fact which in the opinion of the petitioner the Court has overlooked or misapprehended. *CPA v. Tinian Shipping Co.*, 2008 MP 2 ¶ 3 (2008).

Com. R. App. P. 40 does not ordinarily allow the petitioner to raise the same issues and repeat the same arguments already heard and decided on appeal, nor does it allow the raising of new issues or contentions not formerly raised on appeal, except under extraordinary circumstances. Nor should a petition for rehearing be made routinely or as a matter of course. *Northern Marianas Coll. v. Civil Serv. Cmm'n,* 2007 MP 30 ¶ 2 (2007).

Ordinarily, we award attorney's fees if an attorney completely disregards Com. R. App. P. 40 in filing a petition for rehearing. While we take into account a party's *pro se* status, that status does not mean that a party may file a petition that does not conform in any way to Com. R. App. P. 40. Moreover, the entire judicial system is harmed when a party uses disparaging language in an attempt to support arguments. *Northern Marianas Coll. v. Civil Serv. Cmm'n,* 2007 MP 30 ¶ 5 (2007).

Commonwealth Rule of Appellate Procedure 39(a) authorizes awards of costs only in appeals, unless provided by law. Nevertheless, because petitioners' request was reasonable, and because the Court believes it ill-advised to perpetuate disincentives for citizens acting to remedy governmental failures, the Court relied upon its Rule 2 authority to grant petitioners' request for costs. *In re Pangelinan*, 2007 MP 14 ¶ 16

The Court has recognized the functional equivalent test when judging the adequacy of filings under our appellate rules. We now hold that although an application for a writ of mandamus fails, we may nevertheless address the issues by converting the application to an appeal. *Malite v. Tudela, et al.*, 2007 MP 3 ¶ 20

Under the Commonwealth Rules of Appellate Procedure, Rule 42(c), the ultimate responsibility for ensuring that the record (including transcript) is filed on time is that of the Appellant. *Aguon v. Aguon,* 2007 MP 2 ¶ 6

One of the sanctions available under Com. R. App. P. 42(c) for failure of the Appellant to cause the record to be filed in a timely fashion is dismissal of the appeal. If a record or transcript cannot be completed or filed within a timely fashion, then it is the Appellant's obligation to bring this matter to the Supreme Court's attention through the filing of appropriate motions. *Aguon v. Aguon,* 2007 MP 2 ¶ 6

Com. R. App. P. 42(c) allows for additional sanctions to be imposed for failure to prosecute an appeal. The Court will consider those sanctions in the future against any counsel who fails to cause the record of an appeal to be timely filed. *Aguon v. Aguon*, 2007 MP 2 ¶ 8

Oral application at argument to sanction counsel without a prior motion was improper, and should not have been brought without the proper procedural steps. *Tenorio Enterprises, Inc. v. Uddin,* 2006 MP 22 ¶ 20

Appeals from interlocutory orders are exceptional in character and are wholly dependent upon statute. Therefore, the fundamental rule requiring finality of decision as a basis for appeal must be followed unless an express authorization for a different procedure can be found. *Villagomez v. MICO,* 2006 MP 21 ¶ 8

Although appellate filing rules must be followed, compliance with their import, rather than technical

perfection, is the controlling standard. *Commonwealth v. Pua*, 2006 MP 19 ¶ 12

Only in the instance of untimely filing is an appeal beyond the power of the Court to resurrect. The authority to waive procedural technicalities is broad, without need to resort to suspension of rules pursuant to Com. R. App. P. Rule 2. *Commonwealth v. Pua*, 2006 MP 19 ¶ 13

If a litigant files papers in a fashion that is technically at variance with the letter of a procedural rule, a court may nonetheless find that the litigant has complied with the rule if the litigant's action is the functional equivalent of what the rule requires. *Commonwealth v. Pua*, 2006 MP 19 ¶ 13

Because mandamus jurisdiction is permissive, the court's discretion to hear such cases should not be held hostage to technical pleading rules. In any case, to whatever extent mandamus jurisdiction is not proper pursuant to functional equivalent reasoning, the court may still hear a case via its authority to suspend appellate rules. *Commonwealth v. Pua*, 2006 MP 19 ¶ 18

Before the NMI Supreme Court will consider awarding attorney's fees pursuant to Commonwealth Rule of Appellate Procedure 38(a) or (b), it must first conclude that the appeal was frivolous. A frivolous appeal is one in which no justiciable question has been presented and the appeal is readily recognizable as devoid of merit in that there is little prospect it can ever succeed. Com. R. App. Pro. 38. *Pacific Amusement, Inc. v. Villanueva III*, 2006 MP 8 ¶ 20

In order for the NMI Supreme Court to consider awarding sanctions pursuant to Commonwealth Rule of Appellate Procedure 38(a) or (b), it must be clear that there was absolutely no legal or factual basis upon which appellant relied. The Court can order sanctions were it is clear from the record and briefs submitted that counsel had no legal or factual basis for appeal and there has been a showing of bad faith by the appellant. *Pacific Amusement, Inc. v. Villanueva III*, 2006 MP 8 ¶ 20

Bad faith justifying the award of sanctions under Commonwealth Rule of Appellate Procedure 38 has been shown by a combination of: willful and bad faith prosecution, misstating the law, willfully conflating dismissals with summary judgments, making large conclusory arguments without support from any authority and using sources inappropriately, but untimeliness alone is insufficient to constitute bad faith. *Pacific Amusement, Inc. v. Villanueva III*, 2006 MP 8 ¶ 24

It is within the discretion of the court to determine whether or not a sanction and/or attorney's fees are awarded pursuant to Commonwealth Rule of Appellate Procedure 38. Attorney's fees are not a matter of right following a successful motion to dismiss an appeal. *Pacific Amusement, Inc. v. Villanueva III*, 2006 MP 8 ¶ 27

Where a case is one of first impression, and the Appellant raises a reasonable argument, the assessment of attorney's fees pursuant to Commonwealth Rule of Appellate Procedure 38(b) is not warranted. Com. R. App. P. 38(b). *Atalig v. Inos*, 2006 MP 1 ¶37

Where an appellant fails to cite any authority in support of his contention, he violates Rule of Appellate Procedure 28. Com. R. App. Proc. 28. *Commonwealth v. Taitano*, 2005 MP 20 ¶ 15

In determining whether to award an appellee costs, three factors are controlling: the appeal must be disposed of in a manner allowing for costs to be taxed, the costs must be of a type provided for in the rules, and the bill of costs must be filed in a timely manner. *Pacific Amusement, Inc. v. Villanueva*, 2005 MP 14 ¶ 2

Pursuant to Commonwealth Rule of Appellate Procedure 39(a), costs may be awarded to an appellee if an appeal is dismissed unless the parties agree otherwise or the Court orders otherwise. Com. R. App. P. 39(a). *Pacific Amusement, Inc. v. Villanueva*, 2005 MP 14 ¶ 3

The types of costs to which an appellee is entitled under Commonwealth Rule of Appellate Procedure 39(a) are limited to those provided for in Commonwealth Rule of Appellate Procedure 39(b). Com. R. App. P. 39(a); Com. R. App. P. 39(b). *Pacific Amusement, Inc. v. Villanueva*, 2005 MP 14 ¶ 4

Pursuant to Commonwealth Rule of Appellate Procedure 39(c), a party desiring costs must file an itemized and verified bill of costs, with proof of service, within 14 days after the entry of judgment and any objections to the bill of costs must be filed within 10 days of service. Com. R. App. P. 39(c). *Pacific Amusement, Inc. v. Villanueva*, 2005 MP 14 ¶ 5

In order for this Court to consider awarding attorney fees pursuant to Commonwealth Rule of Appellate Procedure 38(a) or (b), it must first conclude that the appeal was frivolous. Com. R. App. P. 38(a); Com. R. App. P. 38(b). *Pacific Amusement, Inc. v. Villanueva*, 2005 MP 14 ¶ 8

A frivolous appeal is one in which no justiciable question has been presented and where the appeal is readily recognizable as devoid of merit in that there is little prospect that it could ever succeed. *Pacific Amusement, Inc. v. Villanueva*, 2005 MP 14 ¶ 8

In order for a court to award sanctions under Commonwealth Rule of Appellate Procedure 38(a) or (b), it must be clear that there was absolutely no legal or factual basis upon which the appellant relied. Sanctions of this sort are awarded when there is no legitimate reason for the party to have brought the case on appeal. *Pacific Amusement, Inc. v. Villanueva*, 2005 MP 14 ¶ 8

Where a court makes no conclusions about the legal and factual arguments presented on appeal, but dismisses the appeal solely for lack of timeliness of filing, it is appropriate for the court to decline to award attorney fees based on Commonwealth Rule of Appellate Procedure 38(a) or (b). Com. R. App. P. 38(a) & (b). *Pacific Amusement, Inc. v. Villanueva*, 2005 MP 14 ¶ 8

In order to request attorney fees pursuant to Commonwealth Rule of Appellate Procedure 39(d), a party must first have complied with Commonwealth Rule of Appellate Procedure 28(m). Rule 28 covers the requirements for briefs on appeal. Thus, the request must be made in the initial filing with the appellate court and not as an afterthought. Where a party does not request attorney fees for the appeal in their initial brief on appeal, the court may not award them attorney fees pursuant to Rule 39(d). Com. R. App. P. 39(d); Com. R. App. P. 28(m). *Pacific Amusement, Inc. v. Villanueva*, 2005 MP 14 ¶ 9

NMI rules of procedure should never be used as a game of skill. The purpose of pleading is to facilitate a proper decision on the merits. *Lucky Dev. Co., Ltd. v. Tokai U.S.A., Inc.*, 2 N.M.I. 81 (1991).

—Interpretation and Construction

Under the Commonwealth Rules of Appellate Procedure, Rule 31(d), not Rule 26(b), governs such motions to extend time for filing briefs. The difference between the rules is one of scope and specificity. Rule 26(b) is concerned with the Court's authority to extend or circumvent time limits in general. By contrast, Rule 31(d) deals exclusively with motions to extend time for filing briefs, and prescribes specific filing requirements for such motions. *Commonwealth Dev. Auth. v. Atalig, et al.*, 2009 MP 5 ¶ 4 (2009).

As a basic tenant of statutory construction, and as clearly evidenced from the structure of the Commonwealth Rules of Appellate Procedure themselves, the specific requirements of Rule 31(d) control over the general language of Rule 26(b) regarding motions to extend time for filing briefs. *Commonwealth Dev. Auth. v. Atalig, et al.*, 2009 MP 5 ¶ 4 (2009).

An appellant must file his or her brief within forty days after the certificate of record is filed. Time may be enlarged by motion to the Court, but extensions of time are not automatically granted; rather, they are permissive and subject to certain procedural requirements. *In the Estate of Taisacan*, 2008 MP 6 ¶ 9 (2008).

A common maxim of statutory construction is the more specific language controls over the more general. This principle is applicable to court rules as well, as we avoid interpretations of our rules which would defy common sense or lead to absurd results. *In the Estate of Taisacan*, 2008 MP 6 ¶ 13 (2008).

It is the responsibility of appellant's counsel to ensure that the excerpts of record are sufficient for consideration and determination of the issues on appeal. *Chen's Corporation v. Hambros,* 2007 MP 4 ¶ 10

Where appellant failed to include an affidavit containing counsel's representation that counsel exercised due diligence and that the brief will be filed within the time requested, motion for extension of time was technically deficient pursuant to Rule 31(d) of the Commonwealth Rules of Appellate Procedure. *Babauta v. Babauta*, 2004 MP 2 ¶ 10

Simple but technically required corrections to appellant's filing cannot be made when the time for filing the opening brief has passed. *Babauta v. Babauta*, 2004 MP 2 ¶ 12

While the Court could choose to overlook any one of appellant's technical and procedural violations, the cumulative weight of the errors requires denial of the motion. *Babauta v. Babauta*, 2004 MP 2 ¶ 13

When the language of a court rule is clear, the Court will not construe it contrary to its plain meaning. *Santos v. Santos*, 2001 MP 12 ¶ 15

The court should avoid interpretations of the Rules of Procedure which would defy common sense or lead to absurd results. *Rosario v. Camacho*, 2001 MP 2 ¶44

NMI Supreme Court will avoid interpretations of Com. R. App. P. which defy common sense or lead to absurd results. *Lucky Dev. Co., Ltd. v. Tokai U.S.A., Inc.*, 2 N.M.I. 450 (1992).

When the language of a court rule is clear, NMI Supreme Court will not construe it contrary to its plain meaning. *Mafnas v. Commonwealth*, 1 N.M.I. 400 (1990).

As author of the Com. R. App. P., NMI Supreme Court has the authority to interpret the meaning sought to be conveyed. In doing so, however, Supreme Court approaches the rules as though they had been drafted by the legislature and gives the words their ordinary meaning, reading the language as a whole, and seeking to give effect to all of it. *Tudela v. Marianas Pub. Land Corp.*, 1 N.M.I. 179 (1990).

Court rules are subject to the same principles of construction as statutes. *Tudela v. Marianas Pub. Land Corp.*, 1 N.M.I. 179 (1990).

A basic principle of construction is that language must be given its plain meaning. When the language of a court rule is clear, court will not construe it contrary to its plain meaning. *Tudela v. Marianas Pub. Land Corp.*, 1 N.M.I. 179 (1990).

DC App. Div. 1987. A local rule designed for the convenience of the court should not be elevated to the status of a jurisdictional requirement. Dist.Com R.App.P. 7(a). *CNMI v. Park*, 2 CR 1176.

DC App. Div. 1981. In interpreting the local rules of appellate procedure, the court looks to the federal appellate rules for guidance in discerning what the purpose of a particular rule. *South Seas Corporation v. Sablan*, 1 CR 122.

—Suspension of Rules

——Particular Cases

Although parties in interlocutory appeal stipulating to dismissal failed to comply with appellate rules concerning dismissal, because appeal stemmed from pending criminal case NMI Supreme Court would dismiss appeal pursuant to rule permitting court to suspend rules in particular case in interest of justice, to expedite a decision, or for other good cause shown. Com. R. App. P. 2. *Commonwealth v. Lu*, 4 N.M.I. 93 (1994).

Sanctions

See also **ATTORNEY AND CLIENT – Sanctions – Appellate Court**

DC App. Div. 1989. An award of attorneys' fees on appeal is not appropriate merely because the appellate court affirms the granting of sanctions. NMI Dist.Ct.R.App.Pro.38. *Camacho v. J.C. Tenorio Enterprises*, 3 CR 964, amended, 3 CR 972.

DC App. Div. 1989. Sanctions are appropriate under appellate rule only if the appeal is frivolous -- whether the underlying sanction award was unquestionably appropriate and the appeal from that award was wholly without merit. NMI Dist.Ct.R.App.Pro. 38. *Camacho v. J.C. Tenorio Enterprises*, 3 CR 964, amended, 3 CR 972.

DC App. Div. 1987. Where appellant disregarded or misread the local rules and made an ex parte contact, appellant would be sanctioned $200. *CNMI v. Park*, 2 CR 1176

Stays

While Rule 23 of the CNMI Supreme Court Rules does not require the Supreme Court to automatically grant a stay before a petitioner exhausts the appellate process, it would frustrate the policy embodied in the rule if the Court failed to grant the stay before it addressed the merits of the appeal. *Commonwealth v. Miura*, 2010 MP 12 ¶ 7 (2010).

DC App. Div. 1987. The standard for evaluating stays pending appeal to the Ninth Circuit is similar to that employed by district courts in deciding whether to grant a preliminary injunction. *Marianas Public Land Trust v. Government CNMI*, 2 CR 999.

DC App. Div. 1987. The relative hardship to the parties is the critical element in deciding at which point along the continuum a stay is justified. *Marianas Public Land Trust v. Government CNMI*, 2 CR 999.

DC App. Div. 1987. In deciding whether a stay on appeal is justified, the public interest is a factor to be

strongly considered. *Marianas Public Land Trust v. Government CNMI*, 2 CR 999.

DC App. Div. 1987. Where party seeks a stay of a decision of the Appellate Division of the District Court pending appeal to the Ninth Circuit, standards of the Ninth Circuit, not local rules, apply. Fed.R.App.Proc. 8; D.C.R. App.Proc. 5. *Marianas Public Land Trust v. Government CNMI*, 2 CR 999.

DC App. Div. 1987. Party moving for a stay on appeal has a substantial burden to show the substantial questions of law it perceives and what factors point toward a probability of success on appeal. *Marianas Public Land Trust v. Government CNMI*, 2 CR 999.

DC App. Div. 1987. Allegations of unidentified serious financial ramifications to a party are insufficient to grant a stay on appeal. *Marianas Public Land Trust v. Government CNMI*, 2 CR 999.

DC App. Div. 1987. Where to maintain the status quo pending the decision of the Ninth Circuit will not demonstrably prejudice either party, much of the money involved is safely deposited and, if the party prevailing in the District Court Appellate Division is ultimately determined to be entitled to the money in dispute, it is unlikely the other party will be unable to pay or that it will choose to disregard a court decision, court would grant request for stay pending appeal. *Marianas Public Land Trust v. Government CNMI*, 2 CR 999.

DC App. Div. 1986. A substantial question for the purpose of granting a stay of execution of sentence pending appeal is one that poses an issue debatable among jurists of reason. Dist. Court R. App. P. 5(a). *CNMI v. Ahn*, 2 CR 773

DC App. Div. 1986. Where issue before the Court is novel, no precedent is known, and its resolution is fairly debatable, appellant's motion for a stay of execution of sentence pending appeal would be granted. Dist. Court R. App. P. 5(a). *CNMI v. Ahn*, 2 CR 773.

Stay of Mandate

See **Mandate – Stay**, this topic.

Transfer of Appeal

—Predecessor Court, From

——Particular Cases

Com. R. App. P. 4(a)(1), concerning filing of notice of appeal, did not apply to transfer appeals pending before the NMI District Court Appellate Division on May 2, 1990, to the NMI Supreme Court. *Vaughn v. Bank of Guam*, 1 N.M.I. 160 (1990), stay denied, 1 N.M.I. 318 (1990).

In absence of statutory mechanism to effectuate transfer of appeals pending before the NMI District Court Appellate Division on May 2, 1990, to the NMI Supreme Court, filing of second notice of appeal to Supreme Court was acceptable. *Vaughn v. Bank of Guam*, 1 N.M.I. 160 (1990), stay denied, 1 N.M.I. 318 (1990).

Since Commonwealth Judicial Reorganization Act of 1989 (PL 6-25) did not provide mechanism for transfer of appeals from Commonwealth cases pending in federal courts, appellant could properly bring case to NMI Supreme Court by filing new notice of appeal with Court. 1 CMC § 3001 et seq. *Wabol v. Villacrusis*, 1 N.M.I. 34 (1989), rev'd, 11 F.3d 124 (9th Cir. 1993).

ARBITRATION

Compelling

DC App. Div. 1985. Where the contract of arbitration makes it clear that the arbitrator can proceed when one party neglects or refuses to participate, one need not apply to a court for an order to compel before commencement of arbitration. Guam Code Civ. Roc. 52112. *Thomas J. Davis, Inc. v. Micronesian Hotel Corp.*, 2 CR 198

DC App. Div. 1985. Although language in a contract providing that the agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law would allow resort to a court to compel arbitration in the event of one party's unwillingness, it cannot be interpreted as mandatory in every instance merely because it is available. Guam Code Civ. Proc. §21 12. *Thomas J. Davis, Inc. v. Micronesian Hotel Corp.*, 2 CR 198.

Confirmation of Award

DC App. Div. 1985. Where statute provides that where no court is specified in the agreement of the parties, application for an order confirming an arbitration award may be made to the Superior Court of Guam, such statutory language is permissive and not exclusive and thus application for confirmation may be made to another court with subject matter

jurisdiction. Guam Code Civ. Roc. §21 12. *Thomas J. Davis, Inc. v. Micronesian Hotel Corp.*, 2 CR 198.

DC App. Div. 1985. A final arbitration award gives rise to a cause of action sounding in contract and an action to confirm an award is in essence an action for specific performance of a contract. *Thomas J. Davis, Inc. v. Micronesian Hotel Corp.*, 2 CR 198.

DC App. Div. 1985. The designation by the contracting parties of the law governing the contract does not prevent confirmation by the courts of a jurisdiction other than that specified; such courts will simply apply the laws of the designated jurisdiction. *Thomas J. Davis, Inc. v. Micronesian Hotel Corp.*, 2 CR 198.

DC App. Div. 1985. The Commonwealth Trial Court had common law jurisdiction to confirm an arbitration award even though the award was executed in another jurisdiction. *Thomas J. Davis, Inc. v. Micronesian Hotel Corp.*, 2 CR 198.

Parties

DC App. Div. 1985. Where contract incorporated by reference the American Arbitration Association Rules, which rules provide for an arbitration proceeding in the absence of a party, the arbitrator was not acting in excess of his powers by proceeding to arbitration in defendant's absence. *Thomas J. Davis, Inc. v. Micronesian Hotel Corp.*, 2 CR 198.

Stay of Court Proceedings

CTC 1986. Arbitration provisions of a contract between an owner and contractor may be incorporated by reference in contracts between the contractor and a subcontactor. *CNMI v. Lord International, Inc.*, 2 CR 828.

CTC 1986. Where owner of project terminated contractor and contractor assigned subcontracts to owner, owner stepped into contractor's shoes and contractor had no obligation to arbitrate with subcontractors. *CNMI v. Lord International, Inc.*, 2 CR 828.

ATTACHMENT

DC NMI 1983. A writ of attachment secures only that interest in the property to which the debtor has a legal claim. *Saipan Construction and Salvage, Inc. v. M/V "Saipan Lady"*, 1 CR 831.

DC NMI 1983. Where debtor's interest in ship was subject to prior maritime liens and ship was subsequently sold to satisfy those claims, judgment creditor could not execute writ of attachment on ship because debtor's interest had been extinguished. *Saipan Construction and Salvage, Inc. v. M/V "Saipan Lady"*, 1 CR 831.

ATTORNEY AND CLIENT

Admission to Practice

—Constitutional Questions

Pursuant to the CNMI Constitution, the Supreme Court has plenary control over who may practice law in the Commonwealth. While guideposts for determining an attorney's fitness to practice do exist, such as the requirement to be a law school graduate and a member in good standing in other jurisdictions, admission to the Commonwealth bar is solely at the discretion of the Court. No set of laws, be it Commonwealth or federal, creates a right to admission, pro hac vice or otherwise. Rather, bar admission is a privilege. *In the Matter of York*, 2010 MP 11 ¶ 11 (2010).

A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene due process or equal protection. However, a bar admission rule requiring graduation from an accredited law school does not violate equal protection under the U.S. Constitution. There is no constitutional right to practice law within a jurisdiction without compliance with its admission requirements. *In re Blankenship*, 3 N.M.I. 209 (1992).

Law requiring applicants for NMI bar examination to be graduates of law schools accredited by the American Bar Association or the American Association of Law Schools or approved by the NMI Supreme Court is rationally related to the NMI's interest in maintaining the quality of legal services offered in the NMI. Requirement does not violate equal protection guarantee in U.S. Constitution. *In re Blankenship*, 3 N.M.I. 209 (1992).

—Generally

The ability to practice law in any given jurisdiction is not a right, but a privilege. *In re Wingenbach*, 2010 MP 5 ¶ 3 (2010).

Article IV, section 9 of the Commonwealth Constitution confers upon the Chief Justice of the Commonwealth Supreme Court the power to promulgate rules and regulations concerning admission to and governance of the bar. *In re Wingenbach*, 2010 MP 5 ¶ 3 (2010).

The Commonwealth Rules of Admission allows a statutorily-admitted attorney to continue practicing law until his/her term of admission expires or unless otherwise suspended or terminated pursuant to the applicable Rules of the Supreme Court, or the Rules for the Integration of the CNMI Bar Association and its By-Laws. *In re Wingenbach*, 2010 MP 5 ¶ 4 (2010).

Under the common law, a corporation may not appear without counsel in a court proceeding. There is the problem of a non-attorney corporate officer appearing essentially in the capacity of an attorney, who is then engaging in the unauthorized practice of law. *Chen's Corporation v. Hambros*, 2007 MP 4 ¶ 8

NMI statutes governing admission to practice law are designed to protect the public from unsuitable practitioners. 1 CMC § 3601 et seq. *In re Blankenship*, 3 N.M.I. 209 (1992).

— Pro Hac Vice

Pursuant to the ABA Model Rules of Pro Hac Vice Admission, during the pendency of an application for admission pro hac vice and upon granting of such application, an out-of-state lawyer submits to the authority of the courts and the lawyer regulatory authority of this state for all conduct relating in any way to the proceeding in which the out-of-state lawyer seeks to appear. *In the Matter of York*, 2010 MP 11 ¶ 3 (2010).

Because procedural and substantive laws differ from jurisdiction to jurisdiction, a lawyer seeking admission pro hac vice is required to associate with a local attorney so that he or she will, throughout the duration of the litigation, have the active participation of one who is familiar with local law and practices. *In the Matter of York*, 2010 MP 11 ¶ 7 (2010).

—Procedure

Pursuant to Article 6 Section 3 of the current CNMI bar bylaws, the secretary is required to send notice by the first day of November each year that annual fees are due on or before January 1. *In re Wingenbach*, 2010 MP 5 ¶ 6 (2010).

Pursuant to Article 6 Section 4 of the current CNMI bar bylaws, if a member has not paid his or her dues by January 31, the secretary shall provide notice to the member that his or her eligibility to practice law will be suspended within thirty days if the fees are not paid. If the member still has not paid at the passing of the additional thirty days, the bar president must notify the Chief Justice, who in turn is obligated to suspend the member's right to practice law. Section 6 then provides a six-month window for the member to apply for reinstatement upon meeting certain conditions. *In re Wingenbach*, 2010 MP 5 ¶ 6 (2010).

Pursuant to Article 6 Section 7 of the current CNMI bar bylaws, a member who has been suspended for six months without moving for reinstatement will be stricken from the roles, and his or her membership will terminate. Upon termination, the bar president must notify the member via first class registered mail of the bar's actions. *In re Wingenbach*, 2010 MP 5 ¶ 6 (2010).

An attorney may work for the Commonwealth government for up to four years without taking the Commonwealth bar examination. *In re Disciplinary Proceedings of Rhodes*, 2002 MP 2 ¶ 12

To practice law as a Commonwealth government attorney, one must be of good moral character and must not have been convicted of a felony. *In re Disciplinary Proceedings of Rhodes*, 2002 MP 2 ¶ 12

One does not complete the application and questionnaire form used for the bar examination by omitting material Information. *In re Disciplinary Proceedings of Rhodes*, 2002 MP 2 ¶ 13

An application to practice law is not an "offer" within meaning of contract law. *In re Blankenship*, 3 N.M.I. 209 (1992).

——Particular Cases

Applicant for NMI bar examination whose application was denied due to his lack of law degree

from accredited or recognized law school was ignorant not of facts but of the law governing admission to the Commonwealth bar. Applicant's ignorance of the law could not support his purported reliance upon allegedly inaccurate information sent to him by NMI Supreme Court Clerk of Court in light of maxim that one is presumed to know the law. *In re Blankenship*, 3 N.M.I. 209 (1992).

Mere delay and dashed expectations that NMI bar examination applicant whose application was denied may have suffered were insufficient to gain estoppel of denial of application. *In re Blankenship*, 3 N.M.I. 209 (1992).

Advocacy

—Generally

The practice of law is not limited to appearances in court. It also embraces the preparation of papers that are to be filed in court on another's behalf and that are otherwise incident to a lawsuit. *In the Admission of Nisperos,* 2007 MP 33 ¶ 9 (2007).

Com. R. App. P. 42(c) allows for additional sanctions to be imposed for failure to prosecute an appeal. The Court will consider those sanctions in the future against any counsel who fails to cause the record of an appeal to be timely filed. *Aguon v. Aguon,* 2007 MP 2 ¶ 8

Counsel should be sure to present the simple mathematical calculation along with the relevant statutory authority when presenting a default judgment to the Clerk. *Tenorio Enterprises, Inc. v, Uddin,* 2006 MP 22 ¶ 15

Oral application at argument to sanction counsel without a prior motion was improper, and should not have been brought without the proper procedural steps. *Tenorio Enterprises, Inc. v, Uddin,* 2006 MP 22 ¶ 20

An attorney's role is to facilitate access to our judicial system for any person seeking legal relief. Any standard of probable cause must insure that the attorney's duty to his client to present his case vigorously in a manner as favorable to the client as the rules of law and professional ethics will permit' is preserved. Attorneys must be given broad leeway in their pursuit of their client's interests. *Waibel v. Farber,* 2006 MP 15 ¶ 26

An attorney has probable cause to represent a client in litigation when, after a reasonable investigation and industrious search of legal authority, he has an honest belief that his client's claim is tenable in the forum in which it is to be tried. The attorney must entertain a subjective belief in that the claim merits litigation and that belief must satisfy an objective standard. *Waibel v. Farber,* 2006 MP 15 ¶ 27

A lawyer's failure to inform his client of the consequences of a guilty plea does not amount to "manifest injustice." *Commonwealth v. Chen,* 2006 MP 14 ¶ 6

Attorneys are not expected to be prescient. Litigants do their best to defeat arguments made by the other side and cannot anticipate the claims made by the court after a trial. *Manglona v. Tenorio,* 2004 MP 17 ¶ 20

Attorneys have a duty to their clients to raise objections during trial so that the harm may be cured when it occurs. *Commonwealth v. Rabauliman,* 2004 MP 12 ¶ 23

An attorney has a duty to present a client's position in a manner that does not suggest that allegations are established facts. Com. R. App. P. 38(b). *Tenorio v. Superior Ct.*, 1 N.M.I. 112 (1990).

Attorney Liability

—Abuse of Process

Attorney who initiates a civil proceeding on behalf of client is not liable if acting primarily to obtain proper adjudication of client's claim. RESTATEMENT (SECOND) OF TORTS § 674, cmt d, at 453 (1976). *Mitchell v. Estate of Hillblom*, 1997 MP 30 ¶ 22

Attorney Misconduct

—Standard of Proof

The standard of proof for establishing allegations of attorney misconduct is clear and convincing evidence. *In re Disciplinary Proceedings of Rhodes*, 2002 MP 2 ¶ 3

The standard of proof for establishing allegations of attorney misconduct is clear and convincing evidence. Com. Disc. R. 9(g). *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶30

Authority

The authority of counsel to proceed with a case is terminated upon the death of the party being

represented. *Mitchell v. Estate of Hillblom*, 1997 MP 30 ¶ 21

Commingling of Funds

—Generally

Attorney violated ABA Model Rule of Professional Conduct 1.15 by taking client's money out of trust account, closing account and depositing money in his personal account without *client's knowledge and consent. In* re Discipline of Lizama, 2 N.M.I. 360 (1991).

Issue of whether attorney violated ABA Model Rule of Professional Conduct 1.15 by commingling his client's funds with his own funds without client's knowledge and consent was question of law, reviewable de novo. *In re Discipline of Lizama*, 2 N.M.I. 360 (1991).

Competence

Collateral attack on judgment due to ineffective assistance of counsel, see **Judgments – Collateral Attack, Ineffective Assistance of**; effective assistance in criminal defense, see **Criminal Procedure – Counsel, Effective Assistance of**.

—Generally

Judicial scrutiny of a defense counsel's performance is highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. A fair assessment of trial counsel's performance requires this Court to eliminate the distorting effects of hindsight. We also must indulge a *strong presumption* that counsel's conduct falls within the wide range of reasonable professional assistance. In so doing, we recognize that there are countless ways to provide effective assistance in any given case. *Commonwealth v. Shimabukuro*, 2008 MP 10 ¶ 20 (2008).

The court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct. *Commonwealth v. Shimabukuro*, 2008 MP 10 ¶ 21 (2008).

Counsel's misreading of a statute of limitations allowable refiling period for claims dismissed by federal court when it declined supplementary jurisdiction is at best a garden variety claim of excusable neglect that will not invoke equitable tolling. *Oden v. N. Marianas College*, 2003 MP 13 ¶ 22

Attorneys admitted to practice before Commonwealth courts are expected to know and be familiar with all court rules. *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

An attorney who undertakes to represent a client has an obligation to familiarize himself with all documents filed prior to his retention. *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

Conflict of Interest

—Generally

The arguments of the Attorney General's Office against Government indemnification of a former client are not necessarily contrary to the former client's interests, in violation12 of the ABA Model Rules of Professional Condu34ct02 1.9(a). Model Rules of Prof'l Conduct 1.9(a). *Bisom v. Commonwealth*, 2002 MP 19 ¶ 57

A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless: the lawyer reasonably believes the representation will not be adversely affected; and the client consents after consultation. Model Rules of Prof'l Conduct R. 1.7(b) (1994). *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶58

When a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. Model Rules of Prof'l Conduct R. 1.7(b) cmt. 5 (1994). *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶58

Pursuant to American Bar Association Model Rules of Professional Conduct 1.7 and 1.9, an attorney must withdraw from representation of a client where attorney both believes a conflict either exists or may arise and attorney has not obtained consent from implicated clients. One such situation is where attorney currently represents separate clients in either

related matters or matters which give, or may give, rise to adverse interests. *Hwang Jae Corp. v. Marianas Trading & Dev. Corp.*, 4 N.M.I. 142 (1994).

In order to violate ABA Model Rule of Professional Conduct 1.7(a), attorney must be representing more than one client at the same time. *In re Discipline of Lizama*, 2 N.M.I. 360 (1991).

——Particular Cases

Assistant Attorneys General who represent government officials in both their private and public capacities court danger and risk violating ethical standards. The distinctions between suits against an official in his individual and official capacities give rise to differing and potentially conflicting defenses. Most notably, the government entity could defend itself by asserting that the official whose conduct is in question acted in a manner contrary to the policy or custom of the entity. Also, an individual capacity defendant could assert the defense of qualified immunity. Given the potential conflict between the defenses available to a government official sued in his individual and official capacities, separate representation for the official in his two capacities is a wise precaution. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 89

Issue of whether attorney violated ABA Model Rules of Professional Conduct 1.7(a) and 2.2 by simultaneously representing himself, client and attorney's mother when they had conflicting interests was question of law, reviewable de novo. *In re Discipline of Lizama*, 2 N.M.I. 360 (1991).

Attorney who arranged for his mother to purchase interest in property, prepared documents for transfer of interest from client to his mother and subsequently repaid company that lent money for purchase was the real purchaser of the interest in the property. *In re Discipline of Lizama*, 2 N.M.I. 360 (1991).

Trial court erred as a matter of law in ruling that attorney violated ABA Model Rule of Professional Conduct 1.7(a) by simultaneously representing his mother and a client in a land transaction. Court's ruling that attorney used his mother's name as a sham precluded ruling that he represented his mother. In addition, since attorney did not engage in any negotiations regarding the terms of the transaction, did not act for his mother but only used her name, and did not act as an intermediary between client and his mother, attorney did not violate ABA Model Rule of Professional Conduct 2.2. *In re Discipline of Lizama*, 2 N.M.I. 360 (1991).

Issue of whether attorney violated ABA Model Rule of Professional Conduct 1.8(a) by entering into business transaction with client without clearly explaining the nature of the transaction and advising the client to seek the advice of independent counsel was question of law, reviewable de novo. *In re Discipline of Lizama*, 2 N.M.I. 360 (1991).

Attorney who purchased land through his mother from client violated ABA Model Rule of Professional Conduct 1.8(a) by failing to clearly explain the nature of the transaction and advising his client to seek the advice of independent counsel. *In re Discipline of Lizama*, 2 N.M.I. 360 (1991).

Issue of whether attorney violated ABA Model Rule of Professional Conduct 1.8(e) by providing financial assistance to a client in connection with pending or contemplated litigation was question of law, reviewable de novo. *In re Discipline of Lizama*, 2 N.M.I. 360 (1991).

Attorney who paid $10,000 to his client solely to purchase her interest in land did not violate ABA Model Rule of Professional Conduct 1.8(e) by providing financial assistance to a client in connection with pending or contemplated litigation. The transaction had no connection with subsequent or pending cases involving the land, in which attorney did not represent the client. *In re Discipline of Lizama*, 2 N.M.I. 360 (1991).

Issue of whether attorney violated ABA Model Rule of Professional Conduct 1.8(f) by simultaneously receiving fees from his client and a third person concerning the same transaction was question of law, reviewable de novo. *In re Discipline of Lizama*, 2 N.M.I. 360 (1991).

Attorney who accepted fee to represent a client violated ABA Model Rule of Professional Conduct 1.8(f) by simultaneously receiving fees from two clients because part of fee was for work concerning a matter for which he was initially retained by another client and for which he was already receiving a fee. *In re Discipline of Lizama*, 2 N.M.I. 360 (1991).

NMI Supreme Court would remand appeal of attorney disciplinary action to Superior Court for determination of amount of fee improperly accepted by attorney on behalf of one client for work already being performed for another client. *In re Discipline of Lizama*, 2 N.M.I. 360 (1991).

Contempt

See **COURTS – Contempt**

Disciplinary Actions

The Commonwealth courts have the inherent power and duty to regulate the practice of law, both in and out of court. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 19

The purpose of suspension or disbarment is not to punish the attorney, but rather to guard the administration of justice, maintain the dignity of the courts and the integrity of the profession, and protect the public. In determining the appropriate sanction, the court considers the nature of the misconduct, the cumulative weight of the violations, and the harm to the public and the profession. *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶ 38

Suspension or disbarment is not a punishment, but rather a necessary measure to protect the public, which has a right to expect that the court will be vigilant in withholding and withdrawing an attorney's certificate of qualification and character upon which the public relies. *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶ 38

An interim suspension followed by a post-suspension hearing satisfies the requirements of due process. *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶ 39

A party must comply with a court order until it is reversed by orderly and proper proceedings. The ostensible purpose for such a rule is to prevent a party from making himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside. *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶41

A lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists. Model Rules of Prof'l Conduct R. 3.4(c) (1994); Com. Disc. R. 2(c). *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶ 42

A court may sanction an attorney for continued violation of a court order of suspension. *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶ 45

An attorney's disregard of a court's suspension order and the rules that govern the practice of law can do nothing but add to the growing cynicism about lawyers and the practice of law, encourage disrespect for and noncompliance with court orders, and further denigrate the integrity of the profession and our regulation of it. Such acts undermine the public's confidence in our system of justice and therefore do great harm to the public, the legal system, the profession, and the dignity of the courts. In such cases, a mere reprimand would encourage others to disregard the orderly processes by which our courts and the legal profession are governed. *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶ 46

An attorney facing disbarment for practicing law while suspended is not necessarily entitled to a hearing if the issues have been fully briefed, rather, the opportunity to brief the issue fully satisfies due process requirements, especially in a case where the judge has witnessed the offenses. Procedural due process does not encompass the right to present all desired evidence. *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶ 49

A suspended attorney must comply with the terms of his suspension in such a manner that there may be no ground for suspicion on the part of other members of the bar or of the public that the court's order is not being exactly observed in its letter and spirit. *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶ 50

—Constitutional Questions

——Particular Cases

Bar association disciplinary committee investigating complaint against attorney and electing to recommend disciplinary action against him did not violate attorney's due process rights because attorney who represented other party in transaction giving rise to complaint participated in disciplinary committee's deliberations and decision. Disciplinary committee did not indict attorney or act as an adjudicator. In addition, findings and conclusions of disciplinary committee were not introduced at trial; accused attorney had trial de novo in Superior Court. Finally, accused attorney did not raise objection either before disciplinary committee or before Superior Court. *In re Discipline of Lizama*, 2 N.M.I. 360 (1991).

Discipline

Any person who practices law in the Commonwealth without being admitted to practice law in this jurisdiction is subject to discipline. Discipline may consist of disbarment, suspension, public censure, private reprimand, and/or any other sanction that is deemed appropriate. We have the inherent authority to impose sanctions that are not specifically addressed by rule. The purpose of suspension or disbarment is not to punish the attorney, but rather to guard the administration of justice, maintain the dignity of the courts and the integrity of the profession, and protect the public. Sanctions are imposed to deter other attorneys who are considering violating the rules of our profession. *In the Admission of Nisperos,* 2007 MP 33 ¶ 7 (2007).

Notice and an opportunity to respond must always be given before sanctions are imposed to comply with due process. *In the Admission of Nisperos,* 2007 MP 33 ¶ 8 (2007).

We have the inherent authority and jurisdiction to regulate the conduct of attorneys practicing before us. *In the Admission of Nisperos,* 2007 MP 33 ¶ 9 (2007).

To determine the appropriate sanction, we consider the nature of the misconduct, the cumulative weight of the violations, and the harm to the public and the profession. We look to other cases involving similar attorney misconduct for guidance. Nonetheless, we decide the instant case, like each case, on its unique circumstances and facts. *In the Admission of Nisperos,* 2007 MP 33 ¶ 9 (2007).

Practicing law without a license in the Commonwealth will subject the violator (and the Office of the Attorney General) to discipline in order to protect the courts, the legal profession, and the people of the Commonwealth. A mere reprimand would fail to reform the practices of the Attorney General's Office in its processing of applications for admission to practice law in the Commonwealth and would encourage others to disregard the orderly process by which our courts and the legal profession are governed. *In the Admission of Nisperos,* 2007 MP 33 ¶ 12 (2007).

Every attorney in the Commonwealth is subject to this Court's disciplinary jurisdiction. Discipline may consist of disbarment, suspension, public censure, private reprimand, and/or any other sanction that is deemed appropriate. We have the inherent authority to impose sanctions that are not specifically addressed by rule. *In the Matter of Roy,* 2007 MP 28 ¶ 3 (2007).

The purpose of suspension or disbarment is not to punish the attorney, but rather to guard the administration of justice, maintain the dignity of the courts and the integrity of the profession, and protect the public. Courts impose sanctions with an eye toward other attorneys who are considering violating the ethical canons of our profession. *In the Matter of Roy,* 2007 MP 28 ¶ 4 (2007).

To comply with due process, notice and an opportunity to respond must always be given before sanctions can be imposed. The opportunity for a hearing must also be given in those situations where a hearing would assist the court in its decision as to whether sanctions should be imposed or not. *In the Matter of Roy,* 2007 MP 28 ¶ 7 (2007).

An opportunity to respond in writing to an order to show cause regarding sanctions and a chance to be heard at a hearing provide adequate due process. Due process is satisfied when the prosecutor is given notice and an opportunity to be heard. *In the Matter of Roy,* 2007 MP 28 ¶ 6 (2007).

We have the inherent authority and jurisdiction to regulate the conduct of attorneys practicing before us, and the prosecutor, as a member of the bar, is subject to our jurisdiction. In determining the appropriate sanction, the court considers the nature of the misconduct, the cumulative weight of the violations, and the harm to the public and the profession. We decide the instant case, like each case, on its unique circumstances and facts. *In the Matter of Roy,* 2007 MP 28 ¶ 7 (2007).

No person in the Commonwealth should have their appeal delayed because of irresponsible and unprofessional conduct from the Attorney General's Office. Nor should the Attorney General's Office act with such blatant defiance of this Court's requirements. A prosecutor's argument that she is overworked in an office with insufficient resources is not an excuse for noncompliance with this Court's rules. Unless the court relieves an attorney of his or her responsibility to the client on appeal, as an officer of the court, the attorney is required to file the appropriate documents and briefs. If an attorney fails to comply with appellate filing deadlines, such conduct is prejudicial to the administration of justice. *In the Matter of Roy,* 2007 MP 28 ¶ 11 (2007).

DC App. Div. 1984. Disciplinary matters for attorneys and trial assistants are unique proceedings within the inherent authority and control of the courts to regulate the practice of law, whether in or out of court. *In Re the Matter Villanueva*, 1 CR 952.

DC App. Div. 1984. While the Disciplinary Panel is free to interpret existing rules of practice on a case-by-case basis, it may not modify, redefine or expand those rules without following constitutionally mandated procedure. *In Re the Matter Villanueva*, 1 CR 952.

DC App. Div. 1984. The Disciplinary Panel has broad discretion in prescribing terms of discipline. *In Re the Matter Villanueva*, 1 CR 952.

DC App. Div. 1984. The Trial Court, to control the conduct of its own affairs and to maintain its own dignity, has the inherent power, independent of statute, to deal with any alleged misconduct in a just and equitable manner. *In Re the Matter Villanueva*, 1 CR 952.

DC App. Div. 1984. The exercise by the trial court of its inherent power to govern the practice of law within its jurisdiction will not be disturbed where the action taken has a rational connection to the public interest. *In Re the Matter Villanueva*, 1 CR 952.

DC App. Div. 1984. Where trial assistant was placed on probation by District Court of Guam in connection with a criminal matter, trial court's discipline order suspending license to practice in the Commonwealth for period of probation was rationally related to public interest and would be upheld. *In Re the Matter Villanueva*, 1 CR 952.

DC App. Div. 1984. Order of Disciplinary panel requiring trial assistant to pass the Professional Responsibility Examination before suspension of license to practice is lifted was reasonable. [As Amended] *In Re the Matter Villanueva*, 1 CR 952.

—— Particular Cases

Every person practicing law in the Commonwealth is bound by the Commonwealth Disciplinary Rules and Procedure. Com. Disc. R. 1. *Atalig, et al. v. Superior Court*, 2008 MP 19 ¶ 7 (2008).

The Commonwealth Disciplinary Rules and Procedure provide a comprehensive procedure to discipline attorneys for professional misconduct. They require that any complaint arising within the Judiciary as a result of direct acts or omissions of attorneys concerning violation of these rules shall be filed with the Presiding Judge, if the conduct occurs in the Superior Court. Once properly notified, the Presiding Judge, or a respective designee, must determine whether to commence an investigation into the alleged misconduct or hold a disciplinary hearing in accordance with the procedures set forth in Rule 9. Com. Disc. R. 4. *Atalig, et al. v. Superior Court*, 2008 MP 19 ¶ 7 (2008).

If the Presiding Judge orders an investigation, he may refer the matter to the Disciplinary Committee of the Northern Marianas Bar Association for investigation or he may order the trial court to conduct its own investigation. If the Presiding Judge elects to hold a disciplinary hearing, he has the authority to determine which trial judge presides over it. Com. Disc. R. 4. *Atalig, et al. v. Superior Court*, 2008 MP 19 ¶ 7 (2008).

Before the trial court may conduct a disciplinary hearing, an attorney must be served with a complaint and have twenty days to file an answer. Com. Disc. R. 9(c). Additionally, the trial court "shall serve notice of the time and place of the hearing upon all counsel at least 10 days prior thereto." Com. Disc. R. 9(d). *Atalig, et al. v. Superior Court*, 2008 MP 19 ¶ 8 (2008).

After providing proper notice, the trial court may hold a disciplinary hearing, which "shall be closed to the public, unless the respondent requests otherwise." The proceedings of the disciplinary hearing only become public when the trial court "finds a violation and impose[s] a sanction equal to or greater than public reprimand." Com. Disc. R. 9(f). *Atalig, et al. v. Superior Court*, 2008 MP 19 ¶ 8 (2008).

——Trial Assistants

DC App. Div. 1984. Limitations in disciplinary order that clarify existing rules applicable to trial assistants were proper. NMI Const., Art. IV, §8; P.L. 1-5, §3. *In Re the Matter Villanueva*, 1 CR 952.

Disqualification

—Generally

An order either disqualifying or refusing to disqualify a law firm is not appealable when entered because it is not a final order. Movants may petition the court for a writ of mandamus only in exceptional cases. *Feliciano v. Superior Court (In re Estate of Hillblom)*, 1999 MP 3 ¶ 24

Whether an attorney should be disqualified is a matter addressed to the sound discretion of the trial court. In exercising that discretion, the trial court is required to make a reasoned judgment which complies with the legal principles and policies

applicable to the issue at hand. *Feliciano v. Superior Court (In re Estate of Hillblom)*, 1999 MP 3 ¶ 38

The relevant test for disqualification of an attorney who has formerly represented another client in the same or a substantially related matter is whether the former representation is substantially related to the current representation. If the existence of a substantial relationship between the two representations is established, the court will conclusively presume that the attorney possesses confidential information adverse to the former client and order disqualification. *Feliciano v. Superior Court (In re Estate of Hillblom)*, 1999 MP 3 ¶ 44

The attorneys in the law firm of one who is disqualified from representing a client are also vicariously disqualified. *Feliciano v. Superior Court (In re Estate of Hillblom)*, 1999 MP 3 ¶ 50

It is the non-delegable responsibility of the court to obtain the adherence of its bar to proper ethical standards in the management of cases before it. Consent of the adverse party does not necessarily compel the court to assent to a flagrant conflict of interest. *Feliciano v. Superior Court (In re Estate of Hillblom)*, 1999 MP 3 ¶ 52

A non-client litigant's standing to disqualify opposing counsel based upon a conflict of interest is limited to where the non-client litigant demonstrates personal detriment or misconduct which taints the fairness of the proceeding. Rule 1.7 of the Model Rules of Professional Conduct. *Dela Cruz v. Hotel Nikko Saipan, Inc.*, 1997 MP 16 ¶ 18

A trial court order disqualifying an attorney from representing a client may be proper or improper based on facts and circumstances existing at the time it is rendered. What subsequently happens at trial does not make the disqualification order right or wrong. Party appealing order may obtain reversal of judgment based on improper disqualification order regardless of whether order prejudiced party at trial. *Olopai v. Hillblom*, 3 N.M.I. 528 (1993).

DC NMI 1986. Where, in action involving the government, defendant is represented by former deputy attorney general, and where during his government service attorney's participation in matters related to pending litigation were peripheral to issues at bar, there is no showing of personal and substantial involvement and motion to disqualify attorney would be denied. *Lizama v. Rios*, 2 CR 497.

—Particular Cases

Attorney general's office was disqualified from representing either party where AGO initially represented both defendant and the office of the governor; AGO withdrew from representation of defendant; AGO continued to represent the office of the governor and did not get prior consent of defendant; AGO's representation of the office of the governor was directly adverse to defendant; and trial testimony elicited by AGO used privileged, confidential information directly adverse to defendant's position. 7 CMC §§ 2301, et seq. *Jasper v. Quitugua*, 1999 MP 4 ¶ 12

Petitioner's due process rights were not violated by denial of motion to substitute counsel where requested counsel had conflicts of interest, petitioner had adequate notice and opportunity to be heard in respect to the motion to substitute counsel, petitioner filed the motion to substitute and requested that the matter be heard on shortened time, petitioner was personally present and represented by counsel at the hearing for the motion, and Superior Court considered declarations filed by petitioner after deadline for their submission. Petitioner had right to counsel, but not to conflicted counsel. *Feliciano v. Superior Court (In re Estate of Hillblom)*, 1999 MP 3 ¶ 35

Law firm was disqualified from representing claimant against estate based upon conflicts of interest where law firm had represented deceased in his life time in connection with a number of assets in the estate, attorney in law firm was deceased's agent and attorney in fact and managed deceased's business affairs in Saipan during deceased's absence from Saipan, attorney in law firm was personally involved in connection with deceased's businesses, law firm had represented deceased during his lifetime, had continuing obligations to the estate, through the executor, and had obligation to guard deceased's client confidences and not to represent parties adverse to the estate in connection with the estate. *Feliciano v. Superior Court (In re Estate of Hillblom)*, 1999 MP 3 ¶ 45

The existence of separate settlement agreements with executor of estate was not enough to overcome conflict of interest and law firm was correctly disqualified from representing two claimants against estate who could have potential claims against one another if settlement agreements were set aside. *Feliciano v. Superior Court (In re Estate of Hillblom)*, 1999 MP 3 ¶ 46

NMI Supreme Court found no abuse of discretion in trial court's denial of non-client litigant's motion to disqualify law firm from representing multiple defendants where the firm obtained the consent of its clients to common representation after consultation regarding the implications of representing multiple parties. *Dela Cruz v. Hotel Nikko Saipan, Inc.*, 1997 MP 16 ¶ 19

Superior Court abused its discretion in disqualifying counsel, after discovery had been completed and 11 days before trial, on the basis that the attorney's legal association with plaintiff, who was an associate in his law firm, produced an inherent appearance of impropriety where court applied class action Rule 23 legal requirements and no equitable fund was to be created from which attorney's fees were to be paid and where court had prohibited the inclusion of attorney's fees in any settlement agreement. *Torres v. Tenorio*, 1997 MP 2 ¶ 15

Disqualification Order

See **Disqualification**, this topic.

Duties of Attorney

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous. Model Rules of Prof'l Conduct R. 3.1 (1994). *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶ 62

A lawyer has a duty not to abuse legal procedure. Model Rules of Prof'l Conduct R. 3.1 cmt. 1 (1994). *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶ 62

An action is frivolous if the client desires to have the action taken primarily for the purpose of harassing or maliciously injuring a person, or, if the lawyer is unable to make a good faith argument on the merits of the action taken. Model Rules of Prof'l Conduct Rule 3.1 cmt. 2 (1994). *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶ 62

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client. Model Rules of Prof'l Conduct R. 3.2 (1994). *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶ 63

Dilatory practices bring the administration of justice into disrepute. Delay should not be indulged merely for the lawyer's convenience, or for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that the bench and the bar often tolerate similar conduct. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Model Rules of Prof'l Conduct R. 3.2 cmt. 1 (1994). *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶ 63

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge. Model Rules of Prof'l Conduct R. 8.2 (1994). *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶ 64

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. Model Rules of Prof'l Conduct R. 1.1 (1994). *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶ 65

Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. Model Rules of Prof'l Conduct R. 1.1 cmt. 5 (1994). *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶ 65

A lawyer shall not engage in conduct intended to disrupt a tribunal. Disruptive conduct is commonly evaluated in light of the totality of the circumstances. The rule is intended to enforce the standards of decorum and courtesy necessary to promote and maintain an orderly system of justice in which people can have confidence when their rights and obligations are at stake. Model Rules of Prof'l Conduct R. 3.5(c) (1994). *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶ 66

Ethics

DC App. Div. 1984. Professional responsibility is the basic requirement for all attorneys, trial assistants, and other officers and administrators of the court in order to maintain the highest possible level of morality in the judicial system. *In Re the Matter Villanueva*, 1 CR 952.

Fees, Reasonableness of

—Generally

The statute restricting attorneys in Article XII cases to a 20% contingency fee or an amount equal to $700.00 per hour is reasonable. *Matsunaga v. Matsunaga,* 2006 MP 25 ¶ 22

A court reviewing a claim of attorney's breach of fiduciary duty should consider the gravity and timing of the violation, its willfulness, and its effect on the value of the lawyer's work for the client when deciding whether fee forfeiture is appropriate. *Matsunaga v. Matsunaga*, 2006 MP 25 ¶ 31

In evaluating the reasonableness of attorney fees, the court considers the time and labor required, the novelty and difficulty of the questions involved, and the skill required to properly perform the legal service. *Pille v. Sanders*, 2000 MP 10 ¶ 25

Determination of reasonable attorney fees is guided by Rule 1.5 of the American Bar Association's Model Rules of Professional Conduct, made applicable in Commonwealth pursuant to Com. Disc. R. 2. *Camacho v. J.C. Tenorio Enters., Inc.*, 2 N.M.I. 509 (1992).

Award of attorney's fees must be based on reasonableness. *Camacho v. J.C. Tenorio Enters., Inc.*, 2 N.M.I. 407 (1992).

—Particular Cases

Considering factors of time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform legal service properly, number of hours charged by appellee after award of attorney's fees was excessive and unreasonable. American Bar Association, Model Rule of Professional Conduct 1.5; Com. Disc. R. 2. *Camacho v. J.C. Tenorio Enters., Inc.*, 2 N.M.I. 509 (1992).

Government Attorneys

Government officials in both their private and public capacities court danger and risk violating ethical standards. The distinctions between suits against an official in his individual and official capacities give rise to differing and potentially conflicting defenses. Most notably, the government entity could defend itself by asserting that the official whose conduct is in question acted in a manner contrary to the policy or custom of the entity. Also, an individual capacity defendant could assert the defense of qualified immunity. Given the potential conflict between the defenses available to a government official sued in his individual and official capacities, separate representation for the official in his two capacities is a wise precaution. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 89

Jurisdiction

—Over Bar

The N.M.I. Supreme Court has jurisdiction pursuant to the Court's inherent powers to regulate the Bar of the Commonwealth of the Northern Mariana Islands. *In re Disciplinary Proceedings of Rhodes*, 2002 MP 2 ¶ 2

The N.M.I. Supreme Court has jurisdiction to regulate the Bar of the Commonwealth of the Northern Mariana Islands pursuant to the Commonwealth Disciplinary Rules and Procedures. Com. Disc. R. 1. *In re Disciplinary Proceedings of Rhodes*, 2002 MP 2 ¶ 2

Local Counsel

—Generally

Purpose of rule of admission to practice law requiring off-island counsel to associate with local counsel is to facilitate normal course of serving and receiving documents and to avoid normal problems associated with delayed and lost mail, difficulty in communicating with off-island counsel, and inability of off-island counsel to appear in court upon short notice or under emergency situations. Com. R. Admiss. 4. *Sonoda v. Villagomez*, 3 N.M.I. 535 (1993).

Based on purposes for which Com. R. Admiss. 4 (requiring off-island counsel to associate with local counsel) was promulgated, duties and responsibilities of local counsel are as follows: (1) to receive, on behalf of off-island counsel, service of documents filed with the court so that off-island counsel is bound by date and time of service; (2) to promptly relay to off-island counsel all communications and documents received from opposing counsel or the court; (3) to promptly communicate to opposing counsel and the court all communications received from off-island counsel which are intended to be transmitted to opposing counsel and the court; (4) to appear in court upon short notice in justified emergency situations; (5) to facilitate proper and efficient management of court proceedings and to prevent unnecessary delays, elements of surprise, mis-communications, and the like; and (6) to appear

in a regularly-scheduled court hearing, short of trial, when off-island counsel cannot appear because of sickness, flight scheduling, typhoons, etc., or to seek continuance of a hearing. *Sonoda v. Villagomez*, 3 N.M.I. 535 (1993).

Pleading

See **Advocacy**, this topic.

Practice of Law

One engages in the practice of law in the Commonwealth's jurisdiction when he or she represents a client in a case that is filed under and governed by Commonwealth law. *In the Matter of York*, 2010 MP 11 ¶ 6 (2010).

Where a suspended attorney wrote a demand letter on behalf of several of his clients, but failed to acknowledge his suspension, or purport to represent the clients in a non-legal capacity, the letter clearly indicates that the attorney was representing the clients as an attorney, in blatant violation of the suspension order. *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶55

Professional Conduct, Rules of

Pursuant to Rule 8.5(a) of the Model Rules of Professional Conduct, a lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. *In the Matter of York*, 2010 MP 11 ¶ 5 (2010).

The Model Rules of Professional Conduct, adopted by the American Bar Association are applicable in the C.N.M.I. through Commonwealth Disciplinary Rules and Procedures, Rule 2. Com. Disc. R. 2. *Bisom v. Commonwealth*, 2002 MP 19 ¶ 55

The arguments of the Attorney General's Office against Government indemnification of a former client are not necessarily contrary to the former client's interests, in violation of the ABA Model Rules of Professional Conduct 1.9(a). Model Rules of Prof'l Conduct 1.9(a). *Bisom v. Commonwealth*, 2002 MP 19 ¶ 57

The contents of court documents may be deemed to violate Rule 3.5(c) of the Model Rules of Professional Conduct. *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶ 66

The prohibition against undignified or discourteous conduct is not for the sake of the justices, but for the sake of the offices they hold. Respect for and confidence in the judicial office are essential to the maintenance of any orderly system of justice. Where they are lacking, a trial court will be inhibited in performing two essential tasks: sifting through conflicting versions of the facts to discover where truth lies, and applying the correct legal principles to the facts as found. These observations are equally applicable to an appellate court, where the court must sift through conflicting arguments, apply the correct standard of review to conflicting facts, and apply the correct legal principles to those facts. *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶ 66

Under Com. R. Disc., governing legal practice in NMI, the American Bar Association Model Rules of Professional Conduct in effect as of September 30, 1989, apply to persons practicing law in the NMI. Com. R. Disc. 2. *Hwang Jae Corp. v. Marianas Trading & Dev. Corp.*, 4 N.M.I. 142 (1994).

Sanctions

—Appellate Court

Rule 30(g) requires that counsel will be provided notice and have an opportunity to respond before sanctions are imposed. *Tenorio Enterprises, Inc. v. Uddin*, 2006 MP 22 ¶18

Sanctions under local court rules such as Rule 30(g) are not imposed absent notice, an opportunity to respond, and a hearing. *Tenorio Enterprises, Inc. v. Uddin*, 2006 MP 22 ¶18

Courts define notice as a motion by a party or an order to show cause by the court. Even a request for sanctions within a party's brief does not constitute notice: there must be a proper motion. *Tenorio Enterprises, Inc. v. Uddin*, 2006 MP 22 ¶18

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, and pursuant to the Court's inherent authority over matters of attorney misconduct, the N.M.I. Supreme Court has jurisdiction over whether an attorney's suspension from the practice of law should continue, or whether that attorney should be disbarred. N.M.I. Const. art. IV, § 3. *Saipan Lau*

Lau Dev., Inc. v. Superior Court (San Nicolas), 2001 MP 2 ¶ 1

If NMI Supreme Court determines that an appeal is frivolous, it may award just damages and single or double costs to the appellee, including reasonable attorney's fees. A frivolous appeal is one in which no justiciable question has been presented, and the appeal is readily recognizable as devoid of merit in that there is little prospect that it can ever succeed. Com. R. App. P. 38(a). *Sablan v. Blake*, 1998 MP 8 ¶ 9; *Sablan v. Blake*, 1998 MP 9 ¶ 7

Imposition of sanctions under Com. R. App. P. 38(b) does not necessarily require a finding of bad faith. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

Under Com. R. App. P. 38(b), NMI Supreme Court can and will sanction counsel upon its own initiative for filing an appeal that on its face is clearly without merit, factually or legally. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

Sanctions are imposed under Com. R. App. P. 38(a) for many of the same reasons they are imposed under Com. R. App. P. 38(b). *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79 (1992).

Com. R. App. P. 38(a), stating that an award of damages and costs and fees may be made if an appeal is frivolous, does not mean that an entire appeal must be frivolous before NMI Supreme Court is able to impose sanctions. Court has discretion to impose damages and/or costs and/or reasonable attorney's fees as to each issue on appeal. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79 (1992).

Com. R. App. P. 38(b), concerning imposition of sanctions for filing frivolous appeals, is patterned after Fed. R. Civ. P. 11, which applies to trial practice. *Tenorio v. Superior Ct.*, 1 N.M.I. 112 (1990).

NMI Supreme Court has inherent authority to impose sanctions on counsel in matters before the court. *Tenorio v. Superior Ct.*, 1 N.M.I. 112 (1990).

Fed. R. Civ. P. 11 imposes duty on counsel to stop and think before filing documents with court; NMI Supreme Court applies same rationale to Com. R. App. P. 38(b). *Tenorio v. Superior Ct.*, 1 N.M.I. 112 (1990).

A frivolous appeal is one in which no justiciable question has been presented and the appeal is readily recognizable as devoid of merit in that there is little prospect that it can ever succeed. Com. R. App. P. 38. *Commonwealth v. Kawai*, 1 N.M.I. 66 (1990), reh'g denied, 1 N.M.I. 93 (1990).

—Appearance, Withdrawal of

——Particular Cases

Trial court was justified in sanctioning off-island counsel who violated Com. R. Prac. 5(d) by seeking to withdraw from case shortly before trial. **Sonoda v. Villagomez**, 3 N.M.I. 535 (1993).

—Attorney's Fees

Equity allows a court to award fees based upon conduct that affects the litigation, even if that conduct did not take place in open court. *Saipan Achugao Resort Members Assoc. v. Yoon*, 2011 MP 12 ¶ 71 (2011).

DC NMI 1989. In civil rights action, plaintiffs had the right to choose whatever forum they deemed appropriate to achieve the end they sought and where plaintiffs prevailed in civil rights action, attorneys fees will be awarded. 42 U.S.C. §1988. *Kin v. CNMI*, 3 CR 630.

DC App. Div. 1987. A prevailing government defendant in a civil rights action is entitled to attorney's fees if the government shows that it is more than just a prevailing party; it must also show that the lawsuit was frivolous, unreasonable, and without foundation, even though not brought in subjective bad faith. 42 U.S.C. §1988. *Saipan Secretarial/Employment Services, Inc. v. CNMI*, 3 CR 168.

DC App. Div. 1987. Where plaintiffs suit was frivolous, unreasonable, and without foundation, the defendant was entitled to an award of attorney's fees. 42 U.S.C. §1988. *Saipan Secretarial/Employment Services, Inc. v. CNMI*, 3 CR 168.

DC NMI 1986. An award of attorney's fees pursuant to federal civil rights statute is uniquely separable from the cause of action. 42 U.S.C. §1988. *Pangelinan v. Castro*, 2 CR 429.

DC NMI 1986. Where decision favorable to plaintiff on civil rights claim asserted does not entirely dispose of action against the defendants, court may reserve determination on the nature of any fee award until a final judgment has been entered. 42 U.S.C. §§1983, 1988. *Pangelinan v. Castro*, 2 CR 429.

DC NMI 1986. Where litigation on all claims is still in progress, award of attorney fees under civil rights statute is premature notwithstanding issuance of permanent injunction on claim. 42 U.S.C. §1983. *Lizama v. Rios*, 2 CR 581.

—Constitutional Questions

See also **Sanctions – Procedure**, this topic.

There is no due process violation where an individual is given opportunity to respond to a sanction order by requesting reconsideration or appealing the order and where that individual is given the opportunity to explain his actions at a hearing on the subsequent contempt proceeding. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 26

—Contempt

See **COURTS – Contempt**

—Failure to Move for Leave of Court

If the Attorney General represents private parties, without moving for leave of the Court prior to undertaking such representation, the Court will impose appropriate sanctions. *Pac. Saipan Technical Contractors v. Rahman*, 2000 MP 14 ¶ 10

—Frivolous Appeals

A legal argument is nonfrivolous if it is likely to succeed on the merits or if reasonable persons could differ as to the likelihood of its success on the merits. *Ramos v. Magusa, Inc.*, 2002 MP 25 ¶ 12

A court does not impinge upon the authority of either the executive or legislative branches of government by imposing sanctions on errant officers of the court. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

—Generally

Attorney sanctions exist not to punish the offending attorney, but to protect the public and to maintain the integrity of the profession and the dignity of the courts. *In re Disciplinary Proceedings of Rhodes*, 2002 MP 2 ¶ 15

Courts impose sanctions with an eye toward other attorneys who are considering violating the ethical canons of the profession. *In re Disciplinary Proceedings of Rhodes*, 2002 MP 2 ¶ 16

A contempt proceeding does not open to reconsideration the legal or factual basis of the order alleged to have been disobeyed and thus become a retrial of the original controversy. Where the order imposing sanctions was not invalid on its face and immediate review was readily available, review of a finding of civil contempt is technically limited to questions of jurisdiction, such as whether the trial court had the authority to impose the punishment inflicted, and whether the acts for which the punishment was imposed constitute a contempt. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 15

Sanctions imposed to punish behavior by an attorney in the actions that led to the lawsuit or conduct of the litigation require a finding of bad faith, while sanctions for actions involving the violation of a court order or other misconduct that is not undertaken for the client's benefit do not. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 22

When a sanction is imposed for conduct that is normally part of the attorney's legitimate efforts at zealous advocacy for his or her client, we require a finding of bad faith to strike a balance between the vigorous pursuit of litigation and the right to be free of litigation that is undertaken in bad faith, vexatiously, wantonly, or for oppressive reasons. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 23

Where the court imposes sanctions because an attorney allegedly lies to the court and engages in unprofessional and unethical conduct that is not undertaken for the client's benefit, the court need not make an explicit finding of bad faith before imposing a sanction under its inherent power. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 24

When bad faith is patent from the record and specific findings are unnecessary to understand the misconduct giving rise to the sanction, the necessary finding of "bad faith" in order to impose sanctions under the court's inherent power may be inferred. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 24

In imposing a sanction after finding attorney misconduct, a court should consider: the duty violated, the attorney's mental state, the actual or potential injury caused by the misconduct, and any aggravating or mitigating factors. *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶ 71

Factors mitigating the imposition of sanctions for attorney misconduct include, among other things, the absence of a prior disciplinary record, and the

existence of personal or emotional problems. Mitigating factors do not include the excuse that the client did not complain of injury or harm, nor the excuse that "the client made me do it." *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶ 71

Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or party, or interference or potential interference with a legal proceeding. *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶ 72

An attorney suspension order may provide for automatic reinstatement, or may require a showing of rehabilitation, compliance with all applicable discipline or disability orders or rules, and fitness to practice law, by clear and convincing evidence. *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶ 72

Appellate review of a ruling imposing sanctions pursuant to Com. R. Civ. P. 11 is made under an abuse of discretion standard. It would be an abuse of discretion if a court based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79 (1992).

—Interlocutory Appeal

See **CIVIL PROCEDURE – Interlocutory Appeal – Sanctions**

—Judicial Bias

Orders and/or judgments in a case imposing sanctions will not be vacated due to later disqualification of the trial court judge unless the factual basis of the ground for disqualification is substantial and the failure to recuse is inexcusable. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79 (1992).

——Particular Cases

Even if the omission of material information from a bar application is a clerical error, sanctions are still appropriate to underscore to future applicants the need to complete bar applications thoroughly and with caution. *In re Disciplinary Proceedings of Rhodes*, 2002 MP 2 ¶ 17

In order to underscore the Court's desire to discourage this type of activity, it is appropriate to impose substantial sanctions on an attorney who deceives the Supreme Court by omitting a felony conviction on his bar application and then attempts to perpetuate the deceit by citing mere clerical error. *In re Disciplinary Proceedings of Rhodes*, 2002 MP 2 ¶ 22

The court is compelled to order a continued suspension where an attorney committed numerous acts of professional misconduct and presented no rational explanation for his behavior, despite the opportunity to do so, and where the attorney refused to recognize a serious and irreparable conflict of interest with his client, and continued to attempt to interfere with the proceedings and the operation of the court. *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶73

Trial court orders imposing and setting amount of sanctions against counsel for one party were not void due to fact that judge had retained counsel for opposing party in an unrelated matter, and later recused himself from case for that reason. At time original complaint was filed to the time that sanctions were imposed, sanctioned attorney knew or should have known of disqualifying fact, yet did not move to disqualify judge. In addition, the disqualifying fact was insubstantial for purposes of vacating orders because trial judge did not have a substantial interest in the outcome of the case. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79 (1992).

—Particular Cases

The 9th Circuit has held that the inclusion of 79 pages of irrelevant material did not vexatiously and unreasonably increase the cost of litigation. *Tenorio Enterprises, Inc. v. Uddin*, 2006 MP 22 ¶19

Attorney (who had twice previously been cautioned by NMI Supreme Court to follow rules of appellate procedure) ordered to show cause why he should not be sanctioned for failure to file excerpt of record on appeal, required under Com. R. App. P. 30. *Rosario v. Quan*, 3 N.M.I. 269 (1992).

—Pleading and Motions

If representation to court certifying pleading or written motion is false, trial court may impose sanctions. Com. R. Civ. P. 11. *Ferreira v. Borja*, 1999 MP 2 ¶ 13

A legal argument is frivolous if no reasonable person could conclude that the argument is likely to succeed on the merits. *Pangelinan v. Itaman*, 1996 MP 16 ¶ 1

Sanctions may be imposed under Com. R. Civ. P. 11 if a document is not well grounded in fact. An objective reasonableness test is used to determine whether an adequate prefiling inquiry has occurred. The circumstances of each case are considered, including the time available for prefiling information. Furthermore, a document is not well grounded in fact if any attorney has misrepresented the evidence. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79 (1992).

Sanctions may be imposed under Com. R. Civ. P. 11 if a document is not well grounded in law. A position is warranted by existing law if it is supported by a non-frivolous legal argument. A legal argument is non-frivolous if it is likely to succeed on the merits or if reasonable persons could differ as to the likelihood of its success on the merits. A good faith argument for a change of existing law may also be advanced. An objective reasonableness test includes analysis of whether the document candidly acknowledges the current adverse law and argues for a change in existing law. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79 (1992).

Sanctions may be imposed under Com. R. Civ. P. 11 if a document is interposed for an improper purpose. Even a document well grounded in fact and law can violate this rule if there is evidence of the signer's bad faith. Whether a signer acted with an improper purpose is judged under an objective standard. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79 (1992).

Sanctions may be imposed under Fed. R. Civ. P. 11 if a document is not well-grounded in fact; an objective reasonableness test is used to determine whether an adequate prefiling inquiry has occurred. Com. R. App. P. 38(b). *Tenorio v. Superior Ct.*, 1 N.M.I. 112 (1990).

In determining whether a document is well-grounded in fact, the circumstances of each case are considered, including the time available for prefiling inquiry and the source and complexity of available prefiling information. Com. R. App. P. 38(b). *Tenorio v. Superior Ct.*, 1 N.M.I. 112 (1990).

A document is not well-grounded in fact if an attorney has misrepresented the evidence. Com. R. App. P. 38(b). *Tenorio v. Superior Ct.*, 1 N.M.I. 112 (1990).

Sanctions may be imposed under Fed. R. Civ. P. 11 if a document is not well-grounded in law; a position is warranted by existing law if it is supported by a non-frivolous legal argument. Com. R. App. P. 38(b). *Tenorio v. Superior Ct.*, 1 N.M.I. 112 (1990).

A legal argument is non-frivolous if it is likely to succeed on the merits or if reasonable persons could differ as to the likelihood of its success on the merits. Com. R. App. P. 38(b). *Tenorio v. Superior Ct.*, 1 N.M.I. 112 (1990).

A good-faith argument for a change in existing law is not legally frivolous if it meets an objective reasonableness test, including analysis of whether the document candidly acknowledges the current adverse law and argues for a change in existing law. Com. R. App. P. 38(b). *Tenorio v. Superior Ct.*, 1 N.M.I. 112 (1990).

Sanctions may be imposed under Fed. R. Civ. P. 11 if a document is interposed for an improper purpose; even a document well-grounded in fact and law can violate this rule if there is evidence of the signer's bad faith. Whether a signer acted with an improper purpose is judged under an objective standard. Com. R. App. P. 38(b). *Tenorio v. Superior Ct.*, 1 N.M.I. 112 (1990).

——Particular Cases

Attorney's amended complaint was not frivolous, within meaning of Com. R. Civ. P. 11, for failure to anticipate defense based on statute of frauds. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 343 (1992).

Attorney's motions to vacate transfer of case from one trial judge to another and to disqualify judge to whom case was transferred were not made for an improper purpose, within meaning of Com. R. Civ. P. 11, given time constraints facing attorney due to approaching hearing on summary judgment motion. Motion to vacate transfer was made only four days after first judge's recusal and motion to disqualify second judge was made only five days after first judge's recusal. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 343 (1992).

Cause of action based on alleged violation of NMI Consumer Protection Act, 4 CMC § 5101 et seq., was legally unreasonable and without factual foundation. Trial court properly sanctioned attorney who prepared complaint. Com. R. Civ. P. 11. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79 (1992).

Trial court erred in sanctioning attorney for factual and legal implausibility of claims based on torts of intentional interference with contract relations and

intentional interference with economic relations. Complaint, for which attorney was sanctioned, gave defendant reasonable notice of claims; attorney pled facts supporting elements of torts with sufficient particularity. Attorney could not be sanctioned for pleading, however unartfully, causes of action which were legally plausible. Com. R. Civ. P. 11. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79 (1992).

In appeals from eminent domain actions, counsel for landowners and the office of NMI Attorney General were each sanctioned $2,000 for failing to clearly and fully present posture of actions in previous or current appeals. Com. R. App. P. 38(b). *Commonwealth v. Bordallo*, 2 N.M.I. 226 (1991).

Because allegations of out-of-court misconduct of opposing counsel were improperly raised in cross-motion for sanctions, were irrelevant, and were apparently intended to distract Supreme Court from opposing party's motion for sanctions, they were themselves sanctionable. Com. R. App. P. 38(b). *Tenorio v. Superior Ct.*, 1 N.M.I. 112 (1990).

Petition for extraordinary writ to set aside election upon hypothetical result was factually speculative and premature; document was not well-grounded in fact and was sanctionable on that basis. Com. R. App. P. 38(b). *Tenorio v. Superior Ct.*, 1 N.M.I. 112 (1990).

Petitioners for extraordinary writ to set aside election upon hypothetical result who failed to cite pertinent authority to support claim for relief and who also did not argue for extension, modification or reversal of existing law had filed legally implausible document and were subject to sanction. Com. R. App. P. 38(b). *Tenorio v. Superior Ct.*, 1 N.M.I. 112 (1990).

Attorney representing criminal defendant was sanctioned for filing frivolous appeal after defendant pleaded nolo contendere below, failing to reserve right to appeal question of law to NMI Supreme Court. Com. R. App. P. 38. *Commonwealth v. Kawai*, 1 N.M.I. 66 (1990), reh'g denied, 1 N.M.I. 93 (1990).

—Procedure

An order issued by a court with jurisdiction over the parties and the subject matter of an action must be obeyed unless and until it has been vacated or stayed, or until it expires by its own terms. The appropriate avenue for relief, in the event that an individual truly believes that the order was improperly issued, is to seek to have the order vacated or amended. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶27

If an individual believes in good faith that the trial court erred in imposing sanctions, he should either pay the sanction, litigate the case, and then appeal the sanction, or demonstrate his inability to comply and his good faith disagreement with the court, and ask the court to stay the sanction pending an appeal. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 27

A party is entitled to notice and a hearing before sanctions are imposed. When the sanctions imposed include attorney fees, an additional hearing on the amount of the fees is not necessary to satisfy the due process requirement of the Constitution. *Ferreira v. Borja*, 1999 MP 23 ¶ 10

While due process requires fair notice and an opportunity to be heard before attorney fees are imposed as a sanction, it does not require both an oral hearing on whether attorney fees should be imposed and a separate oral hearing on the amount of such fees. *Ferreira v. Borja*, 1999 MP 23 ¶ 10

Notice and an opportunity to respond must always be given before sanctions can be imposed. The opportunity for a hearing must also be given in those situations where a hearing would assist the court in its decision as to whether sanctions should be imposed. If the sanctioned conduct occurs in the presence of the court and there are no issues that a hearing would resolve, then a hearing would not be necessary. However, notice and the opportunity to respond must always be provided. Com. R. Civ. P. 11. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 343 (1992).

——Particular Cases

Plaintiff ordered to show cause why he should not be taxed attorneys fees and double costs incurred in connection with appeal, and why both plaintiff and counsel should not be held jointly and severally liable for sanction, where counsel for appellant was informed at oral argument that the record was not properly assembled and that the entire proceedings were not included in the appeal. Without the record, the Court was left to speculate the lower court's reasoning behind its ruling and thus Court found that appeal was frivolous, in that it was completely devoid of merit with little prospect that it could have succeeded, and did not meet the standards of merit and good faith as required by Com. R. App. P. 38. *Sablan v. Blake*, 1998 MP 9 ¶ 8

Where trial court determined that appellant's claim for damages was overly speculative in that his claimed damages were based on the uncertain event of successive and cumulative winning hands in poker machine, NMI Supreme Court was not convinced appeal was frivolous and did not sanction appellant although it found that no error or mistake was made and trial court judge carefully considered all the surrounding circumstances, testimony and evidence presented. *Sablan v. Blake*, 1998 MP 8 ¶ 10

Attorney who filed frivolous appeal placing appellee in legal jeopardy over status of lease for 3 ½ years, but failed to specify which of the trial court's findings were clearly erroneous and ignored the unbiased testimony of two notary publics, could be held jointly and severally liable with his client for double the appellee's attorney fees and costs as sanctions under Com. R. App. P. 38(a). *Cabrera v. Ahn Yeong Mi*, 1997 MP 19 ¶ 18

In civil proceeding, there was no misconduct and sanctions were not warranted for citing record of criminal misconduct where references were fully supported by the record and were used for the limited purpose of determining credibility of witness, and not for the truth of the matter asserted. *Barte v. Saipan Ice, Inc.*, 1997 MP 17 ¶ 19

Attorney publicly admonished and ordered to show cause why a sanction of $200 should not be imposed on the attorney, under Com. R. App. P. 38, where attorney: (1) filed five motions for extensions of time in which to file his opening brief, none of which complied fully with the requirements of Com. R. App. P. 31(d); (2) incorrectly cited the statutory bases of the Superior Court's and Supreme Court's jurisdiction; (3) failed to comply with Com. R. App. P. 30(e)'s requirement that the excerpts of record be numbered, tabbed or paginated; (4) neglected to distinguish in his citations between the transcripts of two different Superior Court proceedings, and cited transcript pages which do not appear at all in the excerpts of record, in contravention of Com. R. App. P. 28(e) and 30(c)(1); and (5) cited cases for propositions for which they do not stand. *Estate of Ayuyu*, 1996 MP 19 ¶ 33

Appellant ordered to show cause why she should not be taxed double attorney's fees and costs incurred in appeal, and why both appellant and counsel should not be held jointly and severally liable for sanction, for not meeting the standards of merit and good faith required by Com. R. App. P. 38, where: (1) appellant's positions on the facts is found to be internally inconsistent and her legal positions to be wholly without merit, and (2) appellant and her counsel chose to add another twenty months to the procedure by filing an appeal which no reasonable person would think likely to succeed on the merits when the case has been pending for over four years since the filing of the initial labor complaint. *Limon v. Camacho*, 1996 MP 18 ¶ 52

Attorney ordered to show cause why he should not be taxed double costs and attorneys' fees, pursuant to Com. R. App. P.38(a), for not meeting standards of appellate advocacy where: (1) the excerpts of record did not comply with Rule 30(e) of the Commonwealth Rules of Appellate Procedure, (2) critical documents were not included in the record of the appeal, forcing the Court to search the files of a prior appeal in order to review the issues raised, and (3) certain of counsel's arguments were frivolous. *Pangelinan v. Itaman*, 1996 MP 16 ¶ 22

Although record indicated that attorney had filed motions for bad faith purposes, and lacked standing to bring motions in his own name, trial court abused its discretion in sanctioning attorney, pursuant to Com. R. Civ. P. 11, without giving notice that it was contemplating sanction and affording attorney an opportunity to respond. Without notice and an opportunity to respond, attorney was denied his right to due process of law. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 343 (1992).

—Type and Amount

See also **Fees, Reasonableness of**, this topic.

In fashioning the appropriate sanctions to impose, the N.M.I. Supreme Court will consider the nature of the misconduct, the cumulative weight of the violations, and the harm to the public and to the profession. *In re Disciplinary Proceedings of Rhodes*, 2002 MP 2 ¶ 16.

Under its inherent power to control case management, and to regulate the practice of law both in and out of courts, the trial court may consider a range of appropriate sanctions, where litigants or attorneys engage in dilatory conduct. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 25

A trial court must consider and should impose, where appropriate, less drastic sanctions than dismissal of a case on a plaintiff or counsel for dilatory prosecution of a case. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 25

The choice of a particular sanction should fall within the permissible range of the court's discretion in light

of the circumstances of a case and with the objective of achieving compliance with court orders and expediting proceedings. Depending on the context, lesser sanctions (than the sanction of involuntary dismissal) may include conditional orders of dismissal or various types of disciplinary action directed at the erring attorney, including perhaps a fine or a reprimand from the court, a fine, a finding of contempt, or a prohibition against practicing before the court for a specified period of time. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 26

The more the delay in prosecuting an action is attributable to a plaintiff's personal obstruction or was designed to benefit the plaintiff's strategic interest, the more suitable the remedy of dismissal. Conversely, if the delay was caused by the lawyer's disregard of his obligation toward a client, a less drastic sanction imposed directly on the lawyer may be warranted. Dismissal is generally inappropriate and lesser sanctions favored where neglect is plainly attributable to an attorney, rather than a blameless client. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 26

The range of sanctions which may be imposed for attorney misconduct encompasses the assessment of attorney fees incurred by the other party as well the partial or complete forfeiture of the lawyer's compensation. Restatement (Third) of the Law Governing Lawyers §§ 6 & 37 (2000). *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 19

A lawyer engaging in clear and serious violation of duty to a client may be required to forfeit some or all of the lawyer's compensation for the matter. Considerations relevant to the question of forfeiture include the gravity and timing of the violation, its wilfulness, its effect on the value of the lawyer's work for the client, any other threatened or actual harm to the client, and the adequacy of other remedies. Restatement (Third) of the Law Governing Lawyers § 37 (2000). *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 19

An agent is entitled to no compensation for conduct which is disobedient or a breach of duty of loyalty to the principal. Restatement (Second) of Agency § 469 (1958). *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 19

Once a violation of Commonwealth Rules of Civil Procedure 11(b) has been determined, the Superior Court has the discretion to award an appropriate sanction under Rule 11(c). Com. R. Civ. P. 11(b); Com. R. Civ. P. 11(c). *Ferreira v. Borja*, 1999 MP 23 ¶ 12.

If the Superior Court exercises its discretion under Commonwealth Rules of Civil Procedure 11(c)(2) to award attorney fees as a sanction, then the fees must be reasonable and a direct result of the violation. Com. R. Civ. P. 11(c)(2). *Ferreira v. Borja*, 1999 MP 23 ¶ 12.

Sanctions must be limited to what is sufficient to deter repetition of the sanctionable conduct. If the court awards attorney fees as part of a sanction, such fees must be reasonable and must be incurred as a direct result of the violation. Com. R. Civ. P. 11(c)(2). *Ferreira v. Borja*, 1999 MP 23 ¶ 12.

The party to whom attorney fees have been awarded bears the burden of demonstrating that the time expended was reasonable. *Ferreira v. Borja*, 1999 MP 23 ¶ 13.

Where the amount of attorney fees requested is excessive, due to billing practices such as block billing, billing for interoffice conferencing, vague billing entries and billing excessive time for research, the appropriate remedy is to deny the fee motion in its entirety. To do otherwise would encourage litigants to make unreasonable demands, since the worst that could happen is that the award would be reduced to a reasonable amount. *Ferreira v. Borja*, 1999 MP 23 ¶ 18.

NMI Supreme Court has broad discretion to fashion an appropriate sanction for violation of Com. R. App. P. 38(b). Sanctions may be imposed on the attorney, the client, or both. Sanctions should be allocated among the persons responsible for the offending document, based on their relative culpability. Com. R. App. P. 38(b). *Tenorio v. Superior Ct.*, 1 N.M.I. 112 (1990).

——Particular Cases

Because appeal of sanctions imposed by trial court upon attorney for including cause of action in complaint that was not well grounded in law was in itself frivolous, NMI Supreme Court would assess single costs and reasonable attorney's fees as to the legally implausible cause of action. Com. R. App. P. 38(a). *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79 (1992).

In appeals from eminent domain actions, counsel for landowners and the office of NMI Attorney General were each sanctioned $2,000 for failing to clearly and fully present posture of actions in previous or current appeals. Com. R. App. P. 38(b). *Commonwealth v. Bordallo*, 2 N.M.I. 226 (1991).

Trial Assistants

—Generally

DC App. Div. 1984. Trial assistant, even though not educated as a lawyer, is held to same standard of ethical competence. *In Re the Matter Villanueva*, 1 CR 952

—Limitations

DC App. Div. 1984. Limitation is disciplinary order that purported to restrict trial assistant to trial work and prevent him from conducting a general law practice was invalid under existing Rules of Criminal Procedure. NMI Const., Art. IV, §8; Trust Territory Rule Crim. Pro. 3(f). *In Re Matter Villanueva*, 1 CR 952

Unauthorized Practice

CTC 1988. The preparation of corporate articles, bylaws, and charter, and other documents necessary to establish a corporation is the practice of law. *In re the Matter of Villanueva*, 3 CR 316.

CTC 1988. The mere holding out by a layman that he is practicing or is entitled to practice law constitutes the unauthorized practice of law. *In re the Matter of Villanueva*, 3 CR 316.

CTC 1988. The charging and receiving of fees is an indication of practicing law. *In re the Matter of Villanueva*, 3 CR 316.

Withdrawal from Representation

—Generally

Disposition of motion by counsel to withdraw from representation of client pursuant to Com. R. Prac. 5(d) is within broad discretion of court. *Hwang Jae Corp. v. Marianas Trading & Dev. Corp.*, 4 N.M.I. 142 (1994).

An unopposed motion by an attorney to withdraw as counsel based upon adverse interests between nonconsenting clients should be considered on its merits alone and not in light of procedural matters. *Hwang Jae Corp. v. Marianas Trading & Dev. Corp.*, 4 N.M.I. 142 (1994).

—Particular Cases

Attorney general's office was disqualified from representing either party where AGO initially represented both defendant and the office of the governor; AGO withdrew from representation of defendant; AGO continued to represent the office of the governor and did not get prior consent of defendant; AGO's representation of the office of the governor was directly adverse to defendant; and trial testimony elicited by AGO used privileged, confidential information directly adverse to defendant's position. 7 CMC §§ 2301, et seq. *Jasper v. Quitugua*, 1999 MP 4 ¶ 12

ATTORNEYS' FEES

Appeal and Error

DC App. Div. 1987. The Appellate Division of the District Court reviews attorney's fees awards for abuse of discretion. *Saipan Secretarial/Employment Services, Inc. v. CNMI*, 3 CR 168.

DC App. Div. 1985. In order to reverse the trial court's award of attorney's fees and costs, the Appellate Division must find an abuse of discretion. *Blanco v. Nauru Local Government Council*, 2 CR 392.

Bad Checks

DC App. Div. 1987. Where statute provides that the court shall award not less than $125 nor more than $250 for each check written without sufficient funds, trial court's interpretation of the Bad Checks Act where the court awarded attorney's fees of $250 where defendant wrote 14 bad checks was in error; proper award was $1,750 computed under the statute at $125 per check. 7 CMC §2442(b). *Penny's Store v. Taisacan*, 3 CR 54.

Burden Of Proof

DC NMI 1987. The burden is upon the attorney fee applicant to produce satisfactory evidence, in addition to affidavits of its counsel, that the hourly fees sought conform to those prevailing in the community for similar services of lawyers of reasonably competent skill and reputation and if the burden is met, the resulting product is presumed to be the reasonable fee. 42 U.S.C §1988. *Temengil v. Trust Territory of the Pacific Islands*, 3 CR 224, rev'd, 881 F.2d.647 (9th Cir. 1989).

DC NMI 1987. The burden of showing justification for an upward adjustment in a fee request is on the litigant and such an adjustment is appropriate only

where it is necessary to provide fair and reasonable compensation. *Temengil v. Trust Territory of the Pacific Islands*, 3 CR 224, rev'd, 881 F.2d.647 (9th Cir. 1989).

Common Benefit

CTC 1983. Where plaintiff's suit challenged the validity of public land corporation's decision to buy land due to the conflict of interest of two board member who voted a approve the payment of money to certain landowners, and where plaintiff did not make an issue of whether the actual figure of $5.00 a square meter for the acquisition of the land was reasonable, and where it is only speculation that the end result of plaintiff's action will reap a common benefit and preserve a fund, it cannot be concluded that plaintiff has, in effect, provided a common benefit to the citizens of the Commonwealth in monetary terms, and therefore an award of attorneys fees would be denied. *Romisher v. Marianas Public Land Corporation*, 1 CR 873.

Factors Considered

In evaluating the reasonableness of attorney fees, the court considers the time and labor required, the novelty and difficulty of the questions involved, and the skill required to properly perform the legal service. *In the Matter of the Estate of Malite*, 2010 MP 20 ¶ 41 (2010).

Since attorney fee awards are reviewed for an abuse of discretion, lower courts are granted wide latitude in awarding fees. With this power comes a responsibility to ensure that all relevant attorney fee factors are considered. There is no formula, and a trial court must exercise its discretion and wisdom to tailor the balancing of factors to the particular circumstances in a given case. What is crucial for purposes of our ruling is not how the factors are balanced, but that the lower court must consider more than only time billings. While time billings constitute an important element of a reasonableness hearing as the Court considers the time and labor a case required, billings alone are insufficient. In many cases, a court will want to consider the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the requested legal services. Depending on the circumstances in a given case, some factors may be weighted more heavily than others. *In the Matter of the Estate of Malite*, 2010 MP 20 ¶ 44 (2010).

Awarding attorney fees involves a two-step process. First, the court must determine whether the requested fees are reasonable. This requires a court to consider all fee agreements and relevant MRPC Rule 1.5 factors. Second, the court must determine the appropriate fee award. If requested fees are deemed reasonable, they may be awarded. If the fees are declared unreasonable, the court must determine the appropriate remedy. A court must review the information gathered during the reasonableness hearing and determine what fee award is reasonable. While complete denial of fees may be appropriate, this will not always be the case. *In the Matter of the Estate of Malite*, 2010 MP 20 ¶ 45 (2010).

DC NMI 1987. In determining an award of attorney fees the most useful starting point is the number of hours reasonably expended on the litigation multiplied by areasonable hourly rate and the product of this calculation may then be adjusted on the basis of other considerations, but there is a strong presumption that this lodestar figure represents a "reasonable" fee. *Temengil v. Trust Territory of the Pacific Islands*, 3 CR 224, rev'd, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1987. An upward adjustment in an attorneys fee award based upon considerations other than a reasonable hourly rate and the time expended is proper only in rare and exceptional cases, and when supported by specific evidence on the record and detailed findings by the trial court. 42 U.S.C. §1988. *Temengil v. Trust Territory of the Pacific Islands*, 3 CR 224, rev'd, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1987. The critical inquiry in determining a reasonable attorney's fee under the civil rights statute is the reasonable hourly rate, and that the prevailing market rate in the community is indicative of a reasonable hourly rate. 42 U.S.C. §1988. *Temengil v. Trust Territory of the Pacific Islands*, 3 CR 224, rev'd, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1987. Adjustments, if any, to the lodestar figure in attorney fee awards, are to be made using the twelve-factor test considering: (1) the time and labor required; (2) the novelty and difficulty of the question involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other

employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. 42 U.S.C. §1988. *Temengil v. Trust Territory of the Pacific Islands*, 3 CR 224, rev'd, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1987. Where a significant number of hours were spent preparing a case of first impression and high impact in the Micronesian community by attorney who exhibited notable degree of skill, and where award secured would be approximately $20 million, attorney would be entitled to a fee of $265,608, representing an hourly rate of $117.50 for 452.1 hours with a multiplier of 5. *Temengil v. Trust Territory of the Pacific Islands*, 3 CR 224, rev'd, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1987. Attorney's activities as lead counsel for intervenors and absent class members in a class action lawsuit placed upon him an added responsibility, which he faithfully met, entitling him to a multiplier of one and one half where his efforts contributed significantly to obtaining a large judgment on behalf of class members. *Temengil v. Trust Territory of the Pacific Islands*, 3 CR 224, rev'd, 881 F.2d 647 (9th Cir. 1989)

CTC 1986. The court evaluates an attorney's fees request by using the factors of time, hourly charge, and the expertise and professional competence of the attorneys. *Saipan Secretarial/Employment Services, Inc. v. CNMI*, 2 CR 700, aff'd, 3 CR 168 (DNMI App. Div. 1987).

Time for Consideration

CTC 1986. The trial court can proceed to consider attorney's fees issues after the filing of a notice of appeal. *Saipan Secretarial/Employment Services, Inc. v. CNMI*, 2 CR 700, aff'd, 3 CR 168 (DNMI App. Div.1987).

Time Records

DC NMI 1987. The time records submitted by counsel in support of a request for attorneys fees must be sufficiently detailed that a neutral judge could make a fair evaluation of the time expended, the nature of and for the service, and the reasonable fees to be allowed. *Temengil v. Trust Territory of the Pacific Islands*, 3 CR 224, rev'd, 881 647 F.2d (9th Cir. 1989).

Waiver

CTC 1987. Statutory mandate requiring liquidated damages and attorneys fees does not preclude the plaintiff, a nonresident worker, from waiving these particular remedies pursuant to a court approved settlement agreement. 3 CMC §4447(d). *Tanoco v. Southern Cross Investment Corporation*, 3 CR 20.

BANKING

Code

—Private Right of Action

DC App. Div. 1989. Where there was neither legislative history nor direct precedent to support the trial court's conclusion that a private right of action may be inferred under the banking law from the circumstances presented, court erred in creating a private right of action against the Government for violation of a banking regulation. *CNMI v. Micronesian Insurance Underwriters, Inc.*, 3 CR 731.

—Purpose

CTC 1986. The CNMI banking regulations and the banking code show a clear intent to impose a duty on the directors to protect depositors and provides a duty running from the Director of Commerce and Labor to the depositors. 4 CMC §6101 et seq. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 777, rev'd in part and aff'd in part, 3 CR 73 1 (DNMI App. Div. 1989).

Finance

—Motor Vehicles

CTC 1988. A bank or commercial lender involved in a financial transaction in which an automobile is financed has no affirmative duty to investigate whether the driver has a driver's license before advancing funds. *Formanes v. Sablan*, 3 CR 309.

BANKRUPTCY

Automatic Stay

—Dissolution

DC NMI 1983. The proper and necessary method to seek dissolution of the automatic stay is to commence an adversary proceeding requesting relief from the automatic stay. 11 U.S.C. §362. *Island Aviation, Inc. v. Mariana Islands Airport Authority*, 1 CR 734.

—Dismissal

DC NMI Bkcy. Div. 1986. Where debtor has failed to timely file both a list of creditors and a plan for reorganization, the bankruptcy court will dismiss the petition upon motion of the creditor notwithstanding violation by the creditor of the automatic stay provided by statute. *In Re Short*, 2 CR 478.

—Generally

DC NMI 1983. The stay of proceedings applicable upon the filing of a petition in bankruptcy becomes effective automatically upon filing of the petition and formal service or notice is not required; the filing of the petition operates as notice to the world. 11 U.S.C. §362(a). *Island Aviation, Inc. v. Mariana Islands Airport Authority*, 1 CR 734.

DC NMI 1983. Exception to the automatic stay provision of the bankruptcy laws applicable to the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's policy or regulatory power does not apply when the object of the government action is to enforce collection of pre-petition debt. 11 U.S.C. §362(b)(4). *Island Aviation, Inc. v. Mariana Islands Airport Authority*, 1 CR 734.

DC NMI 1983. The automatic stay under the federal bankruptcy laws remains in effect until a final discharge is granted or denied, or until such time as the court otherwise determines. 11 U.S.C. § 362(b)(4). *Island Aviation, Inc. v. Mariana Islands Airport Authority*, 1 CR 734.

—Reorganization

——Secured Loans

DC NMI Bkcy. Div. 1988. A debtor is precluded from curing the default on her home loan through a reorganization plan where the loan matured before the filing of her petition for bankruptcy. 11 U.S.C. §1332 (b). *In re Aldan*, 3 CR 399.

——Waiver

DC NMI 1983. The automatic stay provisions of the federal bankruptcy law were enacted for the benefit of debtors and, therefore, any right to a stay which the debtor may have can be waived. 11 U.S.C. §362. *Island Aviation, Inc. v. Mariana Islands Airport Authority*, 1 CR 734.

DC NMI 1983. Inaction by the debtor, or mere compliance in the continuation of judicial proceedings, does not result in waiver of the automatic stay under the federal bankruptcy law. 11 U.S.C. §362. *Island Aviation, Inc. v. Mariana Islands Airport Authority*, 1 CR 734.

CITIZENSHIP

Covenant

DC NMI 1987. The phrase “citizen of the Trust Territory” in citizenship section of Covenant includes a person born in the Trust Territory who has or had one parent born in the Trust Territory. Covenant, Article III, §301. *Dela Cruz v. United States of America*, 3 CR 108.

DC NMI 1987. The phrase "who on that date do not owe allegiance to any foreign state" in citizenship section of Covenant means such persons who have affirmed under oath that they do not consider themselves to have owed allegiance to any foreign state as of November 3, 1986. Covenant, Article III, §301. *Dela Cruz v. United States of America*, 3 CR 108.

DC NMI 1987. The reference to "all persons" in citizenship section of Covenant shall be construed to refer to any person and his or her child or children. Covenant, Article III, §301. *Dela Cruz v. United States of America*, 3 CR 108.

CTC 1983. Provision of permanent residency law that excluded from qualifying for citizenship persons who were present in the Northern Marianas pursuant to a work or other temporary permit was in direct conflict with the intent and design of the Covenant and the Commonwealth Constitution as to those persons who lived in the Commonwealth before January 1, 1974. Covenant, §301; C.N.M.I. Const., Sch. Trans. Mat., §8(c); N.M.I. Public Law 5-19 §6(c)(6) [l C.M.C. §6203(f)]. *Pablo v. Northern Marianas Board of Elections*, 1 CR 381.

Domicile

CTC 1983. Person who lists a local address in the Northern Marianas, has not been in the Philippines for the last several years except for a brief stay, does not own a home or property in the Philippines, holds

a Northern Marianas driver's license but not a Philippine license, and has not paid taxes or voted in the Philippines for over five years, although he supported family members in the Philippines, has established a domicile in the Northern Marianas. *Pablo v. Northern Marianas Board of Elections*, 1 CR 381.

CIVIL PROCEDURE

Answer

—Affirmative Defenses

DC App. Div. 1988. Although generally failure to plead an affirmative defense in the answer results in the waiver of that defense and its exclusion from the case, the court has a duty sua sponte to raise the issue of the illegality of a contract in the interest of the administration of justice. Comm.R.Civ.P. 8(c). *Loren v. E'Saipan Motors, Inc.*, 3 CR 564.

CTC 1989. Where the answer of party opposing summary judgment does not allege any affirmative defense of illegality opposition to motion for summary judgment cannot be based on illegality. Com.R.Civ.P. 8(c). *Bufton v. Ha*, 3 CR 776.

Attorney's Fees

See also **Final Judgment – Costs**, this topic; determination of reasonable fees, see **ATTORNEY AND CLIENT – Fees, Reasonableness of**.

In general, the award of attorney fees is governed by the common law American Rule, which states that parties must bear their own costs of litigation. There are several exceptions to the American Rule, which allow for the winning party to collect attorney fees and costs, including when authorized by statute, agreed to by contract, or when allowed in judicially established equitable circumstances. *Reyes v. Reyes*, 2004 MP 1 ¶ 79

Commonwealth law does not expressly authorize the award of attorney's fees in divorce proceedings. In the absence of written law, the common law controls. *Reyes v. Reyes*, 2004 MP 1 ¶ 80

An award of attorney fees based solely on gender is untenable discrimination based on sex in direct violation of the CNMI Constitution. *Reyes v. Reyes*, 2004 MP 1 ¶ 81

A court may award attorney fees without specific statutory authorization when an equitable exception to the American Rule, such as bad faith, is evident. *Reyes v. Reyes*, 2004 MP 1 ¶ 82

When determining the reasonableness of an award of attorney's fees, the court needs sufficient details to evaluate the reasonableness of the time expended and the expense incurred. *Reyes v. Reyes*, 2004 MP 1 ¶ 84

—Contract Terms

Where parties to option contract agreed that if one of them brought court proceeding for interpretation or enforcement of option, prevailing party would be entitled to recover attorney's fees, party who prevailed on issue relating to interpretation of term in option was entitled to recover attorney's fees. *Wabol v. Camacho*, 4 N.M.I. 388 (1996).

NMI Supreme Court would reverse trial court's award of attorney's fees to contract promisee based on erroneous interpretation of lapsed option contract and remand for entry of award of attorney's fees in favor of promisor, with no interest. On remand, trial court could consider arguments with respect to offset merited by promisor's return of promisee's earnest money. *Wabol v. Camacho*, 4 N.M.I. 388 (1996).

—Prevailing Party

In order for a party's liability for attorney fees to arise, the opposing party must be the prevailing party in the litigation. *Century Ins. Co., Ltd. v. Guerrero Bros., Inc., et al.*, 2010 MP 13 ¶ 17 (2010).

A prevailing party may be the party prevailing in interest, and not necessarily the prevailing person. To be such does not depend upon the degree of success at different stages of the suit, but whether, at the end of the suit the party who has made a claim against the other, has successfully maintained it. *Century Ins. Co., Ltd. v. Guerrero Bros., Inc., et al.*, 2010 MP 13 ¶ 18 (2010).

With regard to an award of attorney fees in a suit with multiple causes of action, where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified. In these circumstances the fee award should not be reduced simply because the plaintiff failed to prevail on every

contention raised in the lawsuit. Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee. The result is what matters. *Century Ins. Co., Ltd. v. Guerrero Bros., Inc., et al.*, 2010 MP 13 ¶ 19 (2010).

Deciding whether there is a party prevailing on the contract, the trial court is to compare the relief awarded on the contract claim or claims with the parties' demands on those same claims and their litigation objectives as disclosed by the pleadings, trial briefs, opening statements, and similar sources. The prevailing party determination is to be made only upon final resolution of the contract claims and only by a comparison of the extent to which each party has succeeded and failed to succeed in its contention. *Century Ins. Co., Ltd. v. Guerrero Bros., Inc., et al.*, 2010 MP 13 ¶ 19 (2010).

Whether a litigant is a prevailing party is determined not based on whether the party prevails on a certain cause of action, but based on whether it is successful on the whole at the end of the litigation. *Century Ins. Co., Ltd. v. Guerrero Bros., Inc., et al.*, 2010 MP 13 ¶ 19 (2010).

With regard to an award of attorney's fees in a suit with multiple claims, the awarding court should focus on the significance of the overall relief obtained by the prevailing party in relation to the hours reasonably expended on the litigation. Where a prevailing party has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified. In these circumstances the fee award should not be reduced simply because the prevailing party failed to prevail on every contention raised in the lawsuit. Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee. The result is what matters. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 65 (2010).

If an attorney achieves only partial success in litigation, then a reduction of a fee award is warranted, but determining the reduced amount of fees to award cannot be based on a mathematical formula. The trial court has discretion in determining the amount of a fee award, and considers the relative importance of various issues, the interrelation of the issues, the difficulty in identifying issues, and the extent to which a party may prevail on various issues. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 65 (2010).

An exception to the duty of a prevailing party's attorney to segregate work on several causes of action arises when the attorney fees rendered are in connection with claims arising out of the same transaction and are so interrelated that their prosecution or defense entails proof or denial of essentially the same facts. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 66 (2010).

A prevailing party cannot recover attorney's fees based on vague billing entries or excessive research. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 70 (2010).

A party may be entitled to attorney's fees even though the fees are not authorized by statute in light of equitable considerations, such as one party's bad faith. Commonwealth courts may award fees irrespective of statutory authority when the common law provides for such awards. The commonly recognized equitable exceptions to the American Rule include the common fund, substantial benefit, private attorney general, third-party tort, and bad faith. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 71 (2010).

An equitable award of attorney's fee is inappropriate for a breach of the covenant of good faith and fair dealing claim. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 71 (2010).

Prevailing in litigation differs from prevailing on a cause of action. A prevailing party may be the party prevailing in interest, and not necessarily the prevailing person. To be such does not depend upon the degree of success at different stages of the suit, but whether, at the end of the suit, the party who has made a claim against the other has successfully

maintained it. *Camacho v. L & T Int'l Corp.*, 4 N.M.I. 323 (1996).

Bifurcation of Trial

—Applications, Particular

Propriety of separate trial on issue of whether a statute of limitations bars an action depends on whether one of three reasons stated in Com. R. Civ. P. 42(b) is satisfied: furtherance of convenience, avoidance of prejudice or if separate trials would be conducive to expedition and economy. *Dilutaoch v. C & S Concrete Block Prods.*, 1 N.M.I. 478 (1991).

—Generally

Whether Superior Court abused its discretion by not allowing a continuance is determined on the following four factors: (1) the movant's diligence in efforts to ready defense prior to the date set for hearing; (2) the likelihood that the need for a continuance could have been met if the continuance had been granted; (3) the extent to which a continuance would have inconvenienced the court and opposing party; and (4) the extent to which the movant might have suffered harm as a result of the denial. *Desince v. Sablan*, 1997 MP 20 ¶7

A decision to order a separate trial of any claim is within the discretion of the trial court. Com. R. Civ. P. 42(b). *Dilutaoch v. C & S Concrete Block Prods.*, 1 N.M.I. 478 (1991).

—Particular Cases

It was error to conduct case as bifurcated trial and cases against each defendant should be tried separately where issues were too interrelated to be tried together and some issues were proper for the judge's ears only, while others were exclusively before the jury to consider. *Jasper v. Quitugua*, 1999 MP 4 ¶18

Trial court did not abuse its discretion in ordering a separate trial on issue of whether action was barred by statute of limitations; bifurcation was conducive to expedition and economy, and avoided prejudice. *Dilutaoch v. C & S Concrete Block Prods.*, 1 N.M.I. 478 (1991).

Class Actions

—Certification

DC NMI 1987. Where: (1) there were approximately 1000 similarly situated individual shareholders and former shareholders throughout Micronesia and the United States; (2) law suit sought to enjoin airline from gaining control of another airline through its efforts to acquire stock via a scheme which allegedly included violations of federal law; (3) common questions of law and fact were presented; (4) plaintiffs claims were typical of the class; and (5) the plaintiffs and their attorneys have and would fairly and adequately protect the interests of the class members, initial requirements for class certification were satisfied. Fed.R.Civ.Pro. 23 (a). *People of Micronesia, Inc. v. Continental Air Lines, Inc.*, 3 CR 84.

DC NMI 1987. Where court could conceive of situations in which inconsistent adjudications could result, particularly in light of the fact that aspects of the dispute were before several courts in the United States as well as in the Federated States of Micronesia, and the resolution of a single plaintiff's claim could be dispositive of non-class members interests, plaintiff's claims met the requisites of both prongs of class certification requirement rule. Fed.R.Civ.P. 23(b)(1)(A); 23(b)(1)(B). *People of Micronesia, Inc. v. Continental Air Lines, Inc.*, 3 CR 84.

DC 1987. Where plaintiffs' class action suit alleges that airline has acted to the detriment of all proposed class members and the complaint asks for declaratory and injunctive relief against the airline, plaintiffs' claims met requirements of class action certification rule. Fed.R.Civ.P. 23(b)(2). *People of Micronesia, Inc. v. Continental Air Lines, Inc.*, 3 CR 84

—Consolidation

DC NMI 1985. Where moving plaintiffs in second employment discrimination action are already include within class as certified in first action, their motion to consolidate is not appropriate and will be denied. *Temengil v. Government of Trust Territory of the Pacific Islands*, 2 CR 34

—Notice

DC NMI 1987. Where objection to the content of class action notice based on its failure to instruct class members of the availability of opting-out of the settlement was made by a nonparty to the action, who was also not a member of the proposed class, nonparty did not have standing to object to the settlement, whether objections related to form or

substance of the notice. *People of Micronesia, Inc. v. Continental Air Lines, Inc.*, 3 CR 84.

DC NMI 1987. Where rule under which class action was certified did not require that notice to potential class members include language of the availability of the opt-out provision, opt-out language is not required in the notice, and therefore objection to the notice was without merit. Fed. R.Civ.P. 23(b)(1),(2). *People of Micronesia, Inc. v. Continental Air Lines, Inc.*, 3 CR 84.

—Settlement

DC NMI 1987. The universally applied standard as to whether to approve a class action settlement is whether the settlement is fundamentally fair, adequate, and reasonable and the District Court's determination is an amalgam of delicate balancing, gross approximations, and rough justice. Fed.R.Civ.P. 23(c). *People of Micronesia, Inc. v. Continental Air Lines, Inc.*, 3 CR 84.

DC NMI 1987. Where, following years of intense negotiations, the parties in a class action suit arrived at a settlement of all claims and causes of action which would result in compensation to individuals for their alleged injuries and leave airline on its feet ready to operate as a viable concern in Micronesia, the court deemed that the settlement of the class action was fair and in the best interests of all interested parties and the settlement would be approved. Fed.R.Civ.P.23(c). *People of Micronesia, Inc. v. Continental Air Lines, Inc.*,3 CR 84.

Complaint and Answer

See also **Pleading**, this topic.

—Generally

DC NMI 1982. When reviewing a complaint's relief prayer, courts are not bound by the particular remedial labels affixed by plaintiff. *Bauer v. McCoy*, 1 CR 248.

—Amended Complaint

A plaintiff is automatically entitled to amend their complaint once, even after the filing of a motion to dismiss, since a motion to dismiss is not a pleading. *Guo Qiong He v. Commonwealth*, 2003 MP 3 ¶ 10

Once filed, an amended complaint supersedes the original. The original complaint no longer performs any function and is treated thereafter as nonexistent. *Guo Qiong He v. Commonwealth*, 2003 MP 3 ¶ 11

If a plaintiff files an amended complaint, prior to the ruling on a motion to dismiss, the ruling of the court based on the original complaint cannot control the disposition of a defendant's motion to dismiss. *Guo Qiong He v. Commonwealth*, 2003 MP 3 ¶ 12

—Amendment

CTC 1987. In the absence of any good reason for denial, such as undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to defendant, or futility of amendment, leave to amend a complaint should be freely given. Com.Tr.C.R.Civ.P. 15(a). *Tenorio v. Camacho*, 3 CR 249.

CTC 1987. While delay in amending the complaint is never sufficient in itself to deny amendment of the complaint, the longer a party has delayed in bringing the amendment, the less prejudice must be shown to justify denying leave to amend, although undue prejudice alone could justify denying leave to amend. Com.Tr.C.R. Civ.P. 15(a). *Tenorio v. Camacho*, 3 CR 249.

CTC 1987. A party who inexcusably delays in seeking leave to amend is in effect holding back the lawsuit contrary to the policy of the federal and Commonwealth rules in favor of "the just, speedy and inexpensive determination of every action." Com.Tr.C.R.Civ.P. 1. *Tenorio v. Camacho*, 3 CR 249.

CTC 1987. Defendant unduly delayed in moving for leave to amend cross-claim where: (1) the court extended defendant's time for filing cross-claim once; (2) defendant made no showing as to any extraordinary reasons as to why there was a delay until three months before trial to attempt to amend the cross-claim; (3) the new allegations in defendant's proposed amended cross-claim contained no new facts which were not known to defendant at the time defendant filed his original cross-claim; and (4) the court granted defendant's first request for an extension to file his cross-claim, court made it clear that no further extensions would be granted. Com.Tr.C.R. Civ.P. 15(a). *Tenorio v. Camacho*, 3 CR 249.

CTC 1987. Co-defendants would suffer prejudice if another defendant were allowed to amend his cross-claim at a late date, because the co-defendants would not only be forced to file a new answer to the cross-

claim but would likely be compelled to take the cross-claim plaintiffs deposition once again. Com.Tr.C.R.Civ.P. 15(a). *Tenorio v. Camacho*, 3 CR 249.

CTC 1987. Motions to amend made after the time to amend has been cut off will be denied if such an amended complaint would force the opposing party to engage in extensive and costly new discovery in order to respond to the amended complaint, thus denying all of the parties to the suit, a reasonably speedy disposition of the action. Com.Tr.C.R.Civ.P. 15(a). *Tenorio v. Camacho*, 3 CR 249.

DC NMI 1983. Leave to amend should be freely granted in the absence of undue delay, bad faith, dilatory motive, failure to cure previous deficiencies, or undue prejudice. *Island Aviation, Inc. v. Mariana Islands Airport Authority*, 1 CR 353.

—Construction

DC NMI 1986. Where the prayer evidences a demand only for monetary relief, and where government remedial actions have mooted any need for injunctive relief, the complaint will be construed as one for strictly monetary relief notwithstanding claims in the body of the complaint for equitable relief. *Employment Consultants, Inc. v. O'Connor*, 2 CR 535.

DC NMI 1985. Under the Federal Rules of Civil Procedure, a complaint will be construed broadly and liberally so as to do substantial justice. Fed. R. Civ. P. 8. *Luna v. Kamata*, 2 CR 29.

—Exhibits

——Particular Cases

Defendants in quiet title action who did not deny in their answer that copy of deed of gift attached to complaint represented actual deed of gift at issue made judicial admission of copy as deed at issue. Because the copy was deemed admitted at the pleading stage, trial court did not err in admitting copy into evidence at trial. Admission of copy into evidence was mere formality. *Manglona v. Kaipat*, 3 N.M.I. 322 (1992).

Since plaintiff's letter to agency alleging that agency failed to follow its regulations was attached to his complaint as an exhibit, it could be regarded as part of the complaint. Com. R. Civ. P. 10(c). *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270 (1991).

Contempt of Court

See **COURTS – Contempt – Civil**

Continuance

—Generally

A trial court has broad discretion in deciding to grant or deny a motion for continuance and an appellate court will only disturb the trial court's determination if there was a manifest or gross abuse of discretion. *Fitial v. Kim Kyung Duk*, 2001 MP 9 ¶ 23

While no single factor is dispositive, on appeal, the court will consider four factors in reviewing a denial of a motion for continuance: the movant's diligence in his efforts to ready his defense prior to the hearing on the motion; the likelihood that a continuance would have satisfied the need for one; the extent a continuance would have inconvenienced the court and opposing party; and the extent of harm movant might have suffered due to the denial. *Fitial v. Kim Kyung Duk*, 2001 MP 9 ¶ 23

The Supreme Court will not reverse the trial court's denial of a motion for continuance unless the movant can show prejudice by the denial and the denial was arbitrary or unreasonable. *Fitial v. Kim Kyung Duk*, 2001 MP 9 ¶ 23

When prejudice suffered by a movant as a result of the denial of a continuance is due to his own lack of diligence in seeking new counsel once he learns of his counsel's intent to withdraw, the appellate court will not reverse the trial court's denial of a motion for continuance. *Fitial v. Kim Kyung Duk*, 2001 MP 9 ¶ 28

Whether Superior Court abused its discretion by not allowing a continuance is determined on the following four factors: (1) the movant's diligence in efforts to ready defense prior to the date set for hearing; (2) the likelihood that the need for a continuance could have been met if the continuance had been granted; (3) the extent to which a continuance would have inconvenienced the court and opposing party; and (4) the extent to which the movant might have suffered harm as a result of the denial. *Desince v. Sablan*, 1997 MP 20 ¶7

Whether denial of a continuance is an abuse of discretion turns largely upon circumstances of individual case. These are to be considered in light of four factors: (1) movant's diligence in efforts to

ready his defense prior to date set for hearing; (2) likelihood that need for continuance could have been met if continuance had been granted; (3) extent to which continuance would have inconvenienced court and opposing party; and (4) extent to which movant might have suffered harm as a result of denial. Appellate court examines facts of each case in relation to these four factors. Factors are to be weighed, and no one factor is dispositive in affirming trial court decision. However, appellant must be able to show that he was prejudiced by denial for appellate court to reverse trial court's ruling. *Hwang Jae Corp. v. Marianas Trading & Dev. Corp.*, 4 N.M.I. 142 (1994).

To justify a continuance to procure evidence, the evidence sought must be relevant to the case. *Hwang Jae Corp. v. Marianas Trading & Dev. Corp.*, 4 N.M.I. 142 (1994).

It is in the interest of judicial economy and efficiency that cases are resolved quickly. Degree to which a court would be inconvenienced by granting a requested continuance depends upon circumstances of each case. *Hwang Jae Corp. v. Marianas Trading & Dev. Corp.*, 4 N.M.I. 142 (1994).

Where a party's own lack of diligence causes the prejudice of which party complains, denial of a requested continuance is not an abuse of discretion. *Hwang Jae Corp. v. Marianas Trading & Dev. Corp.*, 4 N.M.I. 142 (1994).

Trial court abuses its discretion in denying motion for continuance where a balancing of four factors (movant's diligence in efforts to ready defense prior to date set for hearing, likelihood that need for continuance could have been met if continuance had been granted, extent to which continuance would have inconvenienced court and opposing party, and extent to which movant might have suffered harm as result of denial) weighs in movant's favor and it is clear that movant is prejudiced through no fault of its own. *Hwang Jae Corp. v. Marianas Trading & Dev. Corp.*, 4 N.M.I. 142 (1994).

However busy counsel may be, a mere busy schedule is not, by itself, grounds for a continuance. *Manglona v. Kaipat*, 3 N.M.I. 322 (1992).

To obtain a continuance, the harm which the movant would suffer if the continuance is not granted must not be caused by the movant. *Manglona v. Kaipat*, 3 N.M.I. 322 (1992).

In determining whether a trial court has abused its discretion in denying a motion for a continuance, NMI Supreme Court considers: (1) movant's diligence in efforts to ready his or her case prior to trial; (2) likelihood that need for a continuance could have been met if a continuance had been granted; (3) extent to which granting the continuance would have inconvenienced the court and the opposing party, including opposing party's witnesses; and (4) extent to which movant might have suffered harm as a result of the denial. No one factor is dispositive; the court evaluates each in order to determine whether denial of continuance was unreasonable. *Commonwealth v. Bordallo*, 2 N.M.I. 226 (1991).

The four factors to be considered in reviewing a denial of a motion for continuance are: (1) the movant's diligence in his efforts to ready his defense prior to the date set for hearing; (2) the likelihood that the need for a continuance could have been met if the continuance had been granted; (3) the extent to which a continuance would have inconvenienced the court and the opposing party; and (4) the extent to which the movant might have suffered harm as a result of the denial of the continuance. No one factor is dispositive, but if an appellant cannot show prejudice by the denial of the continuance, trial court's ruling will not be reversed. *In re Adoption of Olopai*, 2 N.M.I. 91 (1991).

e four factors to be considered in reviewing a denial of a motion for continuance are: (1) the movant's diligence in his efforts to ready his defense prior to the date set for hearing; (2) the likelihood that the need for a continuance could have been met if the continuance had been granted; (3) the extent to which a continuance would have inconvenienced the court and the opposing party; and (4) the extent to which the movant might have suffered harm as a result of the denial of the continuance. No one factor is dispositive, but if an appellant cannot show prejudice by the denial of the continuance, trial court's ruling will not be reversed. *Guerrero v. Guerrero*, 2 N.M.I. 61 (1991).

—Particular Cases

Trial court did not abuse its discretion in denying defendant's motion for continuance to retain new counsel after defendant's attorney moved to withdraw as counsel prior to trial because defendant did not exercise due diligence in preparing for trial and retaining new counsel. *Deleon Guerrero v. Nabors*, 4 N.M.I. 31 (1993).

Trial court did not abuse its discretion in denying defendants' motion for continuance of trial in quiet title action. Record indicated that defendants had not diligently pursued discovery. Fact that trial court and opposing party may have been minimally inconvenienced by a continuance did not mean that a continuance should have been granted where defendants failed for two months after trial date was set to attempt to conduct discovery. *Manglona v. Kaipat*, 3 N.M.I. 322 (1992).

In appeal from denial of motion for continuance in eminent domain actions, where: (1) record showed that, for good reasons, landowners' expert witness was unable to testify; (2) landowners could not produce an expert witness unless a continuance was granted; (3) continuance would not necessarily inconvenience the court but might inconvenience opposing party; and (4) landowners were harmed by denial of continuance in that they were denied opportunity to present expert witness, trial court abused discretion in denying motion. *Commonwealth v. Bordallo*, 2 N.M.I. 226 (1991).

Trial court abused its discretion in denying motion for continuance in adoption proceeding because: (1) movant (biological father whose parental rights would have been terminated) was not given time to file response to petition; (2) record did not show that court would be inconvenienced and, although petitioner would have been inconvenienced, his inconvenience would have been minimal compared to prejudice suffered by movant; and (3) denial of continuance severely prejudiced movant. *In re Adoption of Olopai*, 2 N.M.I. 91 (1991).

Party lacked diligence in readying herself for trial by seeking substitute counsel after her counsel withdrew a month and a half in advance of trial, and she was aware that no further continuance would be granted. Prejudice caused by party's lack of diligence was not reasonable excuse for seeking continuance; denial of continuance would be upheld. *Guerrero v. Guerrero*, 2 N.M.I. 61 (1991).

Trial court abused its discretion in denying defendants' motion for continuance in eminent domain action where: (1) defendants were diligent in their efforts to ready their defense prior to the trial date; (2) continuance would have allowed the defendants' expert witness to testify at trial; (3) extent to which continuance would have inconvenienced court and plaintiff was not great, compared to the prejudice to the defendants; and (4) defendants suffered harm as a result of denial of continuance. *Commonwealth v. Bordallo*, 1 N.M.I. 208 (1990).

Costs

See also **Attorney's Fees Final Judgment – Costs**, this topic; determination of reasonable fees, see **ATTORNEY AND CLIENT – Fees, Reasonableness of**.

DC App. Div. 1987. In determining whether to tax as costs expenses for depositions that were not used at trial, the court must determine whether the deposition reasonably seemed necessary at the time it was taken. *Marfega v. Soo*, 2 CR 1031.

Counsel, Right ot Assistance of

— Generally

It is clear that any debtor who has not complied with an order to pay faces potential incarceration. The United States Supreme Court has generally held that appointment of counsel is necessary for indigents in civil contempt proceedings if they face a possible loss of liberty. The threat of imprisonment is what makes a civil contempt proceeding effective: the civil label does not obscure its penal nature. Due process requires that, when one's liberty is at stake, the need for the assistance of counsel is beyond question. *Bank of Guam v. Ruben*, 2008 MP 22 ¶ 6 (2008).

The right to counsel is an established tenet of criminal procedure. Com. R. Crim. P. 44. Since the result of most criminal prosecutions is incarceration, the same threat in a civil situation, such as probationers at revocation hearings, should, and indeed does, require appointed counsel. Com. R. Crim. P. 32.1(a)(1)(D). *Bank of Guam v. Ruben*, 2008 MP 22 ¶ 11 (2008).

Although civil litigants facing actual imprisonment may not be entitled to the full panoply of due process rights, they are entitled to counsel. The right to counsel is recognized as unique among the umbrella of due process rights. The right to counsel is to be uniformly extended to indigents in commercial civil contempt proceedings when facing a loss of liberty. *Bank of Guam v. Ruben*, 2008 MP 22 ¶ 12 (2008).

The trial court must proactively advise contemnors of their due process right to counsel when their liberty is in danger. It is the trial court's duty to inform the contemnor that possible contempt sanctions may include incarceration. At that time, the contemnor must be notified that he or she is entitled to an

attorney, and, if indigent, that court appointed counsel is available. The contempt proceedings for an indigent can proceed only after the assignment of counsel, or a waiver of counsel, by the contemnor. *Bank of Guam v. Ruben*, 2008 MP 22 ¶ 13 (2008).

The principle underlying the right to counsel in criminal cases applies with equal force where one's liberty is in jeopardy in a civil case. *Pac. Fin. Corp. v. Muna*, 2008 MP 21 ¶ 15 (2008).

Although civil litigants facing actual imprisonment are not entitled to the full panoply of due process rights, they are entitled to counsel. The right to counsel is recognized as unique among the assortment of due process rights. Consequently, the right to counsel often applies in situations where other due process rights do not. *Pac. Fin. Corp. v. Muna*, 2008 MP 21 ¶ 17 (2008).

Alleged contemnors facing a loss of liberty have the right to counsel unless that right is explicitly waived. However, court-appointed counsel is not necessarily required in every contempt hearing. In cases where the trial court forecloses imprisonment as a punishment prior to the contempt hearing, the right to counsel is not absolute. *Pac. Fin. Corp. v. Muna*, 2008 MP 21 ¶ 21 (2008).

Counsel, Withdrawal of

See **ATTORNEY AND CLIENT – Withdrawal from Representation**

Counterclaim

—–Compulsory

CTC 1988. A counterclaim is compulsory if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim. *Sablan v. Qurashi*, 3 CR 321.

CTC 1988. To determine when a claim and counterclaim arise from the same transaction; four tests are considered: (1) are the issues of fact and law raised by the claim and counterclaim largely the same? (2) would res judicata bar a subsequent suit on defendant's claim absent the compulsory counterclaim rule? (3) will substantially the same evidence support or refute plaintiffs claim as well as defendant's counterclaim? (4) is there any logical relation between the claim and the counterclaim? *Sablan v. Qurashi*, 3 CR 321.

Damages

See **DAMAGES**

Default

—Entry of Default

——Jurisdiction

NMI Supreme Court had jurisdiction, pursuant to Article IV, § 3 of the Commonwealth Constitution, over appeal of Superior Court order denying Rule 60(b) motion to set aside default judgment. N.M.I. Const. art. IV, § 3 (1997). *Montecillo v. Di-All Chemical Co.*, 1998 MP 15 ¶1

NMI Supreme Court had jurisdiction, pursuant to general jurisdictional statute, to consider appeal of trial court's denial of Com. R. Civ. P. 55(c) motion to set aside entry of default. 1 CMC § 3102(a). *Roberto v. De Leon Guerrero*, 4 N.M.I. 295 (1995).

——Motion to Vacate

A litigant may not accept benefits conferred by a default judgment and later attempt to invalidate the judgment to the detriment of the nonmoving party. This rule is not a form of judicial alchemy; it cannot transform a void judgment into a valid one. Rather, it imposes an equitable disability on the party challenging the default judgment, thereby estopping the challenger from asserting that the judgment is void. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 31 (2011).

NMI Rule of Civil Procedure Rule 60(b)(4) mandates that the trial court set aside a default judgment when the judgment is void. There is no question of discretion on the part of the court when a motion is brought under Rule 60(b)(4). Either a judgment is void or it is valid. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 17 (2011).

Underlying concern regarding motion to set aside entry of default for good cause shown is whether there is some possibility that the outcome of the suit after a full trial will be contrary to the result achieved by the default. Thus, the defendant must make some showing of a meritorious defense. Com. R. Civ. P. 55(c). *Roberto v. De Leon Guerrero*, 4 N.M.I. 295 (1995).

Under test for determining propriety of motion to set aside an entry of default or default judgment, the movant must show: (1) that the plaintiff will not be prejudiced; (2) the existence of a meritorious defense;

and (3) that the default was not the result of the defendant's culpable conduct. If the movant fails to establish every element, the motion must be denied. Com. R. Civ. P. 55(c). *Roberto v. De Leon Guerrero*, 4 N.M.I. 295 (1995).

If a defendant has received actual or constructive notice of the filing of an action and failed to answer, his conduct is culpable, within test for determining propriety of motion to set aside entry of default for good cause shown. Com. R. Civ. P. 55(c). *Roberto v. De Leon Guerrero*, 4 N.M.I. 295 (1995).

Trial court did not abuse its discretion in denying motion to set aside entry of default where: (1) defendants made no attempt on appeal to argue that entry of default was not the result of their culpable conduct; (2) plaintiff would have been prejudiced by delay in resolving dispute and receiving payment of damages, and by increase in litigation expenses; and (3) defendants did not cite any legal authority or provide sufficient factual information for their meritorious defense arguments. Com. R. Civ. P. 55(c). *Roberto v. De Leon Guerrero*, 4 N.M.I. 295 (1995).

——Notice

The first prong of Restatement § 66 requires the party seeking relief from the judgment to have had actual notice of the default judgment. Actual notice is defined as notice given directly to, or received personally by a party. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 32 (2011).

A defendant who did not appear in an action is not entitled to notice of application for entry of default. Upon the plaintiff's application, the clerk of court may enter a default without requiring service of the application upon the defendant. The court may also conduct a hearing without requiring notice to a defendant who has failed to previously appear in the action. Com. R. Civ. P. 55. *Santos v. Santos*, 2001 MP 12 ¶ 17

——Relief From

DC NMI 1986. Where it appeared during the course of court proceedings that defendant's failure to respond to the complaint was the result of a tactical decision on their part to circumvent these proceedings by seeking another court's proposed injunctions, and where their reliance on the preliminary injunctions of thtat court was misplaced, and where defendants did not communicate to this Court their desire to proceed in this manner or seek a protective order from this Court, the defendants' default was the result of willful and culpable neglect. *People of Micronesia, Inc. v. Continental Air Lines*, Inc., 2 CR 740.

DC NMI 1986. A defendant moving to vacate the entry of a default must show that: (1) plaintiff will not be prejudiced; (2) defendant finding that any one of these requirements is not has a meritorious defense; and (3) the default was not the result of defendant's culpable conduct. A met results in denial of the motion. *People of Micronesia, Inc. v. Continental Air Lines, Inc.*, 2 CR 740.

DC NMI 1986. Argument that service of complaint was defective because defendant's secretary was not authorized to accept service will be rejected as ground to set aside a default where rule provides that a motion challenging service of process shall be made with twenty days of service of the summons and complaint and defendant failed to plead the defense. *People of Micronesia, Inc. v. Continental Air Lines, Inc.*, 2 CR 740.

Discovery

—Admissions, Request for

Requests for admission are not a substitute for the discovery process and cannot be applied to controverted legal issues lying at the heart of the case. *Estate of Muna v. Commonwealth*, 2007 MP 16 ¶ 9

Pursuant to Commonwealth Rules of Civil Procedure 36(a), once a party is served with a written request for admissions, that party has thirty days to respond to each individually stated matter, failure to do so will deem each matter admitted and considered conclusively established for the purpose of the pending action only. Com. R. Civ. P. 36(a). *Young Jo Cho v. Min Wa Cho*, 2002 MP 24 ¶ 10

An admission made, by failure to reply to a request for admissions, is not necessarily conclusive proof of the matter admitted. It is the responsibility of the trier of fact, and not the party making the admission, to determine factual issues such as whether actions were willful and wanton. *Young Jo Cho v. Min Wa Cho*, 2002 MP 24 ¶ 14

An admission that a party's conduct was willful and wanton, is a fact which may support the conclusion that the party acted with an evil motive or with reckless disregard for the rights of another. *Young Jo Cho v. Min Wa Cho*, 2002 MP 24 ¶ 14

The mere assertion of a fact does not establish the existence of a fact. *Young Jo Cho v. Min Wa Cho*, 2002 MP 24 ¶ 15

Com. R. Civ. P. 36(a) clearly specifies that a matter of which an admission is requested is admitted within thirty days of service, unless the court allows a longer time to file an answer. *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

——Particular Cases

In action in which, for equitable reasons, trial court denied plaintiff's motion for summary judgment filed after defendant failed to timely respond to plaintiff's request for admissions, trial court nonetheless had authority to award plaintiff reasonable attorney's fees and costs associated with summary judgment motion. Com. R. Civ. P. 36, 37(a)(4). *Manglona v. Tenorio*, 4 N.M.I. 322 (1996), aff'd, 114 F.3d 1194 (9th Cir. 1997).

Where neither party nor his attorney sought permission from court to file answer to request for admissions prior to deadline for response, late response was untimely filed. Trial court did not abuse its discretion in striking answer. Com. R. Civ. P. 36(a). *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

—Depositions

The Commonwealth Rules of Civil Procedure, which govern deposition requirements and limitations, apply to a proceeding filed in the Commonwealth. *In the Matter of York*, 2010 MP 11 ¶ 8 (2010).

While a deposition may occur outside the geographical borders of the Commonwealth, Commonwealth law is still very much applicable to activities in furtherance of a case that was filed in Commonwealth courts. The Commonwealth discovery rules that govern a proceeding do not dissolve upon crossing a political boundary. *In the Matter of York*, 2010 MP 11 ¶ 8 (2010).

DC NMI 1989. Testimony taken at depositions in separate civil proceedings are only admissible if the subject matter and the parties are identical. *CNMI v. Micronesia Insurance Underwriters, Inc.*, 3 CR 731.

DC NMI 1988. Where, at the argument on a motion for summary judgment, no counsel objected to the manner of the taking of a deposition nor the certification process and counsel stipulated at the deposition to the procedure for taking the testimony, court considered any departures from the rules to be waived by all parties attending the deposition. Com.TR.C.R.P. 29. *Formanes v. Sablan*, 3 CR 309

DC NMI 1981. Depositions of high government officials are proper where there is a necessity to prevent injustice or prejudice to the party seeking discovery. *Bauer v. Winkel*, 1 CR 737.

—Expert Testimony

DC NMI 1985. A party will be compelled to identify its experts before the pre-trial conference only where the conference is set at a time so close to trial that there will be insufficient time for the moving party to adequately prepare for trial. *Gower v. CNMI*, 2 CR 174.

—Financial Records

CTC 1985. It is only when the plaintiff is entitled to punitive damages that evidence of the financial worth of the defendant is admissible. *Guerrero v. L & T International Corporation*, 2 CR 952.

CTC 1985. Any defendant has a legitimate interest in maintaining confidentiality of its financial records. *Guerrero v. L & T International Corporation*, 2 CR 952.

CTC 1985. The discovery of a party's financial status need not be performed until and unless the plaintiff makes a prima facie showing to the trial court that a viable issue exists for punitive damages. *Guerrero v. L & T International Corporation*, 2 CR 952.

CTC 1985. To discover a party's financial status, the requirement of a prima facie showing by the party that a viable claim for punitive damages exists is satisfied by submitting to the court affidavits or other sworn testimony which tends to support the plaintiff's claim for punitive damages. *Guerrero v. L & T International Corporation*, 2 CR 952.

—Generally

The control of discovery is entrusted to the sound discretion of the trial court and orders concerning discovery will not be disturbed on appeal in the absence of a clear abuse of discretion. *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

DC NMI 1981. A United States district court has broad discretion to control pre-trial discovery. *Bauer v. Winkel*, 1 CR 137.

—Interrogatories

DC NMI 1984. Although interrogatory may be properly responded to with reference to business or medical records, to satisfy the spirit of the Federal Rules, the reference must specifically identify where in the records the answer can be found. Fed.R.Civ.P.33 (c). *Kumagai v. CNMI*, 1 CR 942.

DC NMI 1984. Although general language is permitted in the phrasing of an interrogatory, the answering party must be given a reasonably clear indication of the information to be included in the answer. Fed.R.Civ.P.33(c). *Kumagai v. CNMI*, 1 CR 942.

—Journalist's Source

CTC 1988. As a threshold matter, the court should be satisfied that the claim of the party seeking discovery of a journalist's sources is not frivolous or merely a pretense for using discovery powers in a fishing expedition. *Mafnas v. Matsunaga*, 3 CR 441.

—Protective Orders

DC NMI 1981. Protective orders are issued upon a showing of good cause when justice requires it to avoid annoyance, oppression, undue burden, or expense; each application for a protective order is to be considered on its own particular facts and equities. Fed.R.Civ.P. 26(c). *Bauer v. Winkel*, 1 CR 137.

DC NMI 1981. Motions limiting discovery are disfavored and the party seeking protection carries a heavy burden of showing good cause for denying the taking of a deposition. Fed.R.Civ.P. 26. *Bauer v. Winkel*, 1 CR 137.

DC NMI 1981. To show good cause for limiting discovery specifics and particular facts are required rather than mere conclusory statements. Fed.R. Civ.P. 26(c). *Bauer v. Winkel*, 1 CR 137.

DC NMI 1981. Where plaintiffs complaint alleges that defendant reduced plaintiff's educational allowance because of bias or prejudice against him as a U.S. Civil Service employee, and it is unlikely that other discovery tools will lead to admissible evidence on this question as inexpensively, conveniently, and expediently as might a brief oral deposition, and where defendant intended to depart the jurisdiction permanently in a short time, it would be unjust to deny plaintiff the opportunity to orally depose defendant while defendant is still physically in the Northern Mariana Islands. Fed.R.Civ.P. 26(c). *Bauer v. Winkel*, 1 CR 137.

DC NMI 1981. Good cause for a protective order against the taking of a deposition does not exist where defendant states in conclusory terms that the deposition would be annoying, oppressive, embarassing and without a legitimate end but fails to disclose specific facts supporting such conclusory statements. Fed.R.Civ.P. 26(c). *Bauer v. Winkel*, 1 CR 137.

—Unavailability of Witness

CTC 1988. Defendant's assertion of his rights under the Fifth Amendment render him effectively unavailable for purposes of plaintiff's inquiry.
Mafnas v. Matsunaga, 3 CR 441.

Dismissal, Involuntary

If a plaintiff files an amended complaint, prior to the ruling on a motion to dismiss, the ruling of the court based on the original complaint cannot control the disposition of a defendant's motion to dismiss. *Guo Qiong He v. Commonwealth*, 2003 MP 3 ¶ 12

Motions to dismiss do not test whether a plaintiff will ultimately prevail, but whether he is entitled to offer evidence to support his claim. They do not test questions of fact, but questions of law. Where there is no basis for converting a motion for dismissal to one for summary judgment, the only elements of qualified immunity appropriately considered are two abstract issues of law: whether the complaint alleges a violation of a constitutional right, and whether the right in question was clearly established. *Guo Qiong He v. Commonwealth*, 2003 MP 3 ¶ 17

A ruling on a motion brought under Commonwealth Rules of Civil Procedure 12(b)(6) examines the threshold issue of whether a plaintiff is entitled to present evidence by allowing a defendant to challenge the contents of the complaint. Com. R. Civ. P. 12(b)(6). *In re Estate of Roberto*, 2002 MP 23 ¶ 12

A motion to dismiss under Commonwealth Rules of Civil Procedure 12(b)(6) confines analysis to the allegations and implications contained on the face of the complaint. Com. R. Civ. P. 12(b)(6). *In re Estate of Roberto*, 2002 MP 23 ¶ 12

When on a motion to dismiss under Commonwealth Rules of Civil Procedure 12(b)(6), matters outside the pleadings are presented to and not excluded by the judge, such motion is treated as one for summary judgment. Com. R. Civ. P. 12(b)(6); Com. R. Civ. P. 56(c). *In re Estate of Roberto*, 2002 MP 23 ¶ 13

Like a motion to dismiss, a motion for summary judgment also tests whether a case should move forward toward trial, however the motion for summary judgment also assesses the existence of genuine disputes of material fact and the movant's entitlement to judgment as a matter of law. Com. R. Civ. P. 12(b)(6); Com. R. Civ. P. 56(c). *In re Estate of Roberto*, 2002 MP 23 ¶ 14

DC NMI 1985. A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Fed. R. Civ. P. 12. *Luna v. Kamata*, 2 CR 29.

DC NMI 1985. In considering a motion to dismiss, all allegations in the complaint must be construed in favor of the plaintiff. Fed. R. Civ. P. 12. *Luna v. Kamata*, 2 CR 29.

DC NMI 1985. A defendant's assertion that the sections of federal law cited by plaintiffs as the jurisdictional basis for suit are not applicable to the subject matter of the suit does not defeat jurisdiction, but rather contests whether plaintiff has stated a cause of action. Fed. R. Civ. P. 12. *Luna v. Kamata*, 2 CR 29.

DC NMI 1982. A motion for dismissal under Rule 12(b)(6) determines only that as a technical matter the complaint insufficiently frames a cause of action which otherwise, with more complete pleading, would be cognizable; it does not rule that the court lacks authority under all circumstances to adjudicate the type of cause presented. Fed. R. Civ. P. 12(b)(6). *Bauer v. McCoy*, 1 CR 248.

DC NMI 1982. In considering a motion to dismiss, the court must admit all the allegations in the complaint as true and construe them in the light most favorable to the pleader. Fed. R.Civ.P. 12. *Camacho v. Santos*, 1 CR 281

DC NMI 1982. If the complaint, under any reasonable reading, states a claim upon which relief can be granted, the cause of action must be sustained and admitted to proof. Fed.R.Civ.P.12. *Camacho v. Santos*, 1 CR 281.

CTC 1986. In approaching a motion to dismiss, the court will presume that the well pleaded facts in the complaint are true. Fed.R.Civ.P. 12. *Nabors v. Manglona*, 2 CR 464, aff'd, 2 CR 501 (DNMI App. Div. 1986), vacated, 829 F.2d 902 (9th Cir.1987).

—Failure to Join Party

See **PARTIES – Joinder**

—Failure to Prosecute

Before imposing dismissal as a sanction the trial court must weigh the following factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 22

Under its inherent power to control case management, and to regulate the practice of law both in and out of courts, the trial court may consider a range of appropriate sanctions, where litigants or attorneys engage in dilatory conduct. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 25

A trial court must consider and should impose, where appropriate, less drastic sanctions than dismissal of a case on a plaintiff or counsel for dilatory prosecution of a case. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 25

The choice of a particular sanction should fall within the permissible range of the court's discretion in light of the circumstances of a case and with the objective of achieving compliance with court orders and expediting proceedings. Depending on the context, lesser sanctions (than the sanction of involuntary dismissal) may include conditional orders of dismissal or various types of disciplinary action directed at the erring attorney, including perhaps a fine or a reprimand from the court, a fine, a finding of contempt, or a prohibition against practicing before the court for a specified period of time. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 26

When considering whether involuntary dismissal is the appropriate sanction for a delay in prosecution, courts should assess the relative roles of attorney and client in causing the delay, as well as whether a tactical benefit was sought by the delay. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 26

The more the delay in prosecuting an action is attributable to a plaintiff's personal obstruction or

was designed to benefit the plaintiff's strategic interest, the more suitable the remedy of dismissal. Conversely, if the delay was caused by the lawyer's disregard of his obligation toward a client, a less drastic sanction imposed directly on the lawyer may be warranted. Dismissal is generally inappropriate and lesser sanctions favored where neglect is plainly attributable to an attorney, rather than a blameless client. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 26

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, the N.M.I. Supreme Court has jurisdiction over a lower court's order which granted appellee's motion to dismiss for failure to plead and prosecute claims for unjust enrichment. N.M.I. Const. art. IV, § 3. *Wabol v. Villacrusis*, 2000 MP 18 ¶ 1

Upon a motion to dismiss for failure to prosecute, the court utilizes a number of factors relevant in arriving at a decision: the public's interest in expeditious resolution of litigation; the court's need to manage its docket; the risk of prejudice to the defendants; the public policy favoring disposition of cases on their merits; and the availability of less drastic sanctions. *Wabol v. Villacrusis*, 2000 MP 18 ¶ 19

Facts which do not amount to a clear record of delay do not warrant a dismissal for failure to prosecute and lesser sanctions should be employed. *Wabol v. Villacrusis*, 2000 MP 18 ¶ 22

While there is no requirement that every conceivable sanction be examined, meaningful alternatives to dismissal for failure to prosecute must be explored. Where there is no indication that such alternative sanctions were weighed and found wanting, a dismissal pursuant to Commonwealth Rule of Civil Procedure 41(b) is more difficult to sustain. Com. R. Civ. P. 41(b). *Wabol v. Villacrusis*, 2000 MP 18 ¶ 22

There is no requirement that every single alternate remedy be examined by the court before the sanction of dismissal is appropriate. The reasonable exploration of possible and meaningful alternatives is all that is required. Sanctions less severe than dismissal with prejudice should be considered before a case is dismissed. *Wabol v. Villacrusis*, 2000 MP 18 ¶ 23

An involuntary dismissal with prejudice deprives a party of their right to seek adjudication on the merits of a potential valid claim. Dismissal of an action for failure to prosecute must remain the exception rather than the rule. Where the dismissal is, in reality, a sanction against a party for moving too slowly, it would be an infliction of injustice upon the parties to uphold the dismissal of the case on the ground that its not being prosecuted. *Wabol v. Villacrusis*, 2000 MP 18 ¶ 26

A plaintiff, as the party instigating the litigation, has the burden to see that the case moves forward. *Wabol v. Villacrusis*, 2000 MP 18 ¶ 33

The power to dismiss a case for lack of prosecution is committed to the sound discretion of the trial court, and appellate review is confined solely to whether the trial court has abused that discretion. The appellate court may only reverse when the trial court makes a clear error of law. The abuse of discretion standard allows a range of choice for the trial court, so long as that choice does not constitute a clear error of judgment. *Wabol v. Villacrusis*, 2000 MP 18 ¶ 34

In determining whether dismissal for lack of prosecution is appropriate, the court considers several factors, however, the court is not required to make explicit findings to show that it considered the essential factors. *Wabol v. Villacrusis*, 2000 MP 18 ¶ 35

Dismissal under Commonwealth Rule of Civil Procedure 41(b) is proper if, in view of the entire procedural history of the case, the litigant has not manifested reasonable diligence in pursuing the cause. *Wabol v. Villacrusis*, 2000 MP 18 ¶ 35

DC NMI 1985. Where record of case shows that delay in the matter can be attributed to both plaintiff and defendant, defendant's motion to dismiss for plaintiffs failure to prosecute in a diligent manner will be denied. *Gower v. CNMI*, 2 CR 174.

DC NMI 1985. Defendant's motion to dismiss for plaintiffs failure to identify expert witnesses will be denied where trial date had not been set and no expert had been secured. *Gower v. CNMI*, 2 CR 174.

—Failure to Show Right to Relief

A dismissal based on Com. R. Civ. P. 41(b) involves a determination of the merits, rather than an exercise of discretion by the trial court. The usual standards applicable to review of a judgment on the merits in a nonjury case are controlling. The conclusions of law are freely reviewable, although the findings of fact of the trial court cannot be set aside unless they are clearly erroneous. *Cabrera v. Cabrera*, 3 N.M.I. 1 (1992).

Trial court may grant a motion for involuntary dismissal if, from the record as it stands at the end of the plaintiff's case, the court is convinced that the plaintiff has not established his case by a preponderance of the evidence. Com. R. Civ. P. 41(b). *Cabrera v. Cabrera*, 3 N.M.I. 1 (1992).

When the defendant moves for a dismissal under Com. R. Civ. P. 41(b) at the close of the plaintiff's case, the trial court, as the trier of fact, is required to determine whether the plaintiff has proven its claim. The court is not required to view the evidence in the light most favorable to the plaintiff, or make any special inferences in the plaintiff's favor, but rather must weigh and evaluate the evidence, resolve any conflicts in the evidence, and decide issues of credibility. The court may grant the motion for an involuntary dismissal if, from the record as it stands at the end of the plaintiff's case, the court is convinced that the plaintiff has not established his case by a preponderance of the evidence. The court is not required to deny a Com. R. Civ. P. 41(b) motion to dismiss merely because the evidence, viewed in the light most favorable to the plaintiff, is sufficient to make out a prima facie case. In deciding whether the plaintiff has established its case by a preponderance of the evidence, the court considers all the evidence, whether direct or circumstantial evidence, and whether such evidence was introduced on direct or cross-examination. *Rogolofoi v. Guerrero*, 2 N.M.I. 468 (1992).

In considering motion for involuntary dismissal at close of presentation of plaintiff's case pursuant to Com. R. Civ. P. 41(b), trial court must weigh, evaluate and resolve conflicts in evidence and decide issues of credibility. *Rogolofoi v. Guerrero*, 2 N.M.I. 468 (1992).

A dismissal under Com. R. Civ. P. 41(b) for failure, upon facts and law, to show a right to relief involves a determination on the merits, rather than an exercise of discretion by the trial court. *Castro v. Castro*, 2 N.M.I. 334 (1991).

When the defendant moves for a dismissal under Com. R. Civ. P. 41(b) at the close of the plaintiff's case, the trial court, as the trier of fact, is required to determine whether the plaintiff has proven its claim. The court is not required to view the evidence in the light most favorable to the plaintiff, or make any special inferences in the plaintiff's favor, but rather must weigh and evaluate the evidence, resolve any conflicts in the evidence, and decide issues of credibility. The court may grant the motion for an involuntary dismissal if, from the record as it stands at the end of the plaintiff's case, the court is convinced that the plaintiff has not established his case by a preponderance of the evidence. The court is not required to deny a Com. R. Civ. P. 41(b) motion to dismiss merely because the evidence, viewed in the light most favorable to the plaintiff, is sufficient to make out a prima facie case. In deciding whether the plaintiff has established its case by a preponderance of the evidence, the court considers all the evidence, whether direct or circumstantial evidence, and whether such evidence was introduced on direct or cross-examination. *Castro v. Castro*, 2 N.M.I. 334 (1991).

——Particular Cases

Although trial court failed to strictly follow Com. R. Civ. P. 41(b) (dismissal for failure, upon facts and law, to show a right to relief) by making findings of fact as required by Com. R. Civ. P. 52(a), since transcript of hearing indicated the finding of fact that it made, error was harmless. *Castro v. Castro*, 2 N.M.I. 334 (1991).

Trial court erred in dismissing action "with prejudice" based on lack of standing. For purposes of Com. R. Civ. P. 41(b), a dismissal for lack of standing is a dismissal for lack of jurisdiction. A dismissal for lack of standing (i.e., lack of jurisdiction) should not be "with prejudice" (i.e., an adjudication on the merits). *Mafnas v. Commonwealth*, 2 N.M.I. 248 (1991).

—Failure to State Claim

Under Rule 12(b)(6), dismissal is improper unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Factual argument is inappropriate in a Rule 12(b)(6) motion because the motion only tests the legal sufficiency of the complaint. Thus, in undertaking its analysis, the court must accept the allegations in the complaint as true and construe them in the light most favorable to the plaintiff. *Camacho v. MDC, Inc.*, 2008 MP 8 ¶ 10 (2008).

Whether the elements of adverse possession are satisfied in a particular case requires factual findings that cannot be accomplished in a Rule 12(b)(6) motion. *Camacho v. MDC, Inc.*, 2008 MP 8 ¶ 12 (2008).

On a motion for dismissal for failure to state a claim, the trial court is required to view all facts in favor of the non-moving party whose claim is at issue and

determine if there is any legal basis for their complaint. *Camacho v. MDC, Inc.*, 2008 MP 8 ¶ 17 (2008).

In examining a trial court's dismissal under Commonwealth Rule of Civil Procedure 12(b)(6), the N.M.I. Supreme Court reviews the contents of a complaint by construing it in the light most favorable to the plaintiff and accepting all well-pleaded facts as true. Com. R. Civ. P. 12(b)(6). *Oden v. N. Marianas College*, 2003 MP 13 ¶ 7

The failure to file a complaint within the limitations period is sufficient to support a dismissal pursuant to Commonwealth Rule of Civil Procedure 12(b)(6). Com. R. Civ. P. 12(b)(6). *Oden v. N. Marianas College*, 2003 MP 13 ¶ 7

A statute of limitations defense must be apparent from the face of the complaint, but a court may take judicial notice of matters of public record. *Oden v. N. Marianas College*, 2003 MP 13 ¶ 7

A motion to dismiss under Commonwealth Rules of Civil Procedure 12(b)(6) is a poor vehicle for a defendant relying on an affirmative defense, particularly since dismissal for failure to state a claim is improper unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Com. R. Civ. P. 12(b)(6). *In re Estate of Roberto*, 2002 MP 23 ¶ 12

In examining a trial court's dismissal for failure to state a claim pursuant to Commonwealth Rule of Civil Procedure 12(b)(6), the N.M.I. Supreme Court will review the contents of a complaint by construing it in the light most favorable to the plaintiff, accepting all well-pleaded facts as true. Com. R. Civ. P. 12(b)(6). *Zhang Gui Juan v. Commonwealth*, 2001 MP 18 ¶ 11

The failure to file a complaint within the statute of limitations period is sufficient to support a dismissal pursuant to Commonwealth Rules of Civil Procedure 12(b)(6). Com. R. Civ. P. 12(b)(6). *Zhang Gui Juan v. Commonwealth*, 2001 MP 18 ¶ 11

The statute of limitations defense must be apparent from the face of the complaint, but a court may take judicial notice of matters of public record. *Zhang Gui Juan v. Commonwealth*, 2001 MP 18 ¶ 11

A complaint may be dismissed as a matter of law for lack of a cognizable legal theory. *I.G.I. Gen. Contractor & Dev., Inc. v. Pub. Sch. Sys.*, 1999 MP 12 ¶12

In considering motion to dismiss action for failure to state a claim upon which relief can be granted, court construes complaint in light most favorable to plaintiff and accepts all well-pleaded facts as true. Dismissal is proper if it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Com. R. Civ. P. 12(b)(6). *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

For purposes of a Com. R. Civ. P. 12(b)(6) motion for failure to state claim, court views complaint in light most favorable to plaintiff. All well-pled facts will be taken as true and reasonable inferences shall be drawn therefrom. *Bolalin v. Guam Publications*, Inc., 4 N.M.I. 176 (1994).

To withstand Com. R. Civ. P. 12(b)(6) motion for failure to state claim, complaint must contain either direct allegations on every material point necessary to sustain recovery on any legal theory or allegations from which an inference could fairly be drawn that evidence of material points will be introduced at trial. Conclusory allegations do not suffice to bolster the sufficiency of a claim unless, in light of previous case law, it is reasonable to infer that evidence may be brought which will bolster claim. *Bolalin v. Guam Publications, Inc.*, 4 N.M.I. 176 (1994).

Under Com. R. Civ. P. 6(d) and 12(b), affidavits may be filed in opposition to a Com. R. Civ. P. 12(b)(6) motion to dismiss action for failure to state a claim. *Bolalin v. Guam Publications, Inc.*, 4 N.M.I. 176 (1994).

With respect to a Com. R. Civ. P. 12(b)(6) motion to dismiss for failure to state a claim against false light invasion of privacy claim and defamation claim arising from same allegedly tortious action, court must examine plaintiff's allegations with respect to each claim distinctly, given differences between prima facie elements of those claims. *Bolalin v. Guam Publications, Inc.*, 4 N.M.I. 176 (1994).

Com. R. Civ. P. 12(b)(6) permits the filing of a motion to dismiss a complaint, before the filing of a responsive pleading (e.g., an answer to the complaint), for failure to state a claim upon which relief may be granted. *Torres v. Marianas Pub. Land Corp.*, 3 N.M.I. 484 (1993).

Normally, a court should not dismiss a complaint under Com. R. Civ. P. 12(b)(6) sua sponte without

first giving the plaintiff notice and an opportunity to respond. However, the trial court may dismiss sua sponte when a count clearly has no basis in law or fact. *Ada v. K. Sadhwani's, Inc.*, 3 N.M.I. 303 (1992).

The dismissal of a complaint for failure to state a claim for which relief can be granted presents a question of law. As such, the standard of review is de novo. Com. R. Civ. P. 12(b)(6). *Cepeda v. Hefner*, 3 N.M.I. 121 (1992).

For purposes of a Com. R. Civ. P. 12(b)(6) motion to dismiss for failure to state a claim for which relief can be granted, the complaint is construed in the light most favorable to the plaintiff and its allegations are taken as true. The court's inquiry is directed to whether the allegations constitute a statement under Com. R. Civ. P. 8(a)—i.e., a short and plain statement of the claim, showing that the pleader is entitled to relief. *Cepeda v. Hefner*, 3 N.M.I. 121 (1992).

A complaint must contain either direct allegations on every material point necessary to sustain a recovery on any legal theory, even though it may not be the theory suggested or intended by the pleader, or contain allegations from which an inference may fairly be drawn that evidence on these material points will be introduced at trial. Com. R. Civ. P. 12(b)(6). *Cepeda v. Hefner*, 3 N.M.I. 121 (1992).

A trial court has no duty to strain to find inferences favorable to the non-moving party when considering a motion to dismiss for failure to state a claim for which relief can be granted. However, it must construe the complaint in the light most favorable to the plaintiff. Com. R. Civ. P. 12(b)(6). *Cepeda v. Hefner*, 3 N.M.I. 121 (1992).

In considering a motion to dismiss for failure to state a claim upon which relief can be granted, trial court must take the well-pleaded facts as true and admitted. The defendant must then demonstrate that, even after taking the well-pleaded facts as true, the plaintiff still fails to state a claim for relief. Com. R. Civ. P. 12(b)(6). *Govendo v. Marianas Pub. Land Corp.*, 2 N.M.I. 482 (1992).

While it is true that a trial court must accept all well-pleaded facts of the non-moving party as true, and must also draw reasonable inferences from allegations, there is no duty to strain to find inferences favorable to the non-moving party. Com. R. Civ. P. 12(b)(6). *Govendo v. Marianas Pub. Land Corp.*, 2 N.M.I. 482 (1992).

A dismissal under Com. R. Civ. P. 12(b)(6) for failure to state a claim for which relief can be granted is not final or on the merits and the court normally will give the plaintiff leave to file an amended complaint. *Govendo v. Marianas Pub. Land Corp.*, 2 N.M.I. 482 (1992).

When considering a motion to dismiss for failure to state a claim upon which relief can be granted, the court must accept the allegations in the complaint as true and construe them in the light most favorable to the plaintiff. Dismissal is improper unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Com. R. Civ. P. 12(b)(6). *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270 (1991).

A petition that clearly does not contain either direct allegations on every material point necessary to sustain a recovery on any legal theory or allegations from which an inference fairly may be drawn that evidence on material points will be introduced at trial is subject to a motion to dismiss under Com. R. Civ. P. 12(b)(6). *In re Adoption of Magofna*, 1 N.M.I. 449 (1990).

While it is true that a trial court must accept all well-pleaded facts of the non-moving party as true, and must also draw reasonable inferences from allegations, there is no duty to strain to find inferences favorable to the non-moving party. Com. R. Civ. P. 12(b)(6). *In re Adoption of Magofna*, 1 N.M.I. 449 (1990).

A dismissal under Rule 12(b)(6) is not final or on the merits and the court normally will give plaintiff leave to file an amended complaint. Com. R. Civ. P. 12(b)(6). *In re Adoption of Magofna*, 1 N.M.I. 449 (1990).

——Particular Cases

Where the basis for dismissal of claims was not articulated by the Superior Court and plaintiffs' original complaint sufficiently alleged facts from which a claim may be gleaned which were adequate to avoid a motion to dismiss under Com. R. Civ. P. 12(b)(6), NMI Supreme Court remanded for further consideration requiring that Superior Court set forth legal reasoning for any further dismissal with sufficient clarity to allow review upon appeal. *O'Connor v. Div. of Pub. Lands*, 1999 MP 5 ¶15

In group defamation complaint filed by eighty-nine named Filipina waitresses and 1,000 others working in NMI bars and karaoke clubs against newspaper for publishing allegedly defamatory article, allegations that each plaintiff was sufficiently identified in article as prostitute and that defamatory statements were understood by public to impute to plaintiffs as a whole and to each individual plaintiff serious sexual misconduct were insufficient to state claim for relief because they were conclusory statements and not direct allegations. In addition, statements in article were insufficient to identify any individual plaintiffs, apart from referencing them solely as members of group. Finally, plaintiffs did not file any affidavit or other evidence buttressing their contentions. Without more, court could not conclude as matter of law that fact finder could understand article to point to any individual member of group, either directly or by reasonable inference. Com. R. Civ. P. 12(b)(6). *Bolalin v. Guam Publications, Inc.*, 4 N.M.I. 176 (1994).

In invasion of privacy claim filed by eighty-nine named Filipina waitresses and 1,000 others working in NMI bars and karaoke clubs against newspaper for publishing article allegedly portraying plaintiffs in false light, allegations that each plaintiff was sufficiently identified in article as prostitute and that false statements in article were understood by public to impute to plaintiffs serious sexual misconduct were insufficient to state claim for relief because they were conclusory and statements were insufficient to show that any one plaintiff was placed in false light which would be highly offensive to reasonable person. Construing complaint liberally, court was unable to conclude that plaintiffs showed that statements concerned any one of them individually. Com. R. Civ. P. 12(b)(6). *Bolalin v. Guam Publications, Inc.*, 4 N.M.I. 176 (1994).

Complaint alleging that Marianas Public Land Corporation (MPLC) breached strict duty of fiduciary care under N.M.I. Const. art. XI, § 4(c) by leasing public land to hotel developer stated claim upon which relief could be granted. Allegation that legislative bodies had expressed by formal resolution public's wish to designate land for public park was significant; MPLC has affirmative fiduciary duty to consider legitimate public expressions concerning disposition of public land. In addition, allegation that MPLC could have negotiated better lease terms could, if true, constitute breach of agency's fiduciary duty to beneficiaries. Trial court improperly dismissed cause of action. Com. R. Civ. P. 12(b)(6). *Torres v. Marianas Pub. Land Corp.*, 3 N.M.I. 484 (1993).

Complaint alleging that construction and operation of hotel by developer would result in adverse environmental impact, violating plaintiff's right to clean and healthful public environment guaranteed under N.M.I. Const. art. I, § 9, stated cause of action sufficient to withstand Com. R. Civ. P. 12(b)(6) motion to dismiss for failure to state a claim. *Torres v. Marianas Pub. Land Corp.*, 3 N.M.I. 484 (1993).

Although complaint in action alleging violation of N.M.I. Const. art. XII (restricting acquisition of long-term interest in land in NMI to persons of NMI descent) did not have direct allegations showing that plaintiff was entitled to relief, complaint did contain sufficient allegations from which an inference could be drawn that evidence would be introduced at trial showing right to relief. Trial court erred in dismissing complaint for failure to state claim for which relief could be granted. Com. R. Civ. P. 12(b)(6). *Cepeda v. Hefner*, 3 N.M.I. 121 (1992).

Complaint in action alleging violation of N.M.I. Const. art. XII (restricting acquisition of long-term interest in land in NMI to persons of NMI descent) had direct allegations on every material point necessary to sustain a recovery. Trial court erred in dismissing complaint for failure to state claim for which relief could be granted. Com. R. Civ. P. 12(b)(6). *Cepeda v. Hefner*, 3 N.M.I. 121 (1992).

—Judgment on the Pleadings

DC NMI 1982. On a motion for judgment on the pleadings, the court takes as true non-movant's factual allegations and grants the motion only if movant is clearly entitled to prevail as a matter of law. Fed.R.Civ.P.12. *Babauta v. Trust Territory of the Pacific Islands*, 1CR 291

—Jurisdiction

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, the N.M.I. Supreme Court has jurisdiction over the appeal of a trial court's order dismissing a complaint. N.M.I. Const. art. IV, § 3. *In re Estate of Roberto*, 2002 MP 23 ¶ 2

—Jurisdiction, Lack of

When NMI Superior Court determines that it lacks subject matter jurisdiction and dismisses complaint pursuant to Com. R. Civ. P. 12(b)(1), court should proceed no further. *Rivera v. Guerrero*, 4 N.M.I. 79 (1993).

—Matters Considered

CTC 1987. For the purposes of a motion to dismiss, the well pleaded allegations in the complaint are construed to be true. Com.Tr.Civ.P.12(b). *Tenorio v. Camacho*, 3 CR 195.

CTC 1987. Generally, a motion to dismiss must be determined upon facts set out in the complaint; the court, however, may consider documents other than the complaint in ruling on the motion. Com.Tr.C.R.Civ.P12(b). *Tenorio v. Camacho*, 3 CR 195.

CTC 1987. Materials outside the pleadings that can qualify as "matters presented within rule governing motions to dismiss for lack of jurisdiction are required to be either depositions, admissions, or affidavits. Com.Tr.C.R.Civ.P.12(b). *Tenorio v. Camacho*, 3 CR 195.

CTC 1987. Court would consider deposition on motion to dismiss for the lack of jurisdiction, although it did not comply with notice rule and rule regarding proper swearing in of deponent, where party opposing motion did not object to deposition. Com.Tr.C.R.Civ.P. Wa); 30(b)(l). *Tenorio v. Camacho*, 3 CR 195.

CTC 1987. Court would consider the exhibits attached to the affidavit of attorney on motion to dismiss for lack of jurisdiction despite the fact that these have not been certified in a manner required by civil procedrue rule where the opposing party has not objected to this material. *Tenorio v. Camacho*, 3 CR 195.

—Subject Matter Jurisdiction

DC NMI 1985. A motion to dismiss which relies on a defense of sovereign immunity is properly under Federal Rule 12(b)(1) as a motion to dismiss for lack of subject matter jurisdiction. Fed.R.Civ.P.(b) (1). *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 34, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1985. When a defendant by motion raises a question of subject matter jurisdiction in a manner otherwise untimely the motion is a "suggestion" of no jurisdiction permissible under Rule 12(h)(3). Fed.R.Civ.P.12(h)(3). *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 34, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1985. The defense of lack of subject matter jurisdiction is preserved against waiver. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 34, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1983. On a motion to dismiss for lack of subject matter jurisdiction, the court must construe the complaint in plaintiffs' favor. Fed.R. Civ.P. 12(b)(l). *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1983. On a motion to dismiss for lack of subject matter jurisdiction, the court evaluates the entire complaint, rather than the jurisdictional statement alone, to determine whether there is a basis for jurisdiction; it liberally reads the complaint to ascertain whether the allegations establish jurisdiction on grounds other than those pleaded. Fed.R.Civ.P. 12(b)(l). *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1982. On a motion to dismiss for lack of subject matter jurisdiction, the Court must construe the complaint in plaintiffs favor. Fed.R. Civ.P. 12. *Bauer v. McCoy*, 1 CR 248.

DC NMI 1982. On a motion to dismiss for lack of subject matter jurisdiction the court must liberally read the complaint to determine whether the allegations establish jurisdiction on grounds other than those pleaded. Fed.R.Civ.P. 12. *Bauer v. McCoy*, 1 CR 248.

DC NMI 1982. A Rule 12(b)(l) motion is the proper motion for challenging the court's subject matter jurisdiction. Fed.R.Civ.P. 12(b)(l). *Bauer v. McCoy*, 1 CR 248.

—With Prejudice

Normally, dismissal of a petition "with prejudice" is, in effect, an adjudication on the merits. *Mafnas v. Commonwealth*, 2 N.M.I. 248 (1991).

CSC 1989. A dismissal with prejudice constitute a judgment for the defendant. *Sablan v. Iginoef*, 3 CR 860.

——Particular Cases

Trial court erred in dismissing action "with prejudice" based on lack of standing. For purposes of Com. R. Civ. P. 41(b), a dismissal for lack of standing is a dismissal for lack of jurisdiction. A

dismissal for lack of standing (i.e., lack of jurisdiction) should not be "with prejudice" (i.e., an adjudication on the merits). *Mafnas v. Commonwealth*, 2 N.M.I. 248 (1991).

Equitable Estoppel

Equitable estoppel cannot be invoked where it would interfere with the underlying government policies or unduly undermine the correct enforcement of a particular law or regulation. *Manglona v. Commonwealth*, 2002 MP 7 ¶ 29

Evidentiary Ruling

—Jurisdiction

NMI Supreme Court had jurisdiction under 1 CMC § 3102(a) over appeal of Superior Court order striking certain evidence. *Lifoifoi v. Lifoifoi-Aldan*, 1996 MP 14 ¶1

Ex Parte Practice

See **COURTS – Ex Parte Practice**

Filing and Service

— Extension for Filing

NMI Supreme Court Rule 31-1(b) states that when a party could have filed a motion seeking a discretionary extension enlarging time to file a document, but failed to do so, a subsequent motion to file an out-of-time document is highly disfavored. The "highly disfavored" language leaves little room for interpretation; it is a strong indicator that the Court is unwilling to allow out-of-time documents without a strong contrary showing. *Owens v. Commonwealth Health Center*, 2011 MP 6 ¶ 10 (2011).

NMI Supreme Court Rule 31-1(a)(1)(A)(i) provides that a party must request an automatic extension of time by filing a motion specifically citing Rule 31-1(a)(1). The clerk shall grant automatic extensions of time when no other extension has been granted. If a party obtains an automatic extension of time under Rule 31-1(a)(1), that party may not request any additional extensions, including automatic or discretionary extensions. *Owens v. Commonwealth Health Center*, 2011 MP 6 ¶ 12 (2011).

To file a discretionary extension, a party must file a motion specifically citing NMI Supreme Court Rule 31-1(a)(2) and conforming to the requirements of Rule 31-1(a)(2)(B). The rules governing discretionary extensions set forth a list of facts which must be included in an affidavit accompanying the motion. *Owens v. Commonwealth Health Center*, 2011 MP 6 ¶ 12 (2011).

—Process, Service of

The requirements for personal service of process are set forth by NMI Rule of Civil Procedure 4(e)(1) which provides that service may be effected in any manner prescribed or authorized by any law of the Commonwealth. Generally, service of process is complete when notice of the service and a copy of the summons and complaint are served upon the defendant personally by any person authorized to serve process, or sent by certified or registered mail, postage prepaid, by the plaintiff or the plaintiff's attorney to the defendant. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 21 (2011).

When a defendant cannot be personally served, the NMI Rules of Civil Procedure authorizes service by publication. Service by publication is permissible where it is not reasonably possible or practicable to give more adequate warning, because in the case of persons missing or unknown, employment of an indirect and even a probably futile means of notification is all that the situation permits and creates no constitutional bar to a final decree foreclosing their rights. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 22 (2011).

When a plaintiff serves the defendant by publication, the central inquiry into the validity of service is whether the plaintiff exercised "reasonable diligence" in attempting to locate the defendant. It is axiomatic that if a defendant's name and address are known or may be obtained with reasonable diligence, service by publication will not satisfy the requirements of due process. Service by publication does not realistically afford a defendant actual notice of the lawsuit, and thus, should only be used as a last resort, when service by other methods is not reasonably practicable. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 23 (2011).

A defendant may appoint an agent to receive service of process on his or her behalf, but that appointment must be explicit. In the absence of a specific appointment, the circumstances of the agency relationship must expressly or impliedly indicate that the alleged agent has authority to receive service of process. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 25 (2011).

With regard to the reasonable diligence required before allowing service by publication, what constitutes reasonable diligence depends on the facts of each case. A plaintiff may not declare that he or she has conducted a reasonably diligent search while leaving simple, reasonable methods untried. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 29 (2011).

Service of process upon a party's attorney is accomplished by either delivery, mail, or by leaving the paper with the clerk of court. Pursuant to Com. R. Prac. 6(a), papers left with the clerk are left in a box maintained in the clerk's office for the attorney. Com. R. Civ. P. 5(b). *Commonwealth v. Santos*, 4 N.M.I. 348 (1996).

—Striking of Late Filings

NMI Supreme Court Rule 27-4(a)(2)(B) states that the Clerk of Court may not rule upon motions to 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. *Owens v. Commonwealth Health Center*, 2011 MP 6 ¶ 7 (2011).

When a party moves to file an out-of-time document, NMI Supreme Court Rule 27-4 provides two alternatives to the Clerk of Court's action: a single justice may entertain the motion pursuant to Rule 27-4(b), or the full Court may hear the motion pursuant to Rule 27-4(c). The choice between application of 27-4(b) and 27-4(c) is determined by the procedural effect of deciding the motion. When a motion would have the effect of determining the merits of a proceeding, such motion must be heard by the full Court. In contrast, nondispositive motions may be granted or denied by a single justice. *Owens v. Commonwealth Health Center*, 2011 MP 6 ¶ 8 (2011).

NMI Supreme Court Rule 31(c) provides that if an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal. It follows that an order denying a party leave to file a principal or cross-appeal brief would vest the opposing party with the power to have the appeal or cross-appeal dismissed. *Owens v. Commonwealth Health Center*, 2011 MP 6 ¶ 9 (2011).

Motions to file an out-of-time principal brief are tantamount to a dismissal. Such motions must be heard by the full court according to NMI Supreme Court Rule 27-4(c). *Owens v. Commonwealth Health Center*, 2011 MP 6 ¶ 9 (2011).

——Particular Cases

Trial court did not abuse its discretion in striking affidavits and exhibits supporting opposition to motion for summary judgment due to untimely filing. It is not a legitimate excuse for a late filing that a courier was responsible for the delay. *Estate of Mendiola v. Mendiola*, 2 N.M.I. 233 (1991).

Final Judgment

See also **Interlocutory Appeal**, this topic.

—Appealable Orders

See **Final Judgment – Entry of Judgment**

Whether the Supreme Court can exercise jurisdiction over an appeal is a threshold question that must always be resolved before the merits of an appeal are examined or addressed. As a general matter, the Supreme Court can only exercise jurisdiction over final orders from the trial court. Commonwealth Rule of Civil Procedure 54(b), however, carves out an exception to this requirement when multiple claims and/or multiple parties are involved. *Commonwealth Dev. Auth. v. Camacho, et al.*, 2010 MP 19 ¶ 5 (2010).

Commonwealth Rule of Civil Procedure Rule 54(b) allows the trial court to certify an order as final and ready for appeal upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. *Commonwealth Dev. Auth. v. Camacho, et al.*, 2010 MP 19 ¶ 5 (2010).

In making the determination that there is no just reason for delay and an express determination for the entry of judgment, the trial court must make two inquiries. First, the trial court must determine if the order is final. Second, in determining whether there is no just reason for delay, the trial court must balance the costs and risks of multiple proceedings and the policy with respect to judicial efficiency against the need for an early and separate judgment to some claims or parties. *Commonwealth Dev. Auth. v. Camacho, et al.*, 2010 MP 19 ¶ 6 (2010).

In determining whether there is no just reason for delay, the trial court does not have to articulate its

reasons in the judgment. While the reasons for the trial court's decision to certify a judgment as final and ready for appeal must appear in the record, the trial court's failure to include those reasons in the judgment is not fatal to the Supreme Court's exercise of jurisdiction. *Commonwealth Dev. Auth. v. Camacho, et al.*, 2010 MP 19 ¶ 6 (2010).

Before the Supreme Court can exercise jurisdiction over a partial final order, the separate entry of judgment must expressly state that the trial court has considered Rule 54(b) and it finds that: (1) the judgment is final as to all the parties and/or the issues involved; and (2) the judgment is one that warrants immediate appealability. *Commonwealth Dev. Auth. v. Camacho, et al.*, 2010 MP 19 ¶ 6 (2010).

A Commonwealth Rule of Civil Procedure Rule 54(b) certification must find that the order warrants immediately appealability. Whether an order is ready for appeal is a primary consideration in determining if there is any just reason for delay. As long as the trial court determines that there is no just reason for delay, it satisfies the requirement that the judgment warrants immediate appeal. *Commonwealth Dev. Auth. v. Camacho, et al.*, 2010 MP 19 ¶ 7 (2010).

A final order is one that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment, and it also adjudicates all of the rights and liabilities of all of the parties. *Commonwealth Dev. Auth. v. Camacho, et al.*, 2010 MP 19 ¶ 10 (2010).

In determining whether there was no just reason for delay, the Supreme Court considers three factors: (1) whether the Court's hearing the appeal taken from the certification would have it determine questions that are before the trial court with regard to other claims; (2) the possibility that the need for review might be mooted by future developments in the trial court; and (3) the possible impact of an immediate appeal on the remaining trial proceedings. *Commonwealth Dev. Auth. v. Camacho, et al.*, 2010 MP 19 ¶ 12 (2010).

Article IV, section 3 of the Commonwealth Constitution provides that the Commonwealth Supreme Court shall hear appeals from final judgments and orders of the Commonwealth superior court. The jurisdictional limitation contained in Article IV, section 3, along with the language of 1 CMC § 3102, which statutorily vests the CNMI Supreme Court with appellate jurisdiction over judgments and orders of the Superior Court, the Supreme Court has jurisdiction only over Superior Court judgments and orders which are final. *Camacho, et al. v. Demapan*, 2010 MP 3 ¶ 22 (2010).

A judgment or order is not final unless it ends the litigation on the merits and leaves nothing for the trial court to do but execute the judgment. *Camacho, et al. v. Demapan*, 2010 MP 3 ¶ 23 (2010).

In cases involving multiple parties or when there are multiple claims for relief, a decision which adjudicates fewer than all the claims at issue in the case or which fails to determine the rights and liabilities of fewer than all the parties is not a final judgment within the meaning of Article IV, section 3 of the Commonwealth Constitution or 1 CMC § 3102. Put another way, under Commonwealth law, in the absence of an applicable statutory or common law exception, an appeal must generally await the entry of a final judgment, i.e., a judgment that fully disposes of all claims asserted in an action. *Camacho, et al. v. Demapan*, 2010 MP 3 ¶ 23 (2010).

In actions involving multiple claims or multiple parties, Commonwealth Rule of Civil Procedure 54(b) allows the Commonwealth Superior Court to direct the entry of final judgment as to fewer than all of the claims or parties; but to do so, the court must make an express determination that there is no just reason for delay upon an express determination for the entry of judgment. *Camacho, et al. v. Demapan*, 2010 MP 3 ¶ 24 (2010).

By its own language, Rule 54(b) mandates strict adherence; that is, if the Superior Court deems it appropriate to issue a final appealable order on an issue that adjudicates less than all the claims in a multi-claim case, the court must make an express determination that there is no just reason for delay and expressly direct the entry of final judgment. *Camacho, et al. v. Demapan*, 2010 MP 3 ¶ 25 (2010).

Before the Supreme Court may exercise appellate jurisdiction over a Rule 54(b) partial final judgment, the separate entry of judgment must expressly state that the trial court has considered Rule 54(b) and it finds that: (1) the judgment is final as to the parties and/or the issue(s) involved; and (2) the judgment is one that warrants immediate appealability. *Camacho, et al. v. Demapan*, 2010 MP 3 ¶ 25 (2010).

Commonwealth Rule of Civil Procedure 54(b) is a mechanism by which non-final orders are deemed final by the trial court. Generally, non-final orders appealed to the Supreme Court must comply with this certification requirement. *In the Matter of the Estate of Roberto*, 2010 MP 7 ¶ 11 (2010).

Under Com. R. Civ. P. 54(b), if the trial court has not ruled on all claims, the trial court is required to certify the finality of a claim before that claim can be reviewed by this Court. In the absence of express language, a lower court order is not appealable under Rule 54(b). However, certification under Rule 54(b) is not necessary or applicable when the trial court has ruled on all the claims at issue. *Century Ins. Co., Ltd. v. Hong Kong Entm't. (Overseas) Inv., Ltd., et al.*, 2009 MP 4 ¶ 10 (2009).

This Court has appellate jurisdiction over judgments and orders which are final, except as otherwise provided by law. A decision is not final unless it ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. Under both Commonwealth and federal law, the finality requirement typically is not met until the trial court issues both a decision and a separate entry of judgment. *In re the Estate of De Castro*, 2009 MP 3 ¶ 12 (2009).

The Supreme Court can only entertain appeals from judgments and orders which are final, except as provided by law. 8 CMC § 2206 states that an appeal may be taken from an order determining heirship or the person to whom distribution should be made or trust property should pass. The language of Section 2206 clearly indicates that this issue is appealable. *In re the Estate of De Castro*, 2009 MP 3 ¶ 15 (2009).

The Supreme Court has interpreted 8 CMC § 2206 to be permissive rather than mandatory. Consequently, the Court has appellate jurisdiction over 8 CMC § 2206 orders regardless of whether an appellant contests an appealable order within thirty days of the issuance of the order, or within thirty days after the conclusion of the probate case. *In re the Estate of De Castro*, 2009 MP 3 ¶ 16 (2009).

Section 3102(a) of Title 1 of the Commonwealth Code has been interpreted by the Supreme Court as granting jurisdiction only over Superior Court judgments and orders which are final. 1 CMC § 3102(a). *Chan v. Chan*, 2003 MP 5 ¶ 18

The denial of a motion for summary judgment is not a final order, and therefore the N.M.I. Supreme Court does not have jurisdiction to hear an appeal of the order pursuant to 1 CMC § 3102(a). Moreover, an attempt by the Superior Court to certify an order denying summary judgment as a final judgment pursuant to Commonwealth Rule of Civil Procedure 54(b) is improper. 1 CMC § 3102(a), Com. R. Civ. P. 54(b). *Chan v. Chan*, 2003 MP 5 ¶ 18

Where no express authorization exists permitting the Supreme Court to hear an interlocutory appeal, the Supreme Court has no choice but to decline review of a denial of a summary judgment, even if it is certified for appeal by the trial court. *Chan v. Chan*, 2003 MP 5 ¶ 19

Neither Commonwealth Rule of Appellate Procedure 4, nor 1 CMC § 3102(a) provide the N.M.I. Supreme Court with any grounds for exercising jurisdiction over an interlocutory appeal, therefore the N.M.I. Supreme Court has no jurisdiction to review the appeal of an order denying a motion for summary judgement, where such order is not a final judgment. Com. R. App. P. 4, 1 CMC § 3102(a). *Chan v. Chan*, 2003 MP 5 ¶ 20

The N.M.I. Supreme Court's appellate jurisdiction over Superior Court proceedings permits it to hear appeals only from judgments and orders which are final, except as otherwise provided by law. A decision is not final unless it ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. 1 CMC § 3102(a). *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 13

Final judgment and orders include, besides orders that terminate the litigation, decisions that conclusively determine a disputed question, resolve an important issue completely separate from the merits of the action, and are effectively not reviewable on appeal from the final judgment in the underlying action. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 13

Orders imposing sanctions, for what amounts to professional misconduct, are final for purposes of an appeal. Matsunaga v. Matsunaga, 2001 MP 11 ¶ 14

—Costs

Commonwealth Rule of Civil Procedure 54(d)(1) allows for the recovery of costs by the prevailing party. The Commonwealth Code states that 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. 7 CMC § 3207. *Hiponia, et al. v. Royal Crown Ins. Corp*., 2010 MP 8 ¶ 72 (2010).

Unless the court finds otherwise, the Legislature also specified that certain other costs are recoverable including all fees and expenses paid or incurred for the service of process, witness fees, of filing fees on appeal, 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, but this does not include witness fees when the witness is a party in interest. 7 CMC § 3208. *Hiponia, et al. v. Royal Crown Ins. Corp*., 2010 MP 8 ¶ 72 (2010).

In the Commonwealth, 7 CMC § 3207 is entirely permissive, and the trial court enjoys considerable latitude in awarding costs. It does not enumerate recoverable costs, but rather allows the trial judge to award costs it deems justly and necessarily incurred. *Hiponia, et al. v. Royal Crown Ins. Corp*., 2010 MP 8 ¶ 73 (2010).

Witness fees are recoverable pursuant to 7 CMC § 3208, and are further discussed in 7 CMC §§ 3204 and 3205, but there is no discussion concerning the amount recoverable as costs in any of those sections. The trial court has discretion to award expert witness costs. *Hiponia, et al. v. Royal Crown Ins. Corp*., 2010 MP 8 ¶ 74 (2010).

Photocopying, mileage, and copying costs are routine and may be awarded pursuant to at the trial court's broad discretion under 7 CMC § 3207. *Hiponia, et al. v. Royal Crown Ins. Corp*., 2010 MP 8 ¶ 74 (2010).

Despite the broad statutory language giving the trial court substantial leeway in awarding costs, computerized legal research expenses are not taxable as costs because such expenses are actually part of the attorney's time that is compensated through the fees either charged to the client or awarded by the court. *Hiponia, et al. v. Royal Crown Ins. Corp*., 2010 MP 8 ¶ 75 (2010).

A proper award of attorney's fees in accordance with the assignment requires that all proceedings, including appeals, have been completed. *Stephanson v. Teregeyo*, 2008 MP 13 ¶ 23 (2008).

See also **Attorney's Fees**, this topic; determination of reasonable fees, see **ATTORNEY AND CLIENT – Fees, Reasonableness of**.

In determining whether to award an appellee costs, three factors are controlling: the appeal must be disposed of in a manner allowing for costs to be taxed; the costs must be of a type provided for in the rules; and the bill of costs must be filed in a timely manner. *Pacific Amusement, Inc. v. Villanueva*, 2005 MP 14 ¶ 2

Failure to determine the issue of attorney fees does not render a judgment non-final because its resolution will not alter the order or moot or revise decisions embodied in the order. *Chan v. Chan*, 2003 MP 5 ¶ 13

The finality of a judgment is not dependent upon a determination of the collateral issue of attorney's fees. *Tanki v. S.N.E. Saipan Co., Ltd.*, 4 N.M.I. 69 (1993).

A request for costs raises issues wholly collateral to the judgment in the main cause of action. *Tanki v. S.N.E. Saipan Co., Ltd.*, 4 N.M.I. 69 (1993).

A judgment is final despite the fact that court costs incurred in the case have not yet been fixed. *Tanki v. S.N.E. Saipan Co., Ltd.*, 4 N.M.I. 69 (1993).

Com. R. Civ. P. 54(d), concerning taxing of costs, does not provide a deadline in which a prevailing party may tax costs. The prevailing party may tax costs immediately after judgment, during the pendency of an appeal or even after judgment has been affirmed on review. *Tanki v. S.N.E. Saipan Co., Ltd.*, 4 N.M.I. 69 (1993).

Where an appellant challenges the amount of costs taxed by the trial court clerk after judgment, the order taxing costs is not final but interlocutory in nature until the trial court rules on a motion, pursuant to Com. R. Civ. P. 54(d), to review the clerk's action. *Tanki v. S.N.E. Saipan Co., Ltd.*, 4 N.M.I. 69 (1993).

Any objection to the amount taxed as costs by the trial court clerk is waived unless the trial court rules on a motion, pursuant to Com. R. Civ. P. 54(d), to review the clerk's action. *Tanki v. S.N.E. Saipan Co., Ltd.*, 4 N.M.I. 69 (1993).

Trial court must exercise its sound discretion, with due regard for the facts and circumstances of each case, in reviewing trial court clerk's taxation of costs. Com. R. Civ. P. 54(d). *Tanki v. S.N.E. Saipan Co., Ltd.*, 4 N.M.I. 69 (1993).

CTC 1986. The order of dismissal of actions based on lack of subject matter jurisdiction was final and determinative of the matters and was an appealable order under Rule 54(a). Comm.Tr.Court R.Civ.P. 54(a). *Matsunmoto v. Akiyama*, 2 CR 887, *aff'd*, 3 CR 141 (DNMI App. Div. 1987).

——Particular Cases

In action for breach of lease agreement, order granting summary judgment and awarding undetermined costs and attorney's fees was a final judgment. *Tanki v. S.N.E. Saipan Co., Ltd.*, 4 N.M.I. 69 (1993).

—Entry of Judgment

After a judgment has issued, but before it has become final and non-reviewable, a change in the law that affects the judgment does not deny the holder of the judgment due process because a non-final judgment is not a vested property right. *Marine Revitalization Corp., et al. v. DLNR*, 2011 MP 2 ¶ 6 (2011).

A judgment does not constitute a property right subject to due process protections until the judgment is final and no longer reviewable. *Marine Revitalization Corp., et al. v. DLNR*, 2011 MP 2 ¶ 7 (2011).

Under 1 CMC § 7207, any final judgment of a court shall be paid only pursuant to an item of appropriations. *Marine Revitalization Corp., et al. v. DLNR*, 2011 MP 2 ¶ 9 (2011).

7 CMC § 4101 does not make the government liable for post-judgment interest. *Marine Revitalization Corp., et al. v. DLNR*, 2011 MP 2 ¶ 9 (2011).

Based on the ambiguous language in the statute, its location in the Commonwealth Code, and the legislative history, 1 CMC § 2553(k) likely does not apply to judgments. *Marine Revitalization Corp., et al. v. DLNR*, 2011 MP 2 ¶ 12 (2011).

In cases involving multiple parties or when there are multiple claims for relief, a decision which adjudicates fewer than all claims or the rights and liabilities of fewer than all parties is not a final judgment. The court may, however direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay upon an express direction for the entry of judgment. When there has been such a determination and direction, the judgment is appealable as a final judgment. *Commonwealth v. Kumagai*, 2006 MP 20 ¶ 10

Two inquiries must be made when determining whether a Rule 54(b) certification is proper. First, the court must determine whether it is dealing with a final judgment. Second, the court must perform a balancing test and consider whether the costs and risks of multiple proceedings and the policy with respect to judicial efficiency are outweighed by the need for an early and separate judgment as to some claims or parties. *Commonwealth v. Kumagai*, 2006 MP 20 ¶ 12

Where the lower court had not fully decided a case and no Rule 54(b) certification was filed, the appeal was untimely filed and the appellate court had no jurisdiction to hear the case. *Commonwealth v. Kumagai*, 2006 MP 20 ¶ 14

An entry of judgment or order is different from the announcement of a decision, sentence or order. An entry of judgment or order has been singled and differentiated from announced orders, decisions and sentences in the rules and must therefore itself be in a different form. An entry of judgment or order, filed with the clerk of the Superior Court, is required before an appeal is permitted. *Commonwealth v. Kumagai*, 2006 MP 20 ¶ 18

An entry of judgment or order is different from an announced order, decision or sentence by way of form. *Commonwealth v. Kumagai*, 2006 MP 20 ¶ 19

An appeal lies only from a distinct entry of judgment by the clerk. *Commonwealth v. Kumagai*, 2006 MP 20 ¶ 21

Although not explicitly stated, an entry of judgment or order must be issued as a separate document, filed with the Superior Court clerk, and entered on the docket. *Commonwealth v. Kumagai,* 2006 MP 20 ¶ 22

The appellate court will require strict compliance with the separate document rule The rule will increase judicial efficiency and economy. The rule is neither onerous nor burdensome, and it provides the parties with conclusive notification that the case has ended and an appeal may be taken, ensures that a decision addressed on appeal is really the trial court's final resolution of the matter, and protects litigants from uncertainty. *Commonwealth v. Kumagai,* 2006 MP 20 ¶ 22

Certification as a final judgment under Commonwealth Rule of Civil Procedure 54(b) requires a party to initially establish: that the case include either multiple claims, multiple parties, or both; and that either one or more but fewer than all the claims have been decided or that all the rights and liabilities of at least one party have been adjudicated. Com. R. Civ. P. 54(b). *Chan v. Chan*, 2003 MP 5 ¶ 10

The standard for determining finality of a claim under Commonwealth Rule of Civil Procedure 54(b) is the same standard used in determining finality for a claim in an ordinary appeal. Rule 54(b) does not relax the finality required for a decision to be appealed, it simply allows an individual claim that has been finally decided to move forward to appeal without waiting for a final decision to be rendered on all the claims in a case. Com. R. Civ. P. 54(b). *Chan v. Chan*, 2003 MP 5 ¶ 12

A Rule 54(b) judgment does not require a motion under Com. R. Civ. P. 7(b)(1). Com. R. Civ. P. 54(b) and 7(b)(1). *Teregeyo v. Lizama*, 1997 MP 12 ¶10

A Rule 54(b) judgment does not require the Superior Court to enunciate a brief, reasoned explanation as to why there is "no just cause for delay." Com. R. Civ. P. 54(b). *Teregeyo v. Lizama*, 1997 MP 12 ¶15

Trial court's certificate of appealability is not conclusive as to finality of trial court order directing entry of judgment involving fewer than all claims presented or all parties involved in action pursuant to Com. R. Civ. P. 54(b). If order is in fact interlocutory and does not actually adjudicate one or more but less than all of the claims in the action or the rights and liabilities of one or more parties, an appeal from it will be dismissed, even though the trial court has decided to treat the order as final. *Ito v. Macro Energy, Inc.*, 2 N.M.I. 459 (1992).

Following dismissal of a defendant from an action pursuant to Com. R. Civ. P. 54(b), a remaining defendant may seek certification of appealability of order of dismissal. There is no procedure for obtaining a certificate of appealability prescribed in Com. R. Civ. P. 54(b). In most cases, a party will simply file a motion requesting the court to make the determination and direction required by the rule. In an appropriate case, the trial court may consider the question sua sponte. It does not matter who moved for certification so long as the requirements of Com. R. Civ. P. 54(b) are met. *Ito v. Macro Energy, Inc.*, 2 N.M.I. 459 (1992).

NMI Supreme Court would consider three factors in reviewing certification for appeal of order granting judgment involving fewer than all claims presented or all parties involved in action: (1) whether hearing the appeal would have appellate court determining questions that were before trial court with respect to other claims in the action; (2) possibility that need for review might be mooted by future developments in trial court; and (3) possible impact of immediate appeal on the remaining trial proceedings—i.e., whether the appeal would have the undesirable effect of delaying trial of the unadjudicated matters without gaining any offsetting advantage in simplifying and facilitating the trial. Com. R. Civ. P. 54(b). *Ito v. Macro Energy, Inc.*, 2 N.M.I. 459 (1992).

Under Com. R. Civ. P. 54(b), permitting court to direct entry of judgment involving fewer than all claims presented or all parties involved in action upon express determination that there is no just reason for delay and upon express direction for entry of judgment, general requirements are that case include either multiple claims, multiple parties, or both and that either one or more but fewer than all claims have been decided or that all rights and liabilities of at least one party have been adjudicated. *Ito v. Macro Energy, Inc.*, 2 N.M.I. 459 (1992).

After appellate court determines whether trial court orders directing entry of judgment involving fewer than all claims presented or all parties involved in action are final, appealable orders, it must determine whether trial court abused its discretion in determining that there was no just reason for delay. Com. R. Civ. P. 54(b). *Ito v. Macro Energy, Inc.*, 2 N.M.I. 459 (1992).

——Particular Cases

Despite trial court's certification of appealability, order denying defendant insurance company's motion for partial summary judgment to the effect that defendant insured's employees were not covered by insurance policy was not final, appealable order. Com. R. Civ. P. 54(b). *Ito v. Macro Energy, Inc.*, 2 N.M.I. 459 (1992).

Despite trial court's certification of appealability, order granting defendant insurance company's motion for partial summary judgment to the effect that limit of coverage under insurance policy was $100,000 was not final, appealable order. Order neither adjudicated a right nor a liability of any of the parties. It did not state that a party had to pay a certain sum, or that a party was entitled to sum. These issues were left for trial. Com. R. Civ. P. 54(b). *Ito v. Macro Energy, Inc.*, 2 N.M.I. 459 (1992).

Trial court abused its discretion in certifying appealability of order dismissing two defendants from action pursuant to Com. R. Civ. P. 54(b). Second factor in analysis of appealability (possibility that need for review might be mooted by future developments at trial) was particularly relevant, since claim for relief stemmed from plaintiff's allegation of negligence by employees of defendants. Employees' negligence had not been established; only if it was established that employees were negligent and that their negligence proximately caused death of plaintiff's husband would order finding defendants not liable be appropriate for review. Review of order could thus be premature and would, in effect, be advisory in nature because dismissed defendants were sued on theory of respondeat superior. *Ito v. Macro Energy, Inc.*, 2 N.M.I. 459 (1992).

In action for specific performance of oral land exchange agreement and damages for unauthorized occupation of land, trial court's order upholding agreement, granting specific performance and requiring plaintiff to pay restitution to defendant for improvements on land was not final judgment from which appeal could have been taken. Although order contained phrase "now therefore, it is hereby ordered, adjudged and decreed," use of phrase did not, per se, make order a final judgment. Order did not fix amount of restitution to be paid, the amount of restitution was contested, and order failed to inform plaintiff of extent of remedy afforded against her. *Westenberger v. Atalig*, 3 N.M.I. 471 (1993).

—Forum Selection

DC NMI 1987. Foreign forum selection clauses should be enforced unless the party objecting to enforcement can clearly show that enforcement would be unreasonable, unjust, or invalid because there is fraud, undue influence or overweening bargaining power. *American International Knitters Corporation, v. Kawasaki Kisen Kaisha Ltd.*, 3 CR 102.

DC NMI 1987. Where other than counsel's unsworn assertion that it would be unjust to have the matter tried in a Tokyo court, there was nothing properly in the record to persuade the Court that it would be inappropriate to enforce the forum selection clause, court found that under the facts properly before it the foreign forum selection clause is valid and enforceable and declines to exercise jurisdiction to try this matter. *American International Knitters Corporation, v. Kawasaki Kisen Kaisha Ltd.*, 3 CR 102.

—Generally

An 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 creditor, or for payments, in specified installments on particular dates or at specified intervals. 7 CMC § 4206(b). However, any other method of payment which the court deems just may also be used. *Bank of Guam v. Ruben*, 2009 MP 9 ¶ 7 (2009).

Commonwealth law indicates that the trial court has the right to "make such order in aid of judgment as is just for the payment of any judgment." 7 CMC § 4206. The statute further provides that the court shall "determine the fastest manner in which the debtor can reasonably pay a judgment." 7 CMC § 4205. *Bank of Guam v. Ruben*, 2008 MP 22 ¶ 18 (2008).

At an aid of judgment hearing, the trial court determines the debtor's ability to pay and determines the fastest manner in which the debtor can reasonably pay a judgment. The trial court further determines what part of the debtor's income is necessary to provide the debtor with reasonable living expenses. After the trial court hears evidence, it makes an order in aid of judgment for the payment of any judgment. 7 CMC § 4205. *Triple J Saipan, Inc. v. Norita*, 2007 MP 26 ¶ 4 (2007).

Garnishment is a statutory proceeding whereby the property, money, or credits of one person in the possession of, or owing by another are applied to the payment of the debt of a debtor by means of proper

statutory process issued against the debtor and the garnishee. Thus defined, garnishment necessarily involves three parties: a creditor, a debtor, and a third person who has some obligation to the debtor. Garnishment is a creditor's action against his debtor's debtor to obtain payment of what is owed the creditor. *Triple J Saipan, Inc. v. Norita,* 2007 MP 26 ¶ 5 (2007).

A final judgment is one that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. Generally, a final judgment must adjudicate all the rights and liabilities of each party. *Bank of Guam v. Mendiola et al,* 2007 MP 1 ¶ 5

Com. R. Civ. P. 54(b) carves out an exception for partial final orders when multiple claims or multiple parties are involved. In such cases the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. By its own language, Rule 54(b) requires strict adherence. *Bank of Guam v. Mendiola et al,* 2007 MP 1 ¶ 5

An express Rule 54(b) determination is necessary for appellate jurisdiction. In the absence of express language, a lower court order is not appealable under Rule 54(b). *Bank of Guam v. Mendiola et al,* 2007 MP 1 ¶ 6

Before the Court may exercise appellate jurisdiction over a Rule 54(b) partial final judgment, the separate entry of judgment must expressly state that the trial court has considered Rule 54(b) and it finds that: 1) the judgment is final as to the parties and/or the issue(s) involved; and 2) the judgment is one that warrants immediate appealability pursuant to Com. R. Civ. P. Rule 54(b). *Bank of Guam v. Mendiola et al,* 2007 MP 1 ¶ 13

There exists no real distinction between judgments for attorneys' fees and judgments for other items of damages. Once a judgment is obtained, interest thereon is mandatory without regard to the elements of which that judgment is composed. *Northern Marianas Housing Corporation v. Flores,* 2006 MP 23 ¶ 6

A judgment determining liability is the judgment from which interest begins accruing for all components of the judgment, regardless of whether some or all of those components are not quantified at that point. *Northern Marianas Housing Corporation v. Flores,* 2006 MP 23 ¶ 7

Interest on damage awards, regardless of what those damages purport to remedy, begins to run from the time the trial court enters a judgment establishing a party's right to such damages. *Northern Marianas Housing Corporation v. Flores,* 2006 MP 23 ¶ 8

It is settled law that generally the NMI Supreme Court has no jurisdiction to review interlocutory orders. *Ishimatsu et al. v. Royal Crown Ins. Corp.,* 2006 MP 9 ¶ 7

A court decision that offers remittitur or a new trial pursuant to Rules 50 and 59 of the Commonwealth Rules of Civil Procedure is an interlocutory order which is not immediately appealable because the choice between accepting a reduction of the award or obtaining a new trial remains open until the plaintiff elects one of the options provided by the court. Furthermore, there is no appealable order until the lower court either enters a final order based on plaintiff's acceptance of the remittitur or proceeds to judgment after a new trial. *Ishimatsu et al. v. Royal Crown Ins. Corp.,* 2006 MP 9 ¶ 7

An order that gives a party the choice as to whether they will accept remitted damages or will elect to have a new trial is interlocutory in nature. *Ishimatsu et al. v. Royal Crown Ins. Corp.,* 2006 MP 9 ¶ 8

Where an order does not contain language specifying that a judgment will automatically be entered for a remitted amount at the close of a 30-day period and where it does not satisfy the requirements of Commonwealth Rule of Civil Procedure 4(a)(4) because there is no indication of whether the judgment is actually altered or not, instead there is only a choice provided between accepting the new judgment (remitted award) or proceeding to a new trial, the order is interlocutory and not appealable separately. *Ishimatsu et al. v. Royal Crown Ins. Corp.,* 2006 MP 9 ¶ 8

The N.M.I. Supreme Court has jurisdiction, pursuant to Section 3102(a) of Title 1 of the Commonwealth Code, to review interlocutory orders. 1 CMC § 3102(a). *Villanueva v Tinian Shipping and Transp., Inc.,* 2005 MP 12 ¶ 6

Generally, a grant or denial of a temporary restraining order is not an appealable order, although it may be challenged through an extraordinary writ. The exception to the rule of non-appealability is if the temporary restraining order was extended beyond the

required statutory time period or if it effectively decided the merits of the action. *Villanueva v Tinian Shipping and Transp., Inc.,* 2005 MP 12 ¶ 10

After a temporary restraining order has expired, it cannot be appealed because the matter is moot. The only exception to this prohibition is if a temporary restraining order is of public importance, is likely to recur, and is likely to become moot again prior to appellate review. *Villanueva v Tinian Shipping and Transp., Inc.,* 2005 MP 12 ¶ 11

In the absence of a writ of mandamus, the final judgment rule denies this N.M.I. Supreme Court appellate jurisdiction over interlocutory orders. *Guo Qiong He v. Commonwealth*, 2003 MP 3 ¶ 13

The collateral order doctrine is an exception to the final judgment rule. The collateral order doctrine states that a party may appeal an order which conclusively determines the disputed question, resolves an important issue completely separate from the merits of the action, and is effectively unreviewable on appeal from a final judgment. *Guo Qiong He v. Commonwealth*, 2003 MP 3 ¶ 14

A final decision is one that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. *Chan v. Chan*, 2003 MP 5 ¶ 13

A judgment that rules on the issue of liability, but does not resolve whether a plaintiff is entitled to relief expressly prayed for, is not final, and therefore cannot be certified for appeal under Commonwealth Rule of Civil Procedure 54(b). Com. R. Civ. P. 54(b). *Chan v. Chan*, 2003 MP 5 ¶ 15

Where a trial court's decision does not address issues such as the amount of a plaintiff's damages and other forms of sought relief, it does not finally dispose of the plaintiff's claim, and therefore, certification as final under Commonwealth Rule of Civil Procedure 54(b) is inappropriate and the N.M.I. Supreme Court cannot exercise jurisdiction over the matter as a final judgment. Com. R. Civ. P. 54(b). *Chan v. Chan*, 2003 MP 5 ¶ 16

The law of the case doctrine developed to maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit. While the doctrine does not jurisdictionally bar a court from reconsidering issues previously concluded, as does the related doctrine of res judicata, the principle of law of the case directs a court not to alter a previous judicial determination unless unusual circumstances are present. *Cushnie v. Arriola*, 2000 MP 7 ¶ 14

Law of the case, as applied to the effect of previous orders on the later action of the court rendering them in the same case, merely expresses the practice of the courts generally to refuse to reopen what has been decided, not a limit to their power. *Cushnie v. Arriola*, 2000 MP 7 ¶ 14

The law of the case doctrine is not an inflexible rule. There is no imperative duty to follow the earlier ruling--only the desirability that suitors shall, so far as possible, have reliable guidance how to conduct their affairs. Even if a different judge is assigned to a continuing case, it is not inappropriate for that judge to arrive at a different decision. The judge still retains the ultimate discretion in the case. Thus, a denial of summary judgment does not preclude a successor judge from reconsidering the denial and then granting summary judgment, when appropriate. *Cushnie v. Arriola*, 2000 MP 7 ¶ 15

Where the trial court stated that there had not been adequate briefing on a subject, and that it was not in the position to make a conclusive determination on a motion, and given the apprehensive and uncertain nature of the trial court's denial of the motion, the N.M.I. Supreme Court cannot conclude that the denial of the motion established the law of the case, which would bar a subsequent determination granting the motion. *Cushnie v. Arriola*, 2000 MP 7 ¶ 17

The law of the case doctrine is not a bar to the granting of a subsequent motion for summary judgment, so long as unusual circumstances, such as error, have been established. *Cushnie v. Arriola*, 2000 MP 7 ¶ 18

DC NMI 1982. An action on a final judgement is a distinct cause of action from the initial claim which results in the judgement. *Babauta v. Trust Territory of the Pacific Islands*, 1 CR 291.

——Particular Cases

Appeal from the trial court's denial of qualified immunity falls under the collateral order doctrine, as immunity is not merely a defense but an actual exemption from liability and an entitlement not to stand trial, however, a denial of a motion to dismiss based on immunity is not necessarily a denial of immunity. *Guo Qiong He v. Commonwealth*, 2003 MP 3 ¶ 15

A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. *Tanki v. S.N.E. Saipan Co., Ltd.*, 4 N.M.I. 69 (1993).

—Interlocutory Orders

See **Final Judgment – Entry of Judgment** and **Interlocutory Appeal**, this topic.

—Injunction

See **REMEDIES – Injunction – Appeal**

—Notice

Lack of notice to party of entry of judgment by Superior Court Clerk in itself has no effect upon the time for filing appeal as provided in Com. R. App. P. 4(a), but in considering an application for extension of time for filing appeal, court may take into account, as one of the factors affecting its decision, whether clerk failed to give notice as required in Com. R. Civ. P. 77(d) or the party failed to receive the clerk's notice. Court need not extend time for appeal merely because the clerk's notice was not sent or received. *Tudela v. Marianas Pub. Land Corp.*, 1 N.M.I. 179 (1990).

Com. R. Civ. P. 77(d) charges a prospective appellant with the duty of following the progress of the case and of advising himself when a final judgment or order is actually entered by a court. This duty cannot be delegated to an attorney's office staff, and may not be delegated to an attorney who is not even associated with the appellant's counsel. *Tudela v. Marianas Pub. Land Corp.*, 1 N.M.I. 179 (1990).

——Particular Cases

Despite asserted lack of notice of entry of final judgment by Superior Court clerk, attorney's receipt of copy of summary judgment memorandum decision should have been sufficient to alert appellant to deadline for filing notice of appeal. *Tudela v. Marianas Pub. Land Corp.*, 1 N.M.I. 179 (1990).

—Reconsideration, Motion for

Pursuant to NMI Supreme Court Rule 27-4(d)(2)(B), a motion to reconsider an order entered by a single justice shall be decided by the full court. *Owens v. Commonwealth Health Center*, 2011 MP 6 ¶ 5 (2011).

A court grants a motion pursuant to Rule 59(e) when the controlling law changes, new evidence becomes available, or a need to correct a clear error or prevent a manifest injustice arises. *Century Ins. Co., Ltd. v. Guerrero Bros., Inc., et al*., 2010 MP 13 ¶ 6 (2010).

A motion for reconsideration may be brought under Com. R. Civ. P. 59(e) of the Commonwealth Rules of Civil Procedure as a motion to alter or amend the judgment. Com. R. Civ. P. 59(e). *Angello v. Louis Vuitton Saipan, Inc.*, 2000 MP 17 ¶ 23

The major grounds justifying reconsideration of a judgement involve an intervening change in the controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice. *Angello v. Louis Vuitton Saipan, Inc.*, 2000 MP 17 ¶ 23

There is ordinarily no duty to move for reconsideration at trial court before filing appeal to NMI Supreme Court. *Mundo v. Superior Ct.*, 4 N.M.I. 392 (1996).

—Relief from Judgment, Motion for

The Restatement (Second) of Judgments § 78 (1982), states that relief from a judgment must be obtained by means of a motion for that purpose in the court that rendered the judgment unless relief may be obtained more fully, conveniently, or appropriately by some other procedure. Comment e "[r]elation to motion for new trial or appeal" discusses the effect of an appeal from a default judgment without first moving to vacate the default in the trial court. In discussing the relationship between moving to vacate a default judgment and an appeal, the comment provides that serious errors of the kind that can be remedied by a 60(b) motion can be complained of through appeal. But appeal is an effective remedy only if the matter in question has been made part of the record that can be put before the appellate court at a point when the time to appeal has not expired. . . . On the other hand, if the ground for relief in question involves factual matters that were not placed before the trial court prior to judgment, or in connection with a motion for new trial, ordinarily they cannot be included in the record of an appeal. . . . Hence, even if the time for appeal has not expired, resort to a 60(b) motion is justified when additional evidence is required to establish the basis for attacking the judgment, assuming that the applicant can also justify his failure

to employ a motion for new trial. *Commonwealth Dev. Auth. v. Camacho, et al.*, 2010 MP 19 ¶ 17 (2010).

Under the restatement approach, a party may directly appeal from a default judgment without first challenging it in the trial court, but the appellate court cannot consider matters that were not part of the lower court's record. *Commonwealth Dev. Auth. v. Camacho, et al.*, 2010 MP 19 ¶ 17 (2010).

The Supreme Court adopts the restatement approach, and allows a party to directly appeal a default judgment without first moving to set it aside pursuant to Commonwealth Rules of Civil Procedure 55(c) or 60(b). However, if a party fails to first challenge a default judgment in the trial court, it foregoes the ability to submit new evidence into the record and raise issues on appeal that require factual development. This strictly limits the Court's review to matters that were part of the record or questions of law. Stated differently, if a party wishes to raise defenses to a default judgment that require factual development, it must first raise those issues in the trial court before it notices an appeal, otherwise it intentionally or unintentionally waives those defenses. *Commonwealth Dev. Auth. v. Camacho, et al.*, 2010 MP 19 ¶ 21 (2010).

Commonwealth Rules of Civil Procedure 60(b)(1) authorizes relief from judgment taken through excusable neglect and is a remedial rule which normally receives a liberal construction from courts who are concerned that cases not be decided in default against parties who are inadvertently absent. But a liberal construction is usually reserved for instances where error is due to failure of attorneys or other agents to act on behalf of their clients, not where the client's own inaction is at fault. Com. R. Civ. P. 60(b)(1). *Reyes v. Reyes*, 2001 MP 13 ¶ 22

A party's claim that his attorney did not follow his wishes because he lost contact with his attorney and the party's failure to communicate with his counsel for almost a year do not constitute foreseeable neglect as contemplated by Commonwealth Rule of Civil Procedure 60(b)(1). Com. R. Civ. P. 60(b)(1). *Reyes v. Reyes*, 2001 MP 13 ¶ 23

When a motion is brought for relief from a void judgment, pursuant to Commonwealth Rule of Civil Procedure 60(b)(4), and the judgment is in fact void, there is no discretion on the part of the court, thus the N.M.I. Supreme Court reviews a trial court's denial of a Rule 60(b)(4) motion de novo. Com. R. Civ. P. 60(b)(4). *Reyes v. Reyes*, 2001 MP 13 ¶ 24

——Particular Cases

Superior Court did not abuse its discretion in denying motion for relief from judgment where decisions of Commonwealth Supreme Court and decisions of United States Ninth Circuit Court of Appeals constitute the law of the case in matter and therefore the Superior Court was bound by the decisions of the higher courts. Com. R. Civ. P. 60(b). *Ferreira v. Borja*, 1999 MP 2 ¶10

Superior Court did not abuse its discretion in finding that Rule 60(b) motion to set aside judgment on grounds that the Ninth Circuit had no jurisdiction to vacate judgment in case was frivolous. Com. R. Civ. P. 60(b). *Ferreira v. Borja*, 1999 MP 2¶11

DC App. Div. 1987. Where the trial court's short one and one-half page dismissal order in civil actions was clearly labelled, to the point, and not reasonably susceptible of any interpretation other than finality not only because of its language, but because it dismissed for want of subject matter jurisdiction, it was not a situation fostering inequity because a party could not tell which one of several documents constituted "entry of judgment," and rule requiring separate document for final judgment did not affect finality of judgment. Com.R.Civ.P. 58. *Matsumoto v. Akiyama*, 3 CR 141.

DC App. Div. 1987. To decide whether there has been a waiver of rule requiring a separate judgment, one must apply common sense principles to determine the intent of the trial court. C0m.R.Civ.P. 58. *Matsumoto v. Akiyama*, 3 CR 141.

DC App. Div. 1987. The "separate document" requirement of rule was designed to clarify, for purposes of appeal or post-verdict motions, the point at which a judgment was deemed "entered" and was not intended, as a hyper-technical defense against the according of res judicata effect to a judgment or final order in a previous lawsuit. Com.R.Civ. P. 58. *Matsumoto v. Akiyama*, 3 CR 141.

—Remands

Courts traditionally have not considered remands final decisions because of the policy disfavoring piecemeal appeals. *Feliciano v. Superior Court (In re Estate of Hillblom)*, 1999 MP 3 ¶27

—Separate Document

The trial court can direct the entry of a final judgment as to fewer than all of the parties or claims provided that it makes an express determination that there is no just reason for delay and an express determination for the entry of judgment. Those express determinations must be made on a separate document just like all final judgments. Rule 54(b) certification cannot be implied from the trial court's actions or language; the certification must occur in a separate document. *Commonwealth Dev. Auth. v. Camacho, et al*., 2010 MP 19 ¶ 6 (2010).

The separate document rule requires that a separate entry of judgment form be filed with the Superior Court Clerk before a matter can be appealed to this Court. *In the Matter of the Estate of Roberto*, 2010 MP 7 ¶ 12 (2010).

The Supreme Court has jurisdiction notwithstanding the requirement that the separate document rule applies to 8 CMC § 2206. *In the Matter of the Estate of Roberto*, 2010 MP 7 ¶ 12 (2010).

The separate document rule may be waived if a litigant requests that an appellate court set aside an appealable order and the non-appealing party does not contest the appeal on the basis of the separate document rule. *In the Matter of the Estate of Roberto*, 2010 MP 7 ¶ 12 (2010).

Pursuant to the Separate Documents rule, an appeal may only be taken from a judgment which is set forth on a separate document issued from the Superior Court. The basis of having such a rule is to promote judicial economy and efficiency and so that parties and the courts are clear as to when a case is fully adjudicated below. Therefore, strict adherence to the separate document rule will be enforced prospectively. *Century Ins. Co., Ltd. v. Hong Kong Entm't. (Overseas) Inv., Ltd., et al.*, 2009 MP 4 ¶ 11 (2009).

Rule 58 of the Federal Rules of Civil Procedure states that every judgment shall be set forth on a separate document. A judgment is effective only when so set forth. However, Rule 58 of the Commonwealth Rules of Civil Procedure does not mirror its federal counterpart. *In re the Estate of De Castro*, 2009 MP 3 ¶ 13 (2009).

Entry of judgment or order issued as a separate document is a necessary adjunct that must be filed with the Superior Court clerk. Without such an entry of judgment or order, the Supreme Court has no jurisdiction. In order to comply with the rule, the separate entry of judgment must be distinct from the trial court's opinion or order, in that it shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings. The Supreme Court will require strict compliance with the separate document rule. *In re the Estate of De Castro*, 2009 MP 3 ¶ 13 (2009).

A separate document is necessary for entry of judgment, and that without it, we lack jurisdiction. The separate document rule is jurisdictional, in that the court cannot consider an appeal until a separate entry of judgment is filed. *In re the Estate of De Castro*, 2009 MP 3 ¶ 14 (2009).

The purpose behind the separate document rule is three-fold. First, it provides parties with conclusive notification that the case has ended and an appeal may be taken. Second, it ensures that a decision addressed on appeal is really the trial court's final resolution of the matter. Third, it protects litigants from uncertainty as to when a notice of appeal must be filed within the time permitted. Applying the separate document rule to 8 CMC § 2206 appeals furthers these objectives. *In re the Estate of De Castro*, 2009 MP 3 ¶ 19 (2009).

The separate document rule applies to 8 CMC § 2206 appeals. Litigants may appeal Section 2206 orders within thirty days or they may appeal at the conclusion of the probate case. In either case, the trial court must issue a separate entry of judgment before this Court has jurisdiction over the appeal. And, like other jurisdictions that require all judgments be set forth in a separate document, the period for filing an appeal in the Commonwealth does not begin to run until the trial court enters a separate entry of judgment. *In re the Estate of De Castro*, 2009 MP 3 ¶ 20 (2009).

Notwithstanding the jurisdictional nature of the Commonwealth's iteration of the separate document rule, the Supreme Court adopts a waiver exception. The separate document rule may be waived if a litigant requests that an appellate court set aside an appealable order, and the opposing party agrees to waive the requirement. Waiver, or consent to the appeal without the filing of a separate entry of judgment, is generally established where the non-appealing party does not contest the appeal on the

basis of the separate document rule. *In re the Estate of De Castro*, 2009 MP 3 ¶ 21 (2009).

DC App. Div. 1987. Where the trail court's short one and one-half page dismissal order in civil actions was clearly labeled, to the point, and not reasonably susceptible of any interpretation other than finality not only because of its language, but because it dismissed for want of subject matter jurisdiction, it was not a situation fostering inequity because a party could not tell which one of several documents constituted "entry of judgment," and rule requiring separate document for final judgment. Com.R.Civ.P. 58. *Matsumoto v. Akiyama*, 3 CR 141.

DC App. Div. 1987. To decide whether there has been a waiver of rule requiring a separate judgment, one must apply common sense principles to determine the intent of the trial court. Com.R.Civ.P. 58. *Matsumoto v. Akiyama*, 3 CR 141.

DC App. Div. 1987. The "separate document" requirement of rule was designed to clarify, for purposes of appeal or post-verdict motions, the point at which a judgment was deemed "entered" and was not intended, as a hyper-technical defense against the according of res judicata effect to a judgment or final order in a previous lawsuit. Com.R.Civ. P. 58. *Matsumoto v. Akiyama*, 3 CR 141.

Findings of Fact and Conclusions of Law

—Adequacy

The standard of review for determining the adequacy of factual findings is whether the findings are explicit enough on the ultimate issue in the case to give the appellate court a clear understanding of the basis of the decision and enable it to determine the grounds on which the trial court reached its decision. Com. R. Civ. P. 52(a). *Manglona v. Kaipat*, 3 N.M.I. 322 (1992).

Com. R. Civ. P. 52(a), requiring trial court to make findings of fact and conclusions of law, does not require comprehensive factual findings. So long as the trial court sets forth: (1) the material facts based on the evidence presented as to each of the legal issues raised, and (2) its legal conclusions based on such factual findings, Com. R. Civ. P. 52(a) is satisfied. *Manglona v. Kaipat*, 3 N.M.I. 322 (1992).

——Particular Cases

In quiet title action based on deed of gift, trial court's decision finding that: (1) grantor executed the deed to grantees; (2) grantor owned the property transferred by the deed; (3) grantees' witnesses were credible; (4) witnesses of parties challenging validity of deed were either not credible or equivocal; (5) grantees made no misrepresentation and did not exercise undue influence over grantor; and (6) grantor was competent, coupled with court's conclusion of law that claimed inadequacy of consideration was non sequitur because deed was deed of gift and that title would be quieted in one grantee, adequately set forth findings of fact and conclusions of law on each of contested issues and provided appellate court with understanding of basis of trial court's decision. Com. R. Civ. P. 52(a). *Manglona v. Kaipat*, 3 N.M.I. 322 (1992).

—Amend, Request to

A party's failure to make a motion (pursuant to Com. R. Civ. P. 52(b)) requesting a trial court to amend its findings of fact or make additional findings within ten days of entry of judgment does not prevent party from later asserting on appeal that court's decision does not comply with Com. R. Civ. P. 52(a), requiring trial court to make findings of fact and conclusions of law. *Manglona v. Kaipat*, 3 N.M.I. 322 (1992).

—Appellate Court

The N.M.I. Supreme Court will not make a factual finding based only on counsel's arguments and the record on appeal. *Santos v. Santos*, 2000 MP ¶ 25

NMI Supreme Court is not at liberty to make a finding of fact, not determined below, based on counsel's argument on appeal. *Agulto v. Northern Marianas Inv. Group, Ltd.*, 4 N.M.I. 7 (1993).

NMI Supreme Court is not at liberty to make factual findings based only on counsel's argument and record on appeal. *Agulto v. Northern Marianas Inv. Group, Ltd.*, 4 N.M.I. 7 (1993).

NMI Supreme Court is not free to determine factual issues on review. *In re Estate of Tudela*, 4 N.M.I. 1 (1993), appeal dismissed, 43 F.3d 1479 (9th Cir. 1994).

——Particular Cases

NMI Supreme Court had jurisdiction pursuant to 1 CMC § 3102(a) over appeal from judgment in Superior Court on remand from Supreme Court for further fact-finding. *Pangelinan v. Itaman*, 1996 MP 16 ¶1

In appeal of encroachment action, although trial court did not address issue of whether boundary dispute had been established, NMI Supreme Court would address issue based on undisputed evidence set forth at trial. *Estate of Taisacan v. Hattori*, 4 N.M.I. 26 (1993).

—Generally

In all actions tried upon the facts without a jury, the court shall find the facts specially. Commonwealth Rules of Civil Procedure 52(a) should be construed to encourage appeals that are based on a conviction that the trial court's decision has been unjust; it should not be construed to encourage appeals that are based on the hope that the appellate court will second-guess the trial court. Com. R. Civ. P. 52(a). *Hemley v. Hemley*, 1999 MP 18 ¶ 9

The mere fact that on the same evidence the appellate court might have reached a different result does not justify it in setting the findings of fact aside. The court's findings will not be disturbed on appeal unless they are clearly erroneous and are not based on substantial evidence. *Hemley v. Hemley*, 1999 MP 18 ¶ 9

Where the trial court's findings of fact and the evidence upon which they were based, are not clearly erroneous they should not be second guessed by an appellate court. Where the N.M.I. Supreme Court can ascertain from the record the manner in which the court arrived at its judgment, it can assume that the trial court in allowing certain items did not make a mathematical error. *Hemley v. Hemley*, 1999 MP 18 ¶ 12

Com. R. Civ. P. 52(a) requires sufficient statements of factual findings and conclusions of law. *United Enters., Inc. v. King*, 4 N.M.I. 304 (1995).

Com. R. Civ. P. 52(a) provision requiring trial court to find the facts and state its conclusions of law is mandatory and may not be waived. *Olopai v. Fitial*, 3 N.M.I. 101 (1992).

The purpose of findings of fact is threefold: (1) as an aid in the process of adjudication; (2) for purposes of res judicata and estoppel by judgment; and (3) as an aide to the appellate court on review. The findings should be so explicit as to give the appellate court a clear understanding of the basis of the trial court's decision, and to enable it to determine the ground on which the trial court reached its decision. Com. R. Civ. P. 52(a). *Olopai v. Fitial*, 3 N.M.I. 101 (1992).

—Summary Judgment

Although helpful to appellate court in event of appeal, trial court need not identify undisputed facts, if any, or make conclusions of law when ruling on motion for summary judgment. Com. R. Civ. P. 52(a). *Eurotex (Saipan), Inc. v. Muna*, 4 N.M.I. 280 (1995).

Indispensible Parties

See **PARTIES – Indispensable Parties**

Injunction

See **REMEDIES – Injunction**; for Temporary Injunction see **REMEDIES – Injunction, Temporary**.

Interlocutory Appeal

See also **Final Judgment** and **Interlocutory Appeal – Collateral Order Doctrine**, this topic.

—Administrative Agency Appeal, Remand of

Appellate courts generally deem orders remanding actions to administrative agencies for further proceedings to be interlocutory in nature and not appealable as final decisions. *Songao v. Commonwealth*, 4 N.M.I. 186 (1994).

——Particular Cases

Due to unique nature of Land Commission Act, general rule under which trial court orders remanding actions to administrative agencies for further proceedings are deemed interlocutory in nature and not appealable as final decisions was inapplicable. In quiet title action, trial court decision remanding determination of ownership to NMI Land Commission for further hearings was final judgment for purpose of vesting appellate jurisdiction in NMI Supreme Court over appeal from decision. 2 CMC § 4211 et seq. *Songao v. Commonwealth*, 4 N.M.I. 186 (1994).

—Collateral Order Doctrine

The collateral order exception to the final judgment rule provides a narrow exception for decisions that finally determine claims separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of

the cause itself to require that appellate consideration be deferred until the whole case is adjudicated. *Camacho, et al. v. Demapan*, 2010 MP 3 ¶ 28 (2010).

To come within the collateral order exception to the final judgment rule, the order sought to be appealed from must: (1) have conclusively determined a disputed question; (2) have resolved an important issue completely separate from the merits of the action; and (3) be effectively unreviewable on appeal from a final judgment. The crucial factor in is that the order appealed from must be effectively unreviewable if the aggrieved party is forced to wait until the entire case is fully adjudicated. *Camacho, et al. v. Demapan*, 2010 MP 3 ¶ 28 (2010).

There are limited exceptions to the Final Judgment Rule, such as the Collateral Order Doctrine. *Commonwealth v. Crisostimo*, 2005 MP 18 ¶ 11

The collateral order doctrine is an exception to the final judgment rule. The collateral order doctrine states that a party may appeal an order which conclusively determines the disputed question, resolves an important issue completely separate from the merits of the action, and is effectively unreviewable on appeal from a final judgment. *Guo Qiong He v. Commonwealth*, 2003 MP 3 ¶ 14

Appeal from the trial court's denial of qualified immunity falls under the collateral order doctrine, as immunity is not merely a defense but an actual exemption from liability and an entitlement not to stand trial, however, a denial of a motion to dismiss based on immunity is not necessarily a denial of immunity. *Guo Qiong He v. Commonwealth*, 2003 MP 3 ¶ 15

An exception to the finality rule (providing that an appeal may be taken only from final judgments and orders) is the collateral order doctrine. At a minimum, to come within the exception, the order sought to be appealed must (1) conclusively determine the disputed question, (2) resolve an important issue completely separate from the merits of the action, and (3) be effectively unreviewable on appeal from a final judgment. *Olopai v. Hillblom*, 3 N.M.I. 528 (1993).

A narrow exception to the rule prohibiting appeals from interlocutory orders unless they are expressly allowed by statute, rule or constitutional provision is the common law "collateral order doctrine," which permits appeals from orders collateral to the principal litigation, touching matters that will not affect or be affected by decision of the merits of the case. At a minimum, to come within the doctrine, the order sought to be appealed must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal. *Commonwealth v. Hasinto*, 1 N.M.I. 377 (1990).

—Common Law

See **Interlocutory Appeal – Generally**, this topic.

—Disqualification of Attorney

An order either disqualifying or refusing to disqualify a law firm is not appealable when entered because it is not a final order. Movants may petition the court for a writ of mandamus only in exceptional cases. *Feliciano v. Superior Court (In re Estate of Hillblom)*, 1999 MP 3 ¶24

——Particular Cases

Trial court order disqualifying attorney and his firm from representing party in civil action was not appealable final order. Order did not come within exception to the finality rule under the collateral order doctrine because order was effectively reviewable following judgment on the merits. *Olopai v. Hillblom*, 3 N.M.I. 528 (1993).

— Forgay Doctrine

The Forgay doctrine to the final judgment rule authorizes interlocutory appellate review whenever an order directs immediate delivery of real property, which would subject the losing party to irreparable harm if review is delayed until the conclusion of the case. Pursuant to the Forgay Doctrine, when the decree decides the right to the property in contest, and directs it to be delivered or directs it to be sold, or directs the defendant to pay a certain sum of money to the complainant, and the complainant is entitled to have such decree carried immediately into execution, the decree must be regarded as a final one to that extent, and authorizes an appeal. *Camacho, et al. v. Demapan*, 2010 MP 3 ¶ 32 (2010).

In the absence of an order requiring immediate delivery or sale of the disputed property, it cannot be said that the defendant is in danger of suffering irreparable injury sufficient to authorize the Forgay

doctrine exception to the final judgment rule. *Camacho, et al. v. Demapan*, 2010 MP 3 ¶ 33 (2010).

—Generally

The three exceptions to the final judgment rule only apply where there is an order, otherwise nonappealable, determining substantial rights of the parties which will be irreparably lost if review is delayed until final judgment. *Camacho, et al. v. Demapan*, 2010 MP 3 ¶ 34 (2010).

Since partial summary judgments are by definition interlocutory in that they fail to adjudicate all the claims involved in a case, in the absence of Rule 54(b) certification the Supreme Court generally lack jurisdiction to review such orders on the merits. *Camacho, et al. v. Demapan*, 2010 MP 3 ¶ 26 (2010).

Even in the absence of Rule 54(b) certification, an interlocutory order may be appealable if: (a) the appealability of the order is not dependent on finality because it is made appealable by statute, or (b) it falls within one of the common law exceptions to the finality rule. *Camacho, et al. v. Demapan*, 2010 MP 3 ¶ 27 (2010).

The Commonwealth Supreme Court has jurisdiction to hear interlocutory appeals authorized by 8 CMC § 2206 in light of the Commonwealth Constitution's finality requirement because the statute is not clearly inconsistent with the Constitution. *In the Matter of the Estate of Roberto*, 2010 MP 7 ¶ 10 (2010).

In cases where a statute gives a party a right to appeal an interlocutory order, 8 CMC § 2206, not Commonwealth Rule of Civil Procedure 54(b), confers jurisdiction. *In the Matter of the Estate of Roberto*, 2010 MP 7 ¶ 11 (2010).

In the absence of a writ of mandamus, the final judgment rule denies this N.M.I. Supreme Court appellate jurisdiction over interlocutory orders. *Guo Qiong He v. Commonwealth*, 2003 MP 3 ¶ 13

The common law allows an appeal only after a final decision, i.e., after the last of all possible decisions in the progress of an action. This principle is based on the policy that litigation should not proceed piecemeal, that intermediate appeals would unduly delay the final disposition of litigation, and that a complete disposition of the matter in the trial court may make an appeal moot. *Commonwealth v. Hasinto*, 1 N.M.I. 377 (1990).

The courts generally do not permit appeals from interlocutory orders unless they are expressly allowed by statute, rule or constitutional provision. *Commonwealth v. Hasinto*, 1 N.M.I. 377 (1990).

DC NMI 1988. The trial court should consider four factors in determining the propriety of granting a right to an interlocutory appeal under rule: (1) certification will not result in unnecessary appellate review; (2) the claims that have been adjudicated were separate, distinct, and independent of the remaining claims; (3) review would not be mooted by future developments; and (4) the appellate court will not be required to decide the issues more than once. Fed.R.Civ.P. 54(b). *A & E Pacific Construction Co., v. Saipan Stevedore Co., Inc.*, 3 CR 410.

DC NMI 1988. Certification for an interlocutory appeal should be granted, where: (1) the only remaining cause of action is unrelated in fact and law to the claims that have been dismissed, which are separate, distinct, and independent from the first; (2) there is no chance that certification will result in unnecessary appellate review; and (3) there is no possibility that the dismissed claims will be judicially mooted. Fed.R.Civ.P. 54(b). *A & E Pacific Construction Co., v. Saipan Stevedore Co., Inc.*, 3 CR 410.

CTC 1987. Certification of an issue for immediate appeal under rule is appropriate only upon an express determination that there is no just reason for delay and such a certificate is not to be granted routinely, but is left to the discretion of the court in the interest of sound judicial administration. Com.R.Civ.P.54(b). *Tenorio v. Camacho*, 3 CR 263.

CTC 1987. Only if the moving party presents specific equitable considerations which outweigh the preference for avoiding piecemeal appeals and ensuring prompt resolution of remaining issues should certificate granting immediate appeal be issued. Com.R.Civ.P.54(b). *Tenorio v. Camacho*, 3 CR 263.

CTC 1987. The relevant factors the court should take into account on considering a motion for an immediate appeal before disposition of the entire case are: (1) certification would not result in unnecessary appellate review; (2) the claims finally adjudicated were separate, distinct, and independent of any of the other claims or counter-claims involved, (3) review of these adjudicated claims would not be mooted by

any future developments in the case; and (4) the nature of the claims was such that no appellate court would have to decide the same issues more than once even if there were subsequent appeals. Com.R.Civ.P.54(b). *Tenorio v. Camacho*, 3 CR 263.

CTC 1987. In determining whether an order dismissing a third-party complaint should be certified for immediate appeal, substantial weight should. be given to the fact that the third-party claim is so completely incidental to and dependent upon the principal claim that there can be no recovery upon the third-party claim unless the plaintiff shall prevail on the principal claim and would be moot if the plaintiff did not prevail. Com.R.Civ.P.54(b). *Tenorio v. Camacho*, 3 CR 263.

CTC 1987. Third party claims for indemnity for judgments that may never occur should seldom fall within the narrow exception of orders appropriate for certification of the need for immediate appeal. Com. R.Civ.P.54(b). *Tenorio v. Camacho*, 3 CR 263.

CTC 1987. Equitable considerations may militate against granting motion for certification for immediate appeal. Com.R.Civ. P. 54(b). *Tenorio v. Camacho*, 3 CR 263.

CTC 1987. An immediate appeal on a third-party indemnity claim that would serve only to delay the trial of the principal claim, without in any way either simplifying or facilitating its future litigation, may be considered to militate against grant of certification, and where parties did not show prejudice to their interests sufficiently compelling to outweigh the policy of preventing piecemeal appeals, there was just reason to delay appeal of an order dismissing parties' third-party complaint. Com.R.Civ.P.54(b). *Tenorio v. Camacho*, 3 CR 263

——Particular Cases

In the absence of a clear indication that the NMI Legislature sought to supplant the common law concerning the appealability of interlocutory orders, NMI Supreme Court was not persuaded that it intended to do so. 1 CMC § 3102(a). *Commonwealth v. Hasinto*, 1 N.M.I. 377 (1990).

—Liability, Determination of

Ordinarily, an order establishing liability without fixing the amount of recovery is not final. However, the order may be final if the determination of damages will be mechanical and uncontroversial. To be final, for appeal purposes, a judgment must fully inform the losing party of the extent of the remedy afforded against her. *Westenberger v. Atalig*, 3 N.M.I. 471 (1993).

——Particular Cases

In action for specific performance of oral land exchange agreement and damages for unauthorized occupation of land, trial court's order upholding agreement, granting specific performance and requiring plaintiff to pay restitution to defendant for improvements on land was not final judgment from which appeal could have been taken. Although order contained phrase "now therefore, it is hereby ordered, adjudged and decreed," use of phrase did not, per se, make order a final judgment. Order did not fix amount of restitution to be paid, the amount of restitution was contested, and order failed to inform plaintiff of extent of remedy afforded against her. *Westenberger v. Atalig*, 3 N.M.I. 471 (1993).

—Entry of Judgment

See **Final Judgment – Entry of Judgment**, this topic.

—Injunction, Temporary

See **REMEDIES – Injunction, Temporary – Appeal**

—Modification of Orders

DC NMI 1983. An order which is interlocutory is subject to modification or rescission. *Island Aviation, Inc.v. Mariana Islands Airport Authority*, 1 CR 353.

—Parties, Dismissal of

Following dismissal of a defendant from an action pursuant to Com. R. Civ. P. 54(b), a remaining defendant may seek certification of appealability of order of dismissal. There is no procedure for obtaining a certificate of appealability prescribed in Com. R. Civ. P. 54(b). In most cases, a party will simply file a motion requesting the court to make the determination and direction required by the rule. In an appropriate case, the trial court may consider the question sua sponte. It does not matter who moved for certification so long as the requirements of Com. R. Civ. P. 54(b) are met. *Ito v. Macro Energy, Inc.*, 2 N.M.I. 459 (1992).

——Particular Cases

Order dismissing defendants from action fully adjudicated the case as to them and was appealable. Com. R. Civ. P. 54(b). *Ito v. Macro Energy, Inc.*, 2 N.M.I. 459 (1992).

Trial court abused its discretion in certifying appealability of order dismissing two defendants from action pursuant to Com. R. Civ. P. 54(b). Second factor in analysis of appealability (possibility that need for review might be mooted by future developments at trial) was particularly relevant, since claim for relief stemmed from plaintiff's allegation of negligence by employees of defendants. Employees' negligence had not been established; only if it was established that employees were negligent and that their negligence proximately caused death of plaintiff's husband would order finding defendants not liable be appropriate for review. Review of order could thus be premature and would, in effect, be advisory in nature because dismissed defendants were sued on theory of respondeat superior. *Ito v. Macro Energy, Inc.*, 2 N.M.I. 459 (1992).

— Pragmatic Approach

The pragmatic approach exception to the to the final judgment rule is founded on the principle that where a trial court's order affects the substantive rights of the parties at an early stage of the litigation and could effectively cut one of the parties out of the litigation, that the order should be immediately reviewable. *Camacho, et al. v. Demapan*, 2010 MP 3 ¶ 29 (2010).

Under the pragmatic approach exception to the final judgment rule, to determine whether an order is final for the purposes of appeal, the Supreme Court should look to whether the ruling is fundamental to the further conduct of the case, and should balance the danger of denying one of the parties justice with the inconvenience of piecemeal litigation. Under this exception, the requirement of finality is to be given a practical rather than a technical construction. *Camacho, et al. v. Demapan*, 2010 MP 3 ¶ 30 (2010).

—Probate Proceedings

An order relating to an issue which is disputed or objected to by the aggrieved party or parties puts the parties on notice that the disputed issue may likely be the subject of an appeal. So long as party did not agree to, but rather timely contested an order in the proceedings below, party has properly preserved its right to appeal the order and may decide if and when to bring its appeal therefrom. 8 CMC § 2206. *In re Estate of Tudela*, 3 N.M.I. 316 (1992).

8 CMC § 2206, concerning orders in probate proceedings which may be appealed, is permissive, not mandatory. A party who has contested an appealable order may appeal either within thirty days of the issuance of the order or within thirty days after the conclusion of the probate case. *In re Estate of Tudela*, 3 N.M.I. 316 (1992).

—Sanctions

——Particular Cases

Appeal from trial court order imposing sanctions filed more than thirty days after issuance of order but within thirty days after issuance of order setting amount of sanctions was timely. Order imposing sanctions did not become final until trial court determined the amount of the sanctions. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79 (1992).

Trial court order imposing sanctions was appealable final order under collateral order doctrine. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79 (1992).

—Summary Judgment

Denial of summary judgment motion is not final, appealable order. *Ito v. Macro Energy, Inc.*, 2 N.M.I. 459 (1992).

Generally, a partial summary judgment is interlocutory in nature and is not appealable. However, a partial summary judgment may be appealed if it completely disposes of the plaintiff's claim and resolving the appeal promptly would expedite the resolution of any remaining issues below. A partial summary judgment is also appealable when the claim resolved is separate and distinct from those which remain before the trial court. *Marianas Pub. Land Corp. v. Guerrero*, 2 N.M.I. 301 (1991).

——Particular Cases

NMI Supreme Court would sua sponte review appealability of order granting partial summary judgment, since action below had not been entirely disposed of. *Marianas Pub. Land Corp. v. Guerrero*, 2 N.M.I. 301 (1991).

Order granting partial summary judgment in action for termination of lease was appealable final order

because: (1) it completely disposed of substantive claim; (2) restitution of rental payments was not disputed and payments were recorded and could readily be ascertained; (3) issue of lease termination, which order resolved, was distinct from issue regarding applicability of Restatement (Second) of Contracts § 266(1) (1979) (concerning excused performance due to impracticability); and (4) if NMI Supreme Court determined that Restatement (Second) of Contracts § 269 (1979) (concerning suspended performance due to temporary impracticability) applied, lease would still be in effect, there would be no need to try issue of restitution and § 266(1) would not apply. *Marianas Pub. Land Corp. v. Guerrero*, 2 N.M.I. 301 (1991).

Intervention

The general rule is that an intervenor at the trial level may ride "piggyback" on the constitutional standing of one of the original parties to the litigation if the intervenor is in the same procedural posture as the original party filing the appeal. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 18 (2011).

CTC 1988. Where court allows intervention as a matter of right, intervenor assumes the status of a full participant in the lawsuit and is normally treated as an original party once intervention is granted. Com.Tr. C.R.Civ.P.24(a)(2). *Matsumoto v. Akiyama*, 3 CR 465.

DC NMI 1985. To qualify as intervenors of right in class action, parties must demonstrate that the representation of their interests by the class representatives and class counsel is inadequate. Fed.R.Civ.P. 24 (a). *Temengil v. Government of the Trust Territory of the Pacific Islands*, 2 CR 148.

DC NMI 1985. In considering permissive intervention, the court must consider the potential delay or prejudice to the rights of the original parties which the intervention may bring about. Fed.R.Civ.P. 24(b). *Temengil v. Government of the Trust Territory of the Pacific Islands*, 2 CR 148.

DC NMI 1985. Where members of certified plaintiff employee class in discrimination action against the Trust Territory government seek to intervene as class representatives, and where motion to intervene was filed more than six months after court's suggested deadline, and where class representatives have made considerable progress along with the defendant government in negotiating stipulations regarding the admissability of documents and facts, and where court at certification stage designated team of attorneys to control litigation, intervention would cause undue delay and prejudice without countervailing benefits and was for those reasons denied. Fed.R.Civ.P.23(d), 24 (a). *Temengil v. Government of the Trust Territory of the Pacific Islands*, 2 CR 148.

Involuntary Dismissal

See **Dismissal, Involuntary**, this topic.

Judicial Estoppel

Judicial estoppel, sometimes called the doctrine against the assertion of inconsistent positions, is a judge-made doctrine that seeks to prevent a litigant from asserting a position inconsistent with one that she has previously asserted in the same or in a previous proceeding. It is designed to prevent litigants from playing "fast and loose with the courts." *Saipan Lau Lau Dev., Inc. v. Superior Ct. (San Nicolas)*, 2000 MP 16 ¶ 19

Asserting inconsistent positions does not trigger application of judicial estoppel unless intentional self-contradiction is used as a means of obtaining unfair advantage. Thus, the doctrine of judicial estoppel does not apply when the prior position was taken because of a good faith mistake rather than as part of a scheme to mislead the court. An inconsistent argument sufficient to invoke judicial estoppel must be attributable to intentional wrongdoing. *Saipan Lau Lau Dev., Inc. v. Superior Ct. (San Nicolas)*, 2000 MP 16 ¶ 19

Where a plaintiff is clearly playing "fast and loose" with the courts, trying to profit from a procedural quagmire which he himself has created, by intentionally switching his position for the purpose of obtaining the unfair advantage of denying the defendants their right to post-trial remedies and short-cutting his way to execution of the judgment, the defendants are entitled to mandamus relief. *Saipan Lau Lau Dev., Inc. v. Superior Ct. (San Nicolas)*, 2000 MP 16 ¶ 20

Where a party conceded that the trial court lacked subject matter jurisdiction to review an administrative determination of appeal of an administrative order, due to her failure to timely file the inter-agency appeal, she is estopped from denying that concession on appeal. *Angello v. Louis Vuitton Saipan, Inc.*, 2000 MP 17 ¶ 20

In general, parties who enter into stipulations or agreements during the course of judicial proceedings

are estopped from taking positions inconsistent therewith. A party may not thereafter complain unless is plainly apparent that the complaining party's consent was obtained by fraud or mistake. *Angello v. Louis Vuitton Saipan, Inc.*, 2000 MP 17 ¶ 21

Under the doctrine of judicial estoppel, courts may disregard a party's argument when it contradicts an argument that party has previously made. *KTT Corp. v. Tomokane*, 2003 MP 17 ¶ 20

Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, judicial estoppel will prevent him from thereafter, simply because his interests have changed, assume a contrary position, especially if it is to the prejudice of the party who has acquiesced in the position formerly taken by him. *KTT Corp. v. Tomokane*, 2003 MP 17 ¶ 21

The court will not apply the equitable doctrine of judicial estoppel where a party has merely shown that an inconsistent statement may have been uttered, but has not shown that the other elements counsel in favor of applying the doctrine. *KTT Corp. v. Tomokane*, 2003 MP 17 ¶ 23

Juries: Demand for Jury Trial

—Generally

A jury is not required under the Seventh Amendment for equitable claims which are restitutionary in nature. *Matsunaga v. Matsunaga*, 2006 MP 25 ¶ 46

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).

Juries: Instructions

—Generally

A party has a right to a jury instruction when there is a basis in law and the record. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 54 (2010).

A party must distinctly state its jury instruction objection or that objection is waived. If the jury instruction objection is not distinctly stated, it will not be preserved for appeal. Requirements of Rule 51 are strictly enforced. *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26 ¶ 27

Defendant's rights were not affected where differences between proposed jury instructions regarding punitive damages based upon the Restatements of Torts definition and instructions given based upon the California BAJI Instruction 14.71 were negligible. *Jasper v. Quitugua*, 1999 MP 4 ¶8

No error in jury instructions will require a reversal of the judgment on a jury verdict where the verdict is more probably than not untainted by the error. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

Com. R. Civ. P. 51, requiring timely objection to a jury instruction to preserve right to later challenge

instruction, bars consideration of unobjected-to instructions in a civil case. A narrow exception occurs where the court is aware of a party's concerns with an instruction, and further objection would be unavailing. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

——Particular Cases

Verdict form asking the jury whether agent defrauded principal by concealing or suppressing a material fact and court's refusal to give proposed instructions were not so improper as to constitute reversible error where (1) Superior Court referred to jury the issue of fraud and retained issues of constructive trust, breach of fiduciary duty, and rescission of warranty deeds for its own adjudication; (2) jury instructions fully explained issues assigned to the jury and covered the essential elements of fraud, concealment or suppression of a material fact, duty to disclose known facts in a fiduciary relationship, definition of fiduciary or confidential relationship, and the making of a promise, not intended to be performed; and (3) proposed instructions not given pertained to the fiduciary relationship between a principal and agent rather than the issue of fraud. *Ulloa v. Maratita*, 1997 MP 15 ¶19

Because party alleged that trial court erred in failing to give certain jury instructions, appellate court would review all instructions given to determine whether they were misleading or inadequate. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

Where party failed to timely object to purported omission in jury instructions or to proffer additional instructions, and there was no indication in record that trial court was aware of an objection and that any objection raised would have been futile, issue concerning purported error in instructions would be deemed waived. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

Juries: Right to Jury Trial

See **JURIES – Right to Jury Trial**

Juries: Verdicts

—Generally

A juror cannot be faulted for failing to disclose information for which he or she was not asked, and a new trial will not be granted because of the non-disclosure by a juror when the juror was not asked for the information. In order to obtain a new trial based on juror bias a party must first demonstrate that a juror failed to answer honestly a material question on voir dire. *Fitial v. Kim Kyung Duk*, 2001 MP 9 ¶¶ 20-21

In order to obtain a new trial based on the allegation of juror bias a party must first demonstrate that a juror failed to answer honestly a material question on voir dire, then show that a correct response would have provided a valid basis for a challenge for cause. *Fitial v. Kim Kyung Duk*, 2001 MP 9 ¶ 22

In order to obtain a new trial based on the allegation of juror bias, a party must prove that he suffered actual prejudice or bias due to the juror's non-disclosure. *Fitial v. Kim Kyung Duk*, 2001 MP 9 ¶ 22

—Judicial Review

On appeal, NMI Supreme Court does not review jury verdict directly but the ensuing judgment of the court. 1 CMC § 3102. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

A jury verdict is supported by the evidence where it is supported by substantial evidence. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

When party appeals denial of motion for new trial based on claim that jury verdict was against weight of evidence, appellate court must conduct limited review so as not to abridge right to jury trial. *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

—Standard of Appellate Review

See **APPEAL AND ERROR – Standard of Review – Jury Verdicts: Civil Action**

Mistrials

— Attorney Misconduct

Attorney misconduct warrants a new trial when the flavor of misconduct sufficiently permeates an entire proceeding to provide conviction that the jury was influenced by passion and prejudice in reaching its verdict. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 51 (2010).

Motions

—Generally

The deadlines for filing a motion for a new trial under Com. R. Civ. P. 59(b) and for filing motions to alter or amend a judgement under Com. R. Civ. P. 59(a) and for appealing a judgement under Com. R. App. P. 4(a) are all suspended by a motion for new trial or a motion to alter or amend the judgment under Com. R. Civ. P. 59. Accordingly, the finality of a judgment must also be suspended while such motions are pending. Com. R. Civ. P. 59(b); Com. R. Civ. P. 59(a); Com. R. App. P. 4(a); Com. R. Civ. P. 59. *Saipan Lau Lau Dev., Inc. v. Superior Ct. (San Nicolas)*, 2000 MP 16 ¶ 13

Until the court issues an order disposing of any motions brought pursuant to Com. R. Civ. P. 59, the 30-day period for appealing a judgement pursuant to Com. R. App. P. 4(a)(4) does not begin to run, and any notice of appeal filed while the Rule 59 motions are pending is of no effect and must be re-filed once the 30-day period has begun to run. Com. R. Civ. P. 59; Com. R. App. P. 4(a)(4). *Saipan Lau Lau Dev., Inc. v. Superior Ct. (San Nicolas)*, 2000 MP 16 ¶ 13

Until a judgment is clearly and unambiguously final on its face, the parties cannot definitively know when the crucial 10-day period for filing post-trial motions begins. Until a judgment is clearly and unambiguously final, the parties cannot know when to file an appeal. And until a judgment is clearly and unambiguously final, the parties cannot seek to execute it. *Saipan Lau Lau Dev., Inc. v. Superior Ct. (San Nicolas)*, 2000 MP 16 ¶ 17

In the absence of an evidentiary hearing, a reviewing court will construe the petitioner's exhibits opposing the motion to dismiss in a light most favorable to the petitioner, and resolve all doubts in his favor. *Bank of Saipan v. Superior Court (Connell)*, 2001 MP 1 ¶14

When a party is represented by counsel, formal notice that a court may choose to treat a motion to dismiss as a motion for summary judgment may be unnecessary. Notice occurs when a party has reason to know that the court will consider matters outside the pleadings. *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builders*, 2002 MP 15 ¶ 10

When a party is aware that the opposing party has filed a motion to dismiss, or in the alternative, a motion for summary judgment, and that attached to the motion is an affidavit and exhibit, and when that party has responded to the motion with a motion in opposition, the party cannot argue that it was not fairly appraised of the potential that the court might choose to look beyond the pleadings when considering the motion. *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builders*, 2002 MP 15 ¶ 13

When a party is obliged to respond to a motion for summary judgment and the party is aware that the court has been presented with an affidavit and exhibits for its consideration, the party will not be allowed to claim that the granting of a summary judgment was a complete and utter surprise. *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builders*, 2002 MP 15 ¶ 14

A trial court's failure to rule on a motion is a denial thereof by operation of law. *Ito v. Macro Energy, Inc.*, 4 N.M.I. 46 (1993).

Ordinarily, motions are not pleadings. *Manglona v. Kaipat*, 3 N.M.I. 322 (1992).

DC NMI 1986. Court will not address motions until motions have been properly noticed and heard. *People of Micronesia, Inc. v. Continental Airlines, Inc.*, 2 CR 740.

CTC 1987. Where parties have submitted memoranda advising the court of the authorities supporting their position on motion, and the facts and the law are sufficiently clear, no hearing is needed on motion. *Tenorio v. Camacho*, 3 CR 263.

—In Limine

A motion in limine is a pretrial motion requesting the court to prohibit opposing counsel from referring to or offering evidence on matters so highly prejudicial to the moving party that curative instructions cannot prevent predispositional effect on the jury. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), *aff'd*, 42 F.3d 546 (9th Cir. 1994).

—Jurisdiction

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, and pursuant to 1 CMC § 3102(a), the N.M.I. Supreme Court has jurisdiction over the appeal of the trial court decision to exclude evidence and the denial of a request for indemnification determination. N.M.I. Const. art. IV, § 3, 1 CMC § 3102(a). *Bisom v. Commonwealth*, 2002 MP 19 ¶ 1

—New Trial

A new trial is justified when the verdict is against the great weight of the evidence. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 56 (2010).

——Generally

A new trial should be granted if the jury's verdict is against the clear weight of the evidence, but the appellate court will not second-guess the trial court's evaluation of a witness' credibility nor will it reweigh evidence presented to the trial court. *Fitial v. Kim Kyung Duk*, 2001 MP 9 ¶ 18

A juror cannot be faulted for failing to disclose information for which he or she was not asked, and a new trial will not be granted because of the non-disclosure by a juror when the juror was not asked for the information. In order to obtain a new trial based on juror bias a party must first demonstrate that a juror failed to answer honestly a material question on voir dire. *Fitial v. Kim Kyung Duk*, 2001 MP 9 ¶¶ 20-21

In order to obtain a new trial based on the allegation of juror bias a party must first demonstrate that a juror failed to answer honestly a material question on voir dire, then show that a correct response would have provided a valid basis for a challenge for cause. *Fitial v. Kim Kyung Duk*, 2001 MP 9 ¶ 22

In order to obtain a new trial based on the allegation of juror bias, a party must prove that he suffered actual prejudice or bias due to the juror's non-disclosure. *Fitial v. Kim Kyung Duk*, 2001 MP 9 ¶ 22

——Jurisdiction

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, and pursuant to 1 CMC §3102, the N.M.I. Supreme Court has jurisdiction over an appeal from the Superior Court Order denying a motion for a new trial although the order is not appealable as such. The Court may treat the appeal as being from the judgment rather than from the denial of the motion. N.M.I. Const. art. IV, § 3; 1 CMC §3102. *Fitial v. Kim Kyung Duk*, 2001 MP 9 ¶ 1

—Opposition

DC NMI 1987. Where local rules of the Court require that opposition memoranda, briefs, declarations, affidavits, or other filings be submitted seven days before the date of hearing, a motion to strike an affidavit filed one day before the hearing would be granted. NMI Dist.C.Local R.Pro.220-3. *American International Knitters Corporation v. Kawasaki Kisen Kaisha Ltd.*, 3 CR 102.

CTC 1988. Opposition to motions for summary judgment are due seven calendar days before the hearing, and the reply two calendar days before a hearing. If a holiday falls within the time period, the period must be recomputed according to the rules. Com.Tr.C.R.Civ.Pro. 6(a)(d), 56(c); Com.Tr.C. R.Prac.8(a)(2). *Matsumoto v. Akiyama*, 3 CR 465.

CTC 1988. Where neither the Administratrix nor the other heirs of the decedent timely filed their opposition to motion, a motion to strike the late oppositions filed by both the Administratix and the heirs would be granted. Com.R.Prac.8(a)(2). *In re the Estate of Tudela*, 3 CR 458.

CTC 1986. The reasons for the Com. R. Prac. 8(a)(2), requiring any opposition to a motion to be filed at least one day before the hearing are to avoid surprises, to allow opposing counsel and the court at least 24 hours to review the substance and merits of the opposition, and to promote the fair and efficient determination of motions and where filings are not in compliance with this rule, they should be stricken. Com. Tr. C.R. Prac. 8(a) (2). *Aldan-Pierce v. Mafnas*, 2 CR 855, *aff'd*, 3 CR 326 (DNMI App. Div.1988).

—Reconsideration

DC NMI 1988. Generally, a court will hesitate to rule more than once on the same motion, but strong policies favoring finality and judicial economy, together with the court's inherent discretionary authority to reconsider a motion, counsel a decision to reconsider a motion for summary judgment where certain information was not before the court on previous motion. *Gomez v. Western Equipment, Inc.*, 3 CR 436.

DC NMI 1982. Because of strong policies favoring finality and judicial economy, courts hesitate to rule more than once on the same motion, but a district court judge has the inherent discretionary authority to modify or to overturn an interlocutory order while it remains interlocutory. *Diaz v. Diaz*, 1 CR 319.

DC NMI 1982. Reconsideration of motion may occur upon the court's initiative. *Diaz v. Diaz*, 1 CR 319.

DC NMI 1982. The strongest ground for reconsideration of a motion is that the court overlooked controlling authority which, if considered, reasonably might have altered the result. *Diaz v. Diaz*, 1 CR 319.

—Reconsideration of Order or Judgment

See also **Final Judgment – Reconsideration, Motion for**, this topic.

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, the N.M.I. Supreme Court has jurisdiction over a pro se appeal from an order of the Superior Court denying plaintiff's motion for reconsideration. N.M.I. Const. art. IV, § 3. *Angello v. Louis Vuitton Saipan, Inc.*, 2000 MP 17 ¶ 1

—Time

CTC 1981. Where plaintiff asked the court to consider an additional ground in support of his motion after the close of the hearing and after the court orally indicated its decision, the contention was not timely and not consider by the court. *Palacios v. CNMI*, 1 CR 226.

Notice

See also **JUDGMENTS – Validity – Notice**

DC NMI 1987. Where objection to the content of class action notice based on its failure to instruct class members of the availability of opting-out of the settlement was made by a nonparty to the action, who was also not a member of the proposed class, nonparty did not have standing to object to the settlement, whether objections related to form or substance of the notice. *People of Micronesia, Inc. v. Continental Air Lines, Inc.*, 3 CR 84.

Parties

—Fictitious Names

DC NMI 1987. The exceptions to the general rule that every action be prosecuted in the name of the real party in interest are limited to those situations where a party can show a strong privacy interest or a threat of physical danger and economic harm is generally not a sufficient ground to proceed under a fictitious name. Fed.R.Civ.P.17(a). *Gomez v. Western Equipment, Inc.*, 3 CR 97.

DC NMI 1987. Plaintiffs could proceed under fictitious names where the plaintiffs' employment contracts could be terminated by defendant at will rendering plaintiffs immediately deportable, and where such action would frustrate the purposes of the court action. Fed.R.Civ.P. 17(a). *Gomez v. Western Equipment, Inc.*, 3 CR 97.

—Generally

DC NMI 1985. Where defendant holder of license to lot in question challenges the transfer of title to the lot, the public land corporation which revoked the defendant's license and transferred the fee, is a proper party in defendant's counterclaim. Fed.R.Civ.P.13; 19. *Lizama v. Rios*, 2 CR 407.

DC NMI 1985. Where a conspiracy is alleged in counterclaim, co-conspiracy can be joined as parties. Fed.R.Civ.P.13; 19. *Lizama v. Rios*, 2 CR 407

CTC 1989. Where neither the Marianas Public Land Corporation nor the Land Commission claimed an interest in certain land, neither were proper parties to an appeal of a Determination of Ownership for the land. 2 CMC §4249. *Pelisamen v. Land Commission of the Commonwealth Government*, 3 CR 790.

CTC 1988. A fundamental common law concept is that for litigation there must be a person seeking to establish a right and a person against whom the right is asserted and upon whom a duty or liability may be imposed to whom judgments are awarded and against whom they may be enforced. A*quino v. All Those Persons Having any Claim Or Interest in Lot No. 069 D 05*, 3 CR 415.

CTC 1988. Findings of fact cannot be made binding on a stranger to the action by calling an action a proceeding "in rem." *Aquino v. All Those Persons Having any Claim Or Interest in Lot No. 069 D 05*, 3 CR 415.

—Jurisdiction

CTC 1988. A suit against a nonexistent entity is void ab initio and the defect is jurisdictional. *Aquino v. All Those Persons Having any Claim or Interest in Lot No. 069 D 05*, 3 CR 415.

CTC 1988. Suit to quiet title naming as defendants "all those persons having any claim" in the property did not name an ascertainable adverse party nor did it allege with any specificity the type of claim asserted and should be dismissed for lack of jurisdiction; mere apprehension of an owner that an adverse claim will

be asserted by unknown persons is insufficient to confer equity jurisdiction on a court to entertain a quiet title action. *Aquino v. All Those Persons Having any claim Or interest in Lot No. 069 D 05*, 3 CR 415.

—Real Parties In Interest

CTC 1988. A real defendant to proceed against is essential in all civil proceedings except where the action is strictly in rem. *Aquino v. All Those Persons Having any Claim Or Interest in Lot No. 069 D 05*, 3 CR 415.

—Standing

Standing requires that a plaintiff: (1) must have suffered an injury in fact—an invasion of a legally protected interest which is a) concrete and particularized, and b) actual or imminent, not conjectural or hypothetical; (2) there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of independent action of some third party not before the court; and (3) it must be likely, as opposed to merely speculative that the injury will be redressed by a favorable decision. Courts often restate these requirements as injury-in-fact, causation, and redressability. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 19 (2011).

CSC 1989. Parties have no standing to assert a boundary line for property they don't even own. *Borja v. Rangamar*, 3 CR 890.

Pleading

—Administrative Agency Proceedings

See **ADMINISTRATIVE LAW – Agency Action – Pleading**

—Admissions

Allegations of a complaint which are not denied by the opposing party are deemed admitted. Com. R. Civ. P. 8(d). *Manglona v. Kaipat*, 3 N.M.I. 322 (1992).

——Particular Cases

Defendants in quiet title action who did not deny in their answer that copy of deed of gift attached to complaint represented actual deed of gift at issue made judicial admission of copy as deed at issue. Because the copy was deemed admitted at the pleading stage, trial court did not err in admitting copy into evidence at trial. Admission of copy into evidence was mere formality. *Manglona v. Kaipat*, 3 N.M.I. 322 (1992).

—Affirmative Defenses

An honest mistake of the defendant as to his title in severed property, such as timber, though it would be a defense to an indictment, is not a defense to a civil action. *Mendiola v. Commonwealth Utils. Corp.*, 2005 MP 2 ¶ 19

Affirmative defenses under Commonwealth Rule of Civil Procedure 8(c) must be raised in responsive pleadings, or else they are waived, with narrow exceptions. *Fitial v. Kim Kyung Duk*, 2001 MP 9 ¶ 29

An accord and satisfaction is an affirmative defense and must be pleaded affirmatively. Com. R. Civ. P. 8(c). *Transamerica (Saipan) Corp. v. Wabol*, 1999 MP 1 ¶9

There is no requirement under Com. R. Civ. P. 8 to plead (i.e., respond) to an affirmative defense. *Rogolofoi v. Guerrero*, 2 N.M.I. 468 (1992).

Com. R. Civ. P. 8(c), concerning pleading of affirmative defenses, is identical to Fed. R. Civ. P. 8(c). Interpretations of Fed. R. Civ. P. 8(c) are helpful in analyzing Com. R. Civ. P. 8(c). *Rogolofoi v. Guerrero*, 2 N.M.I. 468 (1992).

——Particular Cases

Where party failed to include lease as affirmative defense in pleadings, the affirmative defense of accord and satisfaction was waived. *Transamerica (Saipan) Corp. v. Wabol*, 1999 MP 1 ¶9

Because defendant failed to designate affirmative defenses as counterclaims, trial court erred in ruling that plaintiff's theories raised in response to affirmative defenses could not be considered because he had not pleaded them in reply. *Rogolofoi v. Guerrero*, 2 N.M.I. 468 (1992).

—Amendment

See also **Answer and Complaint** and **Answer**, this topic.

However, Rule 15(b) indicates that in order for a party to amend pleadings to conform to the evidence,

the party seeking to amend should do so by motion and can even do so after judgment has been entered. *Salas v. Mafnas*, 2010 MP 9 ¶ 47 (2010).

Rule 15(b) of the Commonwealth Rules of Civil Procedure provides that issues not raised by the pleadings that are tried by express or implied consent shall be treated in all respects as if they had been raised in the pleadings. Pleadings may be amended as necessary to cause them to conform to the evidence, even after judgment. *Manglona v. Tenorio*, 2004 MP 17 ¶ 12

When the pleading fails to raise an issue, it may be tried by the express or implied consent of the parties and treated as if it was raised in the pleadings. Com. R. Civ. P. 15(b). *Manglona v. Tenorio*, 2004 MP 17 ¶ 3

Com. R. Civ. P. 15(a), concerning amendment of pleadings, applies only to amendments to a complaint allowed as a matter of course, by leave of trial court, or upon written consent of adverse party. *Castro v. Hotel Nikko Saipan, Inc.*, 4 N.M.I. 268 (1995), appeal dismissed, 96 F.3d 1259 (9th Cir. 1996).

An insufficient allegation of fraud or mistake under Com. R. Civ. P. 9(b) is subject to the liberal amendment provisions of Com. R. Civ. P. 15. *Ada v. K. Sadhwani's, Inc.*, 3 N.M.I. 303 (1992).

A dismissal under Com. R. Civ. P. 12(b)(6) for failure to state a claim for which relief can be granted is not final or on the merits and the court normally will give the plaintiff leave to file an amended complaint. *Govendo v. Marianas Pub. Land Corp.*, 2 N.M.I. 482 (1992).

The liberal allowance of amendments of pleadings is a recognition that controversies should be decided on the merits whenever practicable. Com. R. Civ. P. 15(a). *Govendo v. Marianas Pub. Land Corp.*, 2 N.M.I. 482 (1992).

A party has three ways to amend a pleading: as a matter of course, by written consent of the adverse party, or by leave of the court. If an amendment as a matter of course is no longer available, and if the adverse party refuses to agree in writing to an amendment, then an amendment may be made only by leave of the court. Com. R. Civ. P. 15(a). *In re Adoption of Magofna*, 1 N.M.I. 449 (1990).

A motion for leave to amend a pleading should be made in the trial court, even after an order of dismissal has issued. Com. R. Civ. P. 15(a). *In re Adoption of Magofna*, 1 N.M.I. 449 (1990).

A dismissal under Rule 12(b)(6) is not final or on the merits and the court normally will give plaintiff leave to file an amended complaint. Com. R. Civ. P. 12(b)(6). *In re Adoption of Magofna*, 1 N.M.I. 449 (1990).

Leave to file an amended complaint shall be freely given when justice so requires. Com. R. Civ. P. 15(a). *In re Adoption of Magofna*, 1 N.M.I. 449 (1990).

——Particular Cases

Appellant did not consent to an unjust enrichment theory in the second trial simply because she introduced evidence of a failed land sale in the first trial. *Manglona v. Tenorio*, 2004 MP 17 ¶ 16

An amendment to the pleadings after the first trial left the parties inverting their respective arguments in the second trial and resulted in a great unfairness. *Manglona v. Tenorio*, 2004 MP 17 ¶ 17

Amendment of the pleadings resulted in a grave injustice to appellant because it gave appellee an opportunity to plead a different theory in the subsequent trial. *Manglona v. Tenorio*, 2004 MP 17 ¶ 19

This case is distinguishable from a technical mistake where a simple amendment to the pleadings is acceptable to accurately reflect what the parties litigated at trial. In this case, the trial court granted leave amend the pleadings to create a new claim after trial. *Manglona v. Tenorio*, 2004 MP 17 ¶ 23

The trial court abused its discretion when it granted appellee leave to amend the complaint because there was neither express nor implied consent by the parties to try a claim of unjust enrichment. *Manglona v. Tenorio*, 2004 MP 17 ¶ 24

Whether trial court erred in failing to sua sponte grant leave to amend a petition was reviewed for abuse of discretion, since an amendment to a pleading, other than one made as a matter of right or by written consent of the adverse party, can only be made by leave of court. Com. R. Civ. P. 15(a). *In re Adoption of Magofna*, 1 N.M.I. 449 (1990).

Petitioners lost right to amend pleading as a matter of course when opponent filed responsive pleading; since opponent did not file a written consent to an

amendment, the only alternative would have been for the petitioners to seek leave to amend from the court. Since petitioners did not do so, they could not complain on appeal that the trial court abused its discretion by not allowing them leave to amend sua sponte. Com. R. Civ. P. 15(a). *In re Adoption of Magofna*, 1 N.M.I. 449 (1990).

—Answer

See other subheadings under **Pleading**, this topic, and **Answer**, this topic.

—Capacity

The plaintiffs should include a statement of capacity in the caption, the allegations, and the prayer for relief, as this will allow defendants to have an opportunity to prepare a proper defense and eliminate the unnecessary litigation that arises when parties fail to specify the capacity. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 85

A suit against a defendant in his individual capacity means that the plaintiff seeks recovery from the defendant directly; a suit against a defendant in his official capacity means that the plaintiff seeks recovery from the entity of which the public servant defendant is an agent. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 86

—Complaint

See other subheadings under **Pleading**, this topic, **Answer**, and **Complaint and Answer**, this topic.

—Counterclaims

——Particular Cases

Because defendant failed to designate affirmative defenses as counterclaims, trial court erred in ruling that plaintiff's theories raised in response to affirmative defenses could not be considered because he had not pleaded them in reply. *Rogolofoi v. Guerrero*, 2 N.M.I. 468 (1992).

—Estoppel

Waiver or estoppel is generally a question of fact, and becomes a question of law only when the undisputed facts could reasonably compel only one inference. *Rosario v. Camacho*, 2001 MP 3 ¶ 56

Estoppel is an affirmative defense. Com. R. Civ. P. 8(c). *In re Estate of Deleon Castro*, 4 N.M.I. 102 (1994).

Estoppel, an affirmative defense, is waived if not pled in trial court proceeding. *In re Estate of Deleon Castro*, 4 N.M.I. 102 (1994).

Rule that affirmative defense of estoppel is waived when not pled is applicable to probate matters. Com. R. Civ. P. 1. *In re Estate of Deleon Castro*, 4 N.M.I. 102 (1994).

Estoppel may be available to a plaintiff, even though not specifically pleaded, if established by the evidence. *Aquino v. Tinian Cockfighting Bd.*, 3 N.M.I. 284 (1992).

—Fraud

An insufficient allegation of fraud or mistake under Com. R. Civ. P. 9(b) is subject to the liberal amendment provisions of Com. R. Civ. P. 15. *Ada v. K. Sadhwani's, Inc.*, 3 N.M.I. 303 (1992).

A party who fails to object to the manner in which fraud or mistake is pleaded waives the specificity requirement. *Ada v. K. Sadhwani's, Inc.*, 3 N.M.I. 303 (1992).

Under Com. R. Civ. P. 8(c), failure of consideration and fraud must be set forth as affirmative defenses or they will be waived. *Rogolofoi v. Guerrero*, 2 N.M.I. 468 (1992).

For a plaintiff to waive defenses to the affirmative defenses of failure of consideration and fraud, the defendant must have set forth the affirmative defenses in properly-filed counterclaims, designated as counterclaims, and the plaintiff fail to reply. *Rogolofoi v. Guerrero*, 2 N.M.I. 468 (1992).

——Particular Cases

Defendant who did not raise defense of fraud or fraudulent misrepresentation in his answer waived defense and could not subsequently raise allegations of fraud when opposing plaintiff's motion for summary judgment. Com. R. Civ. P. 8(c), 12(b). *Eurotex (Saipan), Inc. v. Muna*, 4 N.M.I. 280 (1995).

—Frauds, Statute of

The statute of frauds is an affirmative defense. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 343 (1992).

A complaint need not show that facts exist to ward off an affirmative defense based on the statute of frauds. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 343 (1992).

—Generally

Pursuant to Rule 15(b) of the Commonwealth Rules of Civil Procedure, when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. *Salas v. Mafnas*, 2010 MP 9 ¶ 47 (2010).

It is the substance of pleadings which control, not the terminology employed. *Indalecio v. Yarofalir,* 2006 MP 18 ¶ 23

Pleadings shall be so construed as to do substantial justice. Where a plaintiff has not set forth a particular claim for relief, the prima facie elements of a claim must each be either directly alleged or implied. *Indalecio v. Yarofalir,* 2006 MP 18 ¶ 25

Where a plaintiff has not set forth a particular claim for relief under Com. R. Civ. P. 8(a), (e)(2) and 10(b), the prima facie elements of a claim must be either directly alleged or implied. *Castro v. Hotel Nikko Saipan, Inc.*, 4 N.M.I. 268 (1995), appeal dismissed, 96 F.3d 1259 (9th Cir. 1996).

DC NMI 1984. In an action under the federal civil rights act, the failure to specifically cite the statutory provision conferring jurisdiction is not fatal. 42 U.S.C. § 1983. *Hill v. CNMI*, 1 CR 905.

CTC 1986. Where scope of Receiver's cause of action is sufficient to encompass regulations not specifically mentioned, and where defendant government was aware that the unnamed regulations were at issue and where the government has proceeded upon the basis that the unnamed regulations were at issue, and where no prejudice is shown, trial will be allowed to proceed on the unnamed regulations. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 777, *aff'd* in part and *rev'd* in part, 3 CR 73 1 (DNMI App. Div. 1989).

DC NMI 1985. Pleadings alleging breach of contract should allege at a minimum whether the contract is written, oral, implied in fact, implied in law or otherwise and where the contract is implied in fact or law, the allegations must show the facts and circumstances from which the agreement or quasi-contract can be inferred. *Hillblom v. Northern Marianas Cable Television Corporation*, 2 CR 73

—Laches

Laches is defined as the neglect or delay in bringing suit to remedy an alleged wrong, which taken together with lapse of time and other circumstances, causes prejudice to the adverse party and operates as an equitable bar. The burden of proving laches always rests with the party claiming its existence. To successfully establish laches, appellee must show the following factors: (1) inexcusable delay in the assertion of a known right; and (2) the party asserting laches was prejudiced. *In Re the Estate of Rios,* 2008 MP 5 ¶ 9 (2008).

Finding laches is not an arbitrary and unjust punishment. Rather, it is rooted in presumptions of appropriate human behavior. The owners of property, especially if it is valuable and available, do not often allow it to remain in the quiet and unquestioned enjoyment of others. Such a course is not in accordance with the ordinary conduct of people. When, therefore, possession and use are long continued, they create a presumption of lawful origin. *In Re the Estate of Rios,* 2008 MP 5 ¶ 10 (2008).

Proponent bears the burden of proving laches and showing that there was inexcusable delay in the assertion of a known right. *In Re the Estate of Rios,* 2008 MP 5 ¶ 13 (2008).

There is a presumption of laches where the statute of limitations has run. *In Re the Estate of Rios,* 2008 MP 5 ¶ 15 (2008).

The laches defense may be valid regardless of the applicability of a statute of limitations. *In Re the Estate of Rios,* 2008 MP 5 ¶ 17 (2008).

Laches is an affirmative defense. Com. R. Civ. P. 8(c). *In re Estate of Deleon Castro*, 4 N.M.I. 102 (1994).

Laches, an affirmative defense, is waived if not pled in trial court proceeding. *In re Estate of Deleon Castro*, 4 N.M.I. 102 (1994).

Rule that affirmative defense of laches is waived when not pled is applicable to probate matters. Com. R. Civ. P. 1. *In re Estate of Deleon Castro*, 4 N.M.I. 102 (1994).

—Jurisdiction

DC NMI 1985. Under the federal rules, the failure to allege a specific statute under which a district court may take jurisdiction, standing alone, is not fatal; a pleading will not be subject to dismissal so long as it sets forth facts sufficient to vest jurisdiction in the federal court. Fed. R.Civ.P.8. *Hillblom v. Northern Marianas Cable Television Corporation*, 2 CR 73

DC NMI 1985. Where plaintiff candidate alleges in his complaint that the defendant cablecaster has failed to meet certain obligations imposed under Federal Communication Commission Regulations, the complaint sufficiently demonstrates that the court has jurisdiction. Fed.R.Civ.P.P.8; 28 U.S.C. §§1331 and 1337. *Hillblom v. Northern Marianas Cable Television Corporation*, 2 CR 73.

—Quiet Title

Where the parties in a quiet title action allege title from a common source, generally, to show superiority of title each party must plead or prove his or her own claim to the property in question. *Estate of Faisao v. Tenorio*, 4 N.M.I. 260 (1995).

——Particular Cases

In appeal of encroachment action, NMI Supreme Court would grant declaratory relief resolving boundary dispute and quieting title to property despite party's failure to plead quiet title claim in complaint. Although party's complaint incorrectly alleged only an encroachment claim not supported by the evidence, underlying boundary dispute was litigated and should have been addressed by trial court. In addition, record clearly established that parties intended to quiet title. Under circumstances, remanding case to allow complainant to amend complaint to assert quiet title claim and obtain ruling concerning boundary dispute would unjustifiably raise form over substance and waste judicial resources. *Estate of Taisacan v. Hattori*, 4 N.M.I. 26 (1993).

Party's failure to technically plead quiet title claim for relief did not preclude NMI Supreme Court from granting declaratory relief on appeal resolving boundary dispute between parties and quieting title to property. *Estate of Taisacan v. Hattori*, 4 N.M.I. 26 (1993).

—Remedies

Under civil procedure rules, a plaintiff may seek alternative relief for one claim. Com. R. Civ. P. 8(a)(3). *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

—Supplemental Complaint

DC NMI 1985. An amendment alleging matters which occurred after the filing of the complaint is a supplemental pleading. Fed.R.Civ.P.12, 15. *Hillblom v. Northern Marianas Cable Television Corporation*, 2 CR 73.

DC NMI 1985. Where plaintiff filed a pleading erroneously captioned "amended complaint" which alleged events occuring subsequent to the filing of the original complaint, and where no prejudice to the defendant was shown, court would deny motion to dismiss and would grant leave to file supplemental complaint. Fed. R. Civ. P. 15. *Hillblom v. Northern Marianas Cable Television Corporation*, 2 CR 73.

——Vicarious Liability

———Particular Cases

In action for damages arising from alleged battery committed in defendant hotel, plaintiff failed to adequately plead hotel's liability based on theory of respondeat superior where he did not assert in complaint that: (1) relationship between hotel and alleged tortfeasor was one of master/servant, or employer/employee; (2) alleged tortfeasor's conduct was tortious; and (3) tortfeasor committed tortious conduct while acting within the scope of his employment. Restatement (Second) of Agency § 219(1) (1958). *Castro v. Hotel Nikko Saipan, Inc.*, 4 N.M.I. 268 (1995), appeal dismissed, 96 F.3d 1259 (9th Cir. 1996).

—Waiver

Waiver is a voluntary relinquishment of a known right, with knowledge of its existence and intent to relinquish it. Mere silence does not constitute a waiver unless there is an obligation to speak. *Rosario v. Camacho*, 2001 MP 3 ¶ 56

Waiver or estoppel is generally a question of fact, and becomes a question of law only when the undisputed facts could reasonably compel only one inference. *Rosario v. Camacho*, 2001 MP 3 ¶ 56

An heir is not required to come forward with his or her claims of ownership during a probate proceeding, and therefore the heir's silence cannot constitute a waiver. *Rosario v. Camacho*, 2001 MP 3 ¶ 58

Post Trial Motions

—Judgment Notwithstanding the Verdict

DC NMI 1985. A motion for a judgment notwithstanding the verdict is technically a renewal of the motion for directed verdict and the Court freely determines the legal questions presented by the motion. *Fleming v. Department of Public Safety*, 2 CR 308, *aff'd* in part and *rev'd* in part, 837 F.2d 401 (9th Cir. 1988).

DC NMI 1985. In reviewing the sufficiency of the evidence to support the verdict, the Court should only enter a judgment notwithstanding the verdict where the evidence is such that, without weighing the credibility of the witnesses or otherwise considering the weight of the evidence, there can be but one conclusion as to the verdict that reasonable persons could have reached. *Fleming v. Department of Public Safety*, 2 CR 308, *aff'd* in part and *rev'd* in part, 837 F.2d 401 (9th Cir. 1988).

DC NMI 1985. In addressing a motion for judgment n.o.v., the Court will view the evidence in a light most favorable to the party in whose favor the verdict was made and will not substitute its judgment of the facts for that of the jury. *Fleming v. Department of Public Safety*, 2 CR 308, *aff'd* in part and *rev'd* in part, 837 F.2d 401 (9th Cir. 1988)

—New Trial

DC App. Div. 1985. The trial court has broad discretion to grant a new trial under Rule 59 and general equitable principles. Fed.R.Civ.P.59. *Guam Memorial Hospital v. Dale*, 2 CR 291, *aff'd*, 81 1 F.2d 1507 (9th Cir. 1987).

DC NMI 1985. A jury's verdict will not be set aside merely because the judge would have awarded a different amount of damages. A new trial may be granted only if the verdict is against the great weight of the evidence, or "it is quite clear that the jury has reached a seriously erroneous result." *Fleming v. Department of Public Safety*, 2 CR 308, aff d in part and rev'd in part, 837 F.2d 401 (9th Cir. 1988).

—Relief From Judgment or Order

Commonwealth Rule of Civil Procedure 60(a) is intended to correct clerical errors, not errors of substantive judgment; the rule should not be applied in situations where rulings were deliberately done but later discovered to be wrong. *Torres v. Fitial*, 2008 MP 15 ¶ 11 (2008).

The decision to order a settlement that awards money to a specific party without sufficient grounds, such as the settlement order, is clearly not a clerical error but an error of substantive judgment. *Torres v. Fitial*, 2008 MP 15 ¶ 11 (2008).

Commonwealth Rule of Civil Procedure 60(b) permits relief for "any . . . reason justifying relief from the judgment." Com. R. Civ. P. 60(b). *Torres v. Fitial*, 2008 MP 15 ¶ 11 (2008).

Under Commonwealth Rules of Civil Procedure 60(a) and 60(b), a trial court is prohibited from altering its orders or judgment after an appeal is filed unless the Supreme Court first grants permission for the trial court to do so. *Torres v. Fitial*, 2008 MP 15 ¶ 11 (2008).

After a notice of appeal has been filed, a trial court may consider a motion for relief from a judgment or order made pursuant to Commonwealth Rules of Civil Procedure 60(b), but it may not act upon it. Com. R. Civ. P. 60(b). *Lizama v. Kintz*, 2002 MP 18 ¶ 6

The proper procedure for a party seeking relief from a judgment or order pursuant to Commonwealth Rule of Civil Procedure 60(b) after the filing of a notice of appeal is for the party to file a motion in the trial court pursuant to Commonwealth Rules of Civil Procedure 60(b). If the trial court indicates that it is inclined to grant the motion, the movant should then move the appellate court for a remand of the case so that the trial court may act on the Rule 60(b) motion. Com. R. Civ. P. 60(b). *Lizama v. Kintz*, 2002 MP 18 ¶ 7

Frequently, the trial court is better suited to determine whether relief from a judgment or order pursuant to Commonwealth Rule of Civil Procedure 60(b) is appropriate because it has had jurisdiction over this case for a longer period of time, and is intimately familiar with the facts of the case and it is possible that factual determinations must be made in order to grant or deny the relief sought. This is a task for which the trial court is best suited. *Lizama v. Kintz*, 2002 MP 18 ¶ 10

CTC 1987. Alleged wrongfully excluded heir has no standing to bring a motion for relief from judgment because of fraud where she was not a party to the probate proceeding and the relief requested is simply to correct an error in the decree of distribution. Com.Tr.C.R.Civ.P.60 (b)(3). *In re the Estate of De Castro*, 3 CR 28.

CT 1987. Where court lacked jurisdiction to order transfer of interest within probate of decedent's estate, of deceased son's land, the mistake and oversight is tantamount to a clerical error and may be corrected under rule. Com.Tr.C.R.Civ.P.60(a). *In re the Estate of De Castro*, 3 CR 28.

—Relief Requested

DC App. Div. 1984. Where defendant does not show any substantial prejudice from plaintiffs failure to explicitly request liquidated damages until the opening statement at trial, plaintiff is not precluded from an award of liquidated damages. Com.R.Civ.P.54(c). *Elayda v. J & I Construction Co.*, 1 CR 1025.

DC App. Div. 1984. Where the issues of willfulness and failure to pay the wages prescribed by the minimum wage and maximum hour Act are very closely related, and where the Act refers to liquidated damages for willful violations in the same sentence that sets forth liability for unpaid minimum wages or overtime, and where there is no showing of any other evidence the defendant could have adduced to negate the showing of a willful violation, the plaintiffs failure to plead a request for liquidated damages in a minimum wage action did not prejudice defendant. Commonwealth Minimum Wage and Maximum Hours Act; 4 CMC §9243 et seq.; Fed.R.Civ.P.54(c). *Elayda v. J & I Construction Co.*, 1 CR 1025.

Request for Admission

See **Discovery – Admission, Request for**, this topic.

Rules

—Construction

See also **Rules – Interpretation and Construction**, this topic.

When the language of a court rule is clear, the Court will not construe it contrary to its plain meaning. *Santos v. Santos*, 2001 MP 12 ¶ 15

—Counterpart Federal Rules

When interpreting the Commonwealth's rules of civil procedure, which are patterned after the federal rules, the Supreme Court will principally look to federal interpretation for guidance. *Commonwealth Dev. Auth. v. Camacho, et al*., 2010 MP 19 ¶ 16 (2010).

When the Commonwealth's rules are patterned after the federal rules it is appropriate for the Supreme Court to look to federal interpretation for guidance. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 60 (2010).

Commonwealth R. Civ. P. 58 does not mirror the Federal Rule. Rather, Commonwealth Rule 58 is a reiteration of sections (e) and (f) of Rule 14 of the Commonwealth Rules of Practice. *CPA v. Tinian Shipping*, 2007 MP 22 ¶ 11

While our rules do not explicitly state the obvious, we find that an entry of judgment or order issued as a separate document is a necessary adjunct that must be filed with the Superior Court clerk. We went on to state that a thorough evaluation and collective reading of our Rules of Appellate Procedure, Rules of Civil Procedure and Rules of Practice make evident that without such an entry of judgment or order, this Court has no jurisdiction. Furthermore, we took explicit note that Rule 54(a) states: A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings. *CPA v. Tinian Shipping*, 2007 MP 22 ¶ 12

Federal courts interpreting Rule 36(a) unanimously hold that a party may request another party to admit any fact, regardless of whether or not that fact can be characterized as ultimate. *Park v. Kim*, 2007 MP 13 ¶ 11

Commonwealth Rule 54(b) is taken from the Federal Rules, and thus federal cases provide guidance in its interpretation. Under Federal Rule 54(b), a district court must first determine that it is dealing with a final judgment. It must be a judgment in the sense that it is a decision upon a cognizable claim for relief, and it must be final in the sense that it is an ultimate disposition of an individual claim entered in the course of a multiple claims action. Once having found finality, the district court must go on to determine whether there is any reason for delay. *Bank of Guam v. Mendiola et al*, 2007 MP 1 ¶ 9

As Commonwealth Rules of Civil Procedure 42(b) has a federal counterpart, it is appropriate to consult interpretations of the federal rule. *In re Fleming*, 2005 MP 13 ¶ 11

Canon 3(D)(c) of the Commonwealth Code of Judicial Conduct models the affidavit procedure for disqualification set forth in 28 U.S.C. § 144. Com. C. Judic. Cond., Canon 3(D)(c); 28 U.S.C. § 144.

Bank of Saipan v. Superior Court (Disqualification of Lamorena), 2002 MP 17 ¶ 7

Because section 3308 of Title 1 of the Commonwealth Code and Canon 3(C) of the Commonwealth Code of Judicial Conduct both model the language of the federal recusal statute, codified as 28 U.S.C. § 455; and Canon 3(D)(c) of the Commonwealth Code of Judicial Conduct models the affidavit procedure for disqualification set forth in 28 U.S.C. § 144; federal cases interpreting these sections may be relied upon in deciding motions based on the Commonwealth Code and the Commonwealth Code of Judicial Conduct. 1 CMC § 3308; Com. C. Judic. Cond., Canon 3(C); 28 U.S.C. § 455; Com. C. Judic. Cond., Canon 3(D)(c); 28 U.S.C. § 144. *Bank of Saipan v. Superior Court (Disqualification of Lamorena)*, 2002 MP 17 ¶ 7

In the C.N.M.I., the affidavit requirement of Canon 3(D)(c) of the Commonwealth Code of Judicial Conduct is specifically applicable to motions made under 1 CMC § 3308(b)(1). This is distinct from the federal procedure wherein disqualification under the affidavit provision of 28 U.S.C. § 144 offers a separate ground for disqualification than 28 U.S.C. § 455. Accordingly, unlike the federal procedure, a failure to comply with the affidavit requirement under Canon 3(D)(c) precludes further analysis under 1 CMC § 3308(b)(1). Com. C. Judic. Cond., Canon 3(D)(c); 1 CMC § 3308(b)(1); 28 U.S.C. § 144; 28 U.S.C. § 455. *Bank of Saipan v. Superior Court (Disqualification of Lamorena)*, 2002 MP 17 ¶ 17

Canon 3(D)(c) of the Commonwealth Code of Judicial Conduct models the affidavit procedure for disqualification set forth in 28 U.S.C. § 144. Com. C. Judic. Cond., Canon 3(D)(c); 28 U.S.C. § 144. *Bank of Saipan v. Superior Court (Disqualification of Castro)*, 2002 MP 16 ¶ 7

Because section 3308 of Title 1 of the Commonwealth Code and Canon 3(C) of the Commonwealth Code of Judicial Conduct both model the language of the federal recusal statute, codified as 28 U.S.C. § 455; and Canon 3(D)(c) of the Commonwealth Code of Judicial Conduct models the affidavit procedure for disqualification set forth in 28 U.S.C. § 144; federal cases interpreting these sections may be relied upon in deciding motions based on the Commonwealth Code and the Commonwealth Code of Judicial Conduct. 1 CMC § 3308; Com. C. Judic. Cond., Canon 3(C); 28 U.S.C. § 455; Com. C. Judic. Cond., Canon 3(D)(c); 28 U.S.C. § 144. *Bank of Saipan v. Superior Court (Disqualification of Castro)*, 2002 MP 16 ¶ 7

It is appropriate to consult the interpretation of counterpart federal rules when interpreting Commonwealth procedural rules, and the N.M.I. Supreme Court finds such interpretations instructive. *Angello v. Louis Vuitton Saipan, Inc.*, 2000 MP 17 ¶ 14

Commonwealth Rule of Civil Procedure 41(b) utilizes language from the Federal Rule of Civil Procedure 41(b), thus case law from other jurisdictions is instructive. Com. R. Civ. P. 41(b). *Wabol v. Villacrusis*, 2000 MP 18 ¶ 19

Interpretation of counterpart federal rules are helpful in interpreting Commonwealth Rules of Civil Procedure. *Bank of Saipan v. Superior Ct. (Carlsmith)*, 2001 MP 7 ¶ 19

Interpretations of counterpart federal rules are helpful in interpreting the Commonwealth Rules of Civil Procedure. *Ada v. K. Sadhwani's, Inc.*, 3 N.M.I. 303 (1992).

Com. R. Civ. P. 8(c), concerning pleading of affirmative defenses, is identical to Fed. R. Civ. P. 8(c). Interpretations of Fed. R. Civ. P. 8(c) are helpful in analyzing Com. R. Civ. P. 8(c). *Rogolofoi v. Guerrero*, 2 N.M.I. 468 (1992).

It is appropriate to consult interpretation of counterpart federal rules when interpreting Commonwealth procedural rules; interpretation of such rules can be highly persuasive. *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270 (1991).

It is appropriate to consult interpretation of counterpart federal rules when interpreting Commonwealth procedural rules; interpretation of such rules can be highly persuasive. *Mafnas v. Commonwealth*, 2 N.M.I. 248 (1991).

Although interpretations by federal courts of federal procedural rules similar to Commonwealth procedural rules are helpful, they are not binding. *Lucky Dev. Co., Ltd. v. Tokai U.S.A., Inc.*, 2 N.M.I. 81 (1991).

Interpretations of the counterpart federal rule are helpful in interpreting a Commonwealth procedural rule. *In re Adoption of Magofna*, 1 N.M.I. 449 (1990).

It is appropriate to consult interpretation of counterpart federal rules in interpreting

Commonwealth procedural rules. The interpretation of such rules can be highly persuasive. *Tudela v. Marianas Pub. Land Corp.*, 1 N.M.I. 179 (1990).

—Generally

Com R. Civ. P. 83(i), which governs appeals, does not subject the small claims court to the usual appellate process of the Supreme Court. *Chen's Corp. v. Hambros,* 2008 MP 9 ¶ 4 (2008).

The rationale behind the small claims procedure is to enable small claims to be justly decided and fully disposed of with less formality, paperwork, and expenditure of time than is required by the ordinary procedure for larger claims. To require claimants to file an appeal with the Supreme Court for these matters would require a substantial record, far more than what is required for small claims matters. Furthermore, the trial court will determine if the appeal for a new trial is frivolous or for the purpose of delay, a finding that is both inappropriate and onerous for the Supreme Court to determine. *Chen's Corp. v. Hambros,* 2008 MP 9 ¶ 5 (2008).

The word "may" modifies the word "appeal," in that it gives parties the option to appeal. Com. R. Civ. P. 83(i) then lists the method of appeal, specifically a new trial with the trial court. The word "may" does not give appellant options as to where to appeal; it only details the proper method if the appellant chooses to appeal. Small claims actions are not typically appealed to the Supreme Court, unless under extraordinary circumstances. *Chen's Corp. v. Hambros,* 2008 MP 9 ¶ 6 (2008).

If matters outside the pleadings are presented to the court, but the court excludes them, a Rule 12(b)(6) proceeding is appropriate. Com. R. Civ. P. 12(b). *Furoka v. Dai-Ichi Hotel,* 2002 MP 5 ¶ 17

Family law cases are civil in nature and in the C.N.M.I. are governed by the Commonwealth Rules of Civil Procedure. *Santos v. Santos,* 2001 MP 12 ¶ 10

NMI rules of procedure should never be used as a game of skill. The purpose of pleading is to facilitate a proper decision on the merits. *Lucky Dev. Co., Ltd. v. Tokai U.S.A., Inc.*, 2 N.M.I. 81 (1991).

—Interpretation and Construction

The rationale behind the *Kumagai* ruling it to provide the parties with conclusive notification that the case has ended and an appeal may be taken, ensures that a decision addressed on appeal is really the trial court's final resolution of the matter, and protects litigants from uncertainty as to when a notice of appeal must be filed within the time permitted. *Commonwealth v. Superior Court (JG Sablan, Inc.),* 2008 MP 11 ¶ 20 (2008).

——Generally

Com. R. Civ. P. 36(a) allows a party to request an admission of any discoverable matter that relates to the application of law to fact. The rule does, however, preclude a request for the admission of a pure matter of law. *Park v. Kim,* 2007 MP 13 ¶ 10

Many courts hold that even if a request is objectionable, if a party fails to object or respond, the party should be held to have admitted the matter. *Park v. Kim,* 2007 MP 13 ¶ 10

Rule 36(a) requests may not include requests for opinions of law or for legal conclusions. *Park v. Kim,* 2007 MP 13 ¶ 12

A defendant's failure to respond to request for admissions was an admission of each matter for which admission was sought even though request for admissions raised the same questions asked and answered in depositions. If a party fails to object, that party should be held to have admitted the matter. *Park v. Kim,* 2007 MP 13 ¶ 14

The reason a small claims appeal first proceeds to Superior Court is because the rules of evidence and procedure will be enforced, and thus: 1) give the lower court an opportunity to make a ruling based on more formal rules of evidence and procedure, and 2) make any resulting appeal to the Supreme Court more capable of setting forth an adequate record. The Superior Court will conduct a *de novo* trial where normal rules of procedure and evidence apply. *Chen's Corporation v. Hambros,* 2007 MP 4 ¶ 5

If an appeal from small claims court is not first made to the Superior Court, then the policy behind the rules has not been effectuated, and this Court will not hear the appeal. *Chen's Corporation v. Hambros,* 2007 MP 4 ¶ 7

We look at the plain meaning of a rule to interpret it. *Chen's Corporation v. Hambros,* 2007 MP 4 ¶ 9

The Rules do not allow a corporation to be represented by anyone but an attorney. *Chen's Corporation v. Hambros,* 2007 MP 4 ¶ 9

While it is true that Rule 54(b) does not require a specific procedure for obtaining certification from the trial court, in no way does it follow that the certification itself is optional. *Bank of Guam v. Mendiola et al,* 2007 MP 1 ¶ 7

A lower court is not required to make a reasoned explanation of its Rule 54(b) determination that no just cause for delay exists to warrant postponing an appeal. However, a Rule 54(b) order must include an express determination by the trial court that there was in fact no just cause for delay. In other words, the record must demonstrate that the trial court found Rule 54(b) applicable, although the court's reasoning need not be present. *Bank of Guam v. Mendiola et al,* 2007 MP 1 ¶ 8

In considering the second requirement of Rule 54(b), the court will perform a balancing test and consider whether the costs and risks of multiple proceedings and the policy with respect to judicial efficiency are outweighed by the need for an early and separate judgment as to some claims or parties. *Bank of Guam v. Mendiola et al,* 2007 MP 1 ¶ 9

The trial court must be the one to determine the applicability of Rule 54(b). *Bank of Guam v. Mendiola et al,* 2007 MP 1 ¶ 10

In the absence of express language to that effect, a lower court order is not appealable under Rule 54(b). In light of the separate document rule, it is now necessary for such express language to appear on the face of the separate document constituting the entry of judgment. *Bank of Guam v. Mendiola et al,* 2007 MP 1 ¶ 13

When the language of a court rule is clear, NMI Supreme Court will not construe it contrary to its plain meaning. *Mafnas v. Commonwealth*, 1 N.M.I. 400 (1990).

Court rules are subject to the same principles of construction as statutes. *Tudela v. Marianas Pub. Land Corp.*, 1 N.M.I. 179 (1990).

A basic principle of construction is that language must be given its plain meaning. When the language of a court rule is clear, court will not construe it contrary to its plain meaning. *Tudela v. Marianas Pub. Land Corp.*, 1 N.M.I. 179 (1990).

DC App. Div. 1989. Where the language of that local rule and Federal Rule appeal identical, and both parties cite exclusively federal authority in their briefs, federal law is considered authoritative in interpreting local rule. Com.R.Civ.P.11. *Camacho v. J.C. Tenorio Enterprises*, 3 CR 964, amended, 3 CR 972.

DC App. Div. 1988. Rules of civil procedure are to be construed to provide a just, speedy and inexpensive determination of action. *Matsumoto v. Akiyama*, 3 CR 141.

DC NMI 1985. The Federal Rules of Civil Procedure are to be read liberally. *Hillblom v. Northern Marianas Cable Television Corporation*, 2 CR 73.

DC NMI 1985. The general purpose of the Federal Rules is to minimize technical obstacles to a determination of the controversy on its merits. *Hillblom v. Northern Marianas Cable Television Corporation*, 2 CR 73.

Sanctions

When judgment debtors violate an order in aid of judgment, they may be incarcerated until they comply with the order or serve out their sentence. 7 CMC § 4208. *Pac. Fin. Corp. v. Muna*, 2008 MP 21 ¶ 6 (2008).

Once a violation of Commonwealth Rules of Civil Procedure 11(b) has been determined, the Superior Court has the discretion to award an appropriate sanction under Rule 11(c). Com. R. Civ. P. 11(b); Com. R. Civ. P. 11(c). *Ferreira v. Borja*, 1999 MP 23 ¶ 12

If the Superior Court exercises its discretion under Commonwealth Rules of Civil Procedure 11(c)(2) to award attorney fees as a sanction, then the fees must be reasonable and a direct result of the violation. Com. R. Civ. P. 11(c)(2). *Ferreira v. Borja*, 1999 MP 23 ¶ 12

DC NMI 1986. Where the Court is left with the inescapable conclusion that removal petition was effected solely to vex and harass plaintiffs, to delay resolution of the lawsuit, and to increase costs of litigation, defendants' actions lacked the good faith required by Rule 11. *Concepcion v. American International Knitters Corp.*, 2 CR 837.

DC NMI 1986. A court may impose sanctions, including attorney fees, on its own initiatives under Rule 11 or sua sponte under its inherent power. Fed.R.Civ.P.11. *Concepcion v. American International Knitters Corp.*, 2 CR 837.

DC NMI 1986. Where defendant removes action to federal court and one week later files a motion to dismiss the action claiming that the federal court has no jurisdiction, the defendant has demonstrated lack of good faith and is subject to appropriate sanctions. Fed.R.Civ.P.11. *Concepcion v. American International Knitters Corp.*, 2 CR 837.

DC NMI 1985. Courts have inherent authority to sanction parties for perpetrating wilful fraud upon the court. *Luna v. Kamata*, 2 CR 127.

—Default

DC NMI 1985. Where defendant stated to the court that he needed a continuance of trial because of his absence from the jurisdiction for medical reasons, and where such statement was a willful, fraudulent misrepresentation, default against the defendant was warranted. *Luna v. Kamata*, 2 CR 127

—Parties Entitled

CTC 1988. Intervenor is a party capable of seeking sanctions against other parties in the action pursuant to court rule.Com.R.Civ.P.11;24(a). *Matsumoto v. Akiyama*, 3 CR 465.

—Standard

DC App. Div. 1989. An attorney's investigation into the facts and law must be objectively reasonable under the circumstances to meet standard of rule governing sanctions. Com.R.Civ.P.11. *Camacho v. J.C. Tenorio Enterprises*, 3 CR 964, amended, 3 CR 972.

DC App. Div. 1989. Where party:(1) asserted that a bank sold property at a foreclosure sale and attached to the complaint a copy of the certificate of sale; (2) asserted that his demand for redemption was ignored; and (3) did not disclose that he stipulated to the sale of his property, such statements and omissions were misleading and the sanctions imposed by the trial judge were amply warranted on the ground that the complaint was not well-grounded in fact. Com.R.Civ.P.11. *Camacho v. J.C. Tenorio Enterprises*, 3 CR 964, amended 3 CR 972.

DC NMI 1988. Where person was available to make his affidavit at the time of first motion for summary judgment, court and opposing counsel were required to spend time preparing for a second hearing, which should not have been necessary, party opposing second summary judgment motion would be awarded reasonable attorney fees for preparation and appearance at the second motion. *Gomez v. Western Equipment, Inc.*, 3 CR 436.

CTC 1988. Rule calling for sanctions may be invoked when claims are made in bad faith, recklessly, or without basis in fact or law. Com.Tr. C.R.Civ.P. 11. *Matsumoto v. Akiyama*, 3 CR 465.

CTC 1988. The subjective intent of an attorney in filing a lawsuit is irrelevant in determining whether sanctions should be granted for violation of Rule 11; rather what must be considered is whether the attorney examined the facts and the law before instituting legal process and whether a reasonable attorney would have believed such action was justified. Com.R.Civ.P.11. *Matsumoto v. Akiyama*, 3 CR 465.

CTC 1988. In examining whether sanctions are applicable, the court must examine the objective reasonableness of the claim in light of existing law and facts and if this standard of objective reasonableness is unsatisfied, sanctions are mandatory. Com.Tr.CR.Civ.P.11. *Matsumoto v. Akiyama*, 3 CR 465.

CTC 1988. Where: (1) plaintiffs' previous two suits against intervenor were dismissed with prejudice; (2) the plaintiffs' present attorney was also counsel for plaintiffs in preceding action; and (3) despite the prior dismissals, plaintiffs sought to challenge intervenor's title and interest in land previously found to be owned by intervenor, it cannot be said that the complaint was grounded in either law or fact and, therefore, sanctions are appropriate. *Matsumoto v. Akiyama*, 3 CR 465.

Service of Process

—Foreign Governments

CTC 1983. Service of process upon a foreign government may be made by the clerk of court sending the summons and complaint to the ministry of foreign affairs. 28 U.S.C. §1608(a). *White v. Republic of Nauru*, 1 CR 342.

CTC 1983. Failure to comply exactly with the provisions of federal statute governing service of process upon foreign governments is not critical where the defendant receives the documents, enters a general appearance, and neither argues nor shows any prejudice from the failure to comply exactly with the statute. 28 U.S.C. §1608(a). *White v. Republic of Nauru*, 1 CR 342.

—Timeliness

CTC 1989. Where the plaintiff did not serve the defendant within 120 days after the filing of her complaint and cannot show good cause for the tardiness, the court must dismiss the action against the defendant. Com.R.Civ.P.4(j). *Guerrero v. L & T International*, 3 CR 650.

CTC 1989. Where the plaintiff had the opportunity to serve the defendant by publication yet failed to do so and plaintiff could have requested an extension of time to serve her summons and complaint, but did not take any action whatsoever for almost two years, plaintiff must suffer the consequences of dismissal without prejudice under rule requiring service of process within 120 days, but with the knowledge that any attempt to refile the action would be met with a successful statute of limitations challenge. Com.R.Civ.P.4(j). *Guerrero v. L & T International*, 3 CR 650.

—Waiver

DC NMI 1986. Defense of defective service is waived if not pleaded within the statutory time period. Fed. R. Civ. P.12. *People of Micronesia, Inc. v. Continental Air Lines, Inc.*, 2 CR 740.

Scheduling Orders

See **COURTS – Inherent Powers – Docket, Control of**

Settlements

— Settlement Agreements, Enforcement of

The trial court possesses an inherent power to summarily enforce settlement agreements entered into by parties litigant in a pending case. *Torres v. Fitial*, 2008 MP 15 ¶ 9 (2008).

Small Claims

—New Trial

Com. R. Civ. P. Rule 83(i) provides the court with discretion in deciding whether to grant a new trial. *Bank of Hawaii v. Sablan*, 1997 MP 9 ¶9

Stipulations

—Generally

Parties by their stipulation may in many ways make the law for their legal proceeding, which not only binds them, but which the courts are bound to enforce. They may stipulate away statutory and even constitutional rights, and, may to a large extent chart their own procedural course through the courts. *Angello v. Louis Vuitton Saipan, Inc.*, 2000 MP 17 ¶ 21

—Questions of Law

It is very well established that the courts in the Ninth Circuit are not bound by stipulations as to questions of law. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 13

Summary Judgment

—Admissions

See **Summary Judgment – Exhibits**, this topic.

—Affidavits

DC App. Div. 1989. The trial court did not err in relying on an affidavit containing hearsay statements in rendering its decision on a motion for summary judgment where the opposing party failed to raise any objection to the hearsay statements. Com.R.Civ.P.56. *CNMI v. Micronesian Insurance Underwriters Inc.*, 3 CR 731.

DC NMI 1988. Counsel's personal belief that a fact "cannot be seriously disputed" or that an affidavit is "clearly incompetent" is held only at their client's peril. *Gomez v. Western Equipment, Inc.*, 3 CR 436.

DC App. Div. 1987. Affidavits accompanying a motion must affirmatively show that the affiant is competent to testify to the matters therein and that the facts stated in the affidavit are based on affiant's personal knowledge. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 1164.

DC NMI 1981. Facts stated in affidavits opposing a summary judgment motion must be accepted as true. Fed.R.Civ.P.56. *Mariana Islands Airport Authority v. The Ralph M. Parsons Company*, 1 CR 181.

CTC 1986. An affidavit may be stricken if it was not timely filed under the Court's Rule of Practice and does not show affirmatively that the affiant is competent to testify to the matter stated therein. Com.Tr.C.R.Prac.8; Com.R. Civ.P. 56. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 760.

CTC 1986. In view of the uncontradicted corporate records showing defendant was a director, defendant cannot oppose the summary judgment motion by merely making a conclusionary statement or arriving at a legal conclusion that he was not a director. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 760.

CTC 1986. In replying to Rule 56 summary judgment motion, the adverse party cannot rely on her pleading but must come forward with affidavits to show there is a genuine issue of fact for trial. Fed.R.Civ.P.56. *Aldan-Pierce v. Mafnas*, 2 CR 855, aff'd, 3 CR 326 (DNMI App. Div. 1988).

—Appeal

See **Interlocutory Appeal – Summary Judgment**, this topic.

—Burden of Proof

To be liable for defamation of a public official or public figure, a defendant must have acted with actual malice; that is, with knowledge of falsity or with reckless disregard for truth or falsity. To prevail on an appeal of the grant of summary judgment for the defendant, a plaintiff must prove by clear and convincing evidence that a reasonable jury could find the defendant acted with actual malice. *Tan v. Younis*, 2007 MP 11 ¶ 49

A financial motive to defame is insufficient to survive summary judgment. *Tan v. Younis*, 2007 MP 11 ¶ 58

To allow plaintiffs to survive even summary judgment without any evidence in record tending to show the existence of actual malice chills fundamental rights of speech and press. *Tan v. Younis*, 2007 MP 11 ¶ 60

A party opposing a properly supported motion for summary judgment may not rest upon the mere allegations or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial. *Aplus Co., Ltd. v. Niizeki Intern'l Saipan, Co., Ltd.*, 2006 MP 13 ¶ 10

The law is well established that when considering a motion for summary judgment, the trial court must review the evidence and inferences in a light most favorable to the non-moving party. *Sullivan v. Tarope*, 2006 MP 11 ¶ 49

Once the moving party establishes that there is no genuine issue of material fact, the burden shifts to the non-moving party to set forth admissible facts to show a genuine issue for trial; general denials or conclusory statements are insufficient. *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22 ¶ 9

The movant always bears the initial burden of production on summary judgment. *In re Estate of Roberto*, 2002 MP 23 ¶ 17

Where a defendant is a party moving for summary judgment, he must point to a lack of evidence supporting the claims against him or he must be able to show that the undisputed facts establish every element of an asserted affirmative defense at the outset. *In re Estate of Roberto*, 2002 MP 23 ¶ 18

The burden of production does not shift to the non-moving party unless and until the moving party has successfully met his initial burden. *In re Estate of Roberto*, 2002 MP 23 ¶ 18

The burden of production is the responsibility to move forward with the presentation of evidence regarding evidentiary facts. On summary judgment, the moving party always bears the initial burden of production. *In re Estate of Roberto*, 2002 MP 23 ¶ 18

If there has been sufficient time for discovery, and if the moving party will not bear the ultimate burden of persuasion at trial, he may fulfil the initial burden of production by pinpointing an absence of evidence supporting his opponent's claims rather than adducing evidence to negate an essential element of such claim or affirmatively supporting his own affirmative claims. *In re Estate of Roberto*, 2002 MP 23 ¶ 18

If, and only if, the party moving for summary judgment meets his initial burden then the burden of production shifts to the non-moving party, who must produce just enough evidence to create a genuine fact issue. *In re Estate of Roberto*, 2002 MP 23 ¶ 18

The burden of persuasion is the onus to affirmatively convince the trier of fact of the existence or non-existence of required facts. On summary judgment the burden of persuasion regarding the absence of genuine issues of material fact always remains with the moving party. *In re Estate of Roberto*, 2002 MP 23 ¶ 18

Any doubt as to the existence of a genuine issue of material fact in a motion for summary judgment must be resolved against the movant. *In re Estate of Roberto*, 2002 MP 23 ¶ 18

Because summary judgment forecloses a trial on the merits, the burden of persuasion cannot be satisfied unless it is clear that a trial is unnecessary. *In re Estate of Roberto*, 2002 MP 23 ¶ 18

Ultimate burden may refer to the final burden of persuasion on a particular question or at a particular phase or, alternatively, a party may be said to have the ultimate burden where that party would bear the burden of persuasion on a particular issue at trial. *In re Estate of Roberto*, 2002 MP 23 ¶ 18

Terms such as burden of demonstrating, burden of establishing, and burden of showing are used indiscriminately, at times describing an ultimate burden, at others either the burden of production or the burden of persuasion, and, at other times, are used in reference to the combined burdens of production and persuasion. *In re Estate of Roberto*, 2002 MP 23 ¶ 18

The term burden of proof is at times used to describe either the burden of production or, more commonly, the burden of persuasion, and, at other times, it is used in reference to the combined burdens of production and persuasion, while, in an entirely different context, the same term also defines the degree or weight of persuasion required, as in proof by a preponderance of the evidence, by clear and convincing evidence, or beyond a reasonable doubt. *In re Estate of Roberto*, 2002 MP 23 ¶ 18

The moving party bears the initial and the ultimate burden of establishing its entitlement to summary judgment by demonstrating the absence of a genuine issue of material fact in the record before the court. *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builders*, 2002 MP 15 ¶ 24

After the moving party meets the initial burden for a summary judgment motion, it then falls to the non-moving party to show that a genuine issue of material fact is still in question. *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builders*, 2002 MP 15 ¶ 24

A moving party bears the initial and the ultimate burden of establishing its entitlement to summary judgment by demonstrating the absence of a genuine issue of material fact in the record before the court. *Triple J Saipan Inc. v. Agulto*, 2002 MP 11 ¶ 8

After the moving party meets the initial burden, it falls to the nonmoving party to show that a genuine issue of material fact is still in question. *Triple J Saipan Inc. v. Agulto*, 2002 MP 11 ¶ 8

With a motion for summary judgment, the burden rests on the party seeking the motion to show that no genuine issue of material fact exists. *Manglona v. Commonwealth*, 2002 MP 7 ¶ 25

Because the Governor is not required to sign a contract under the C.N.M.I. Procurement Regulations, a party wishing to prove that the agreement was not approved by the Governor must provide evidence, beyond the absence of the Governor's signature on the lease itself to prevail. C.N.M.I. Procurement Regulations, 12 Com. Reg. 7,274 (Sept. 15, 1990) (adopted at 12 Com. Reg. 7,436 (Oct. 15, 1990)). *Manglona v. Commonwealth*, 2002 MP 7 ¶ 26

A party moving for summary judgment bears the initial and the ultimate burden of establishing its entitlement to summary judgment. *Furoka v. Dai-Ichi Hotel*, 2002 MP 5 ¶ 22

Once the moving party satisfies its initial burden for a motion for summary judgment, then the nonmoving party must respond by establishing that a genuine issue of material fact exists. *Furoka v. Dai-Ichi Hotel*, 2002 MP 5 ¶ 24

A party that is an organization does not meet its initial burden of showing that it had no knowledge of the negligent conduct for which the opposing party seeks to hold it responsible simply by demonstrating that one of its representatives did not have such knowledge. *Furoka v. Dai-Ichi Hotel*, 2002 MP 5 ¶ 28

If a moving party does not meet its initial burden of demonstrating a lack of material facts in dispute, the non-moving party is under no obligation to bring forth any evidence refuting the moving party's assertion and may rest on its pleadings, although this tactic is disfavored by the N.M.I. Supreme Court. *Furoka v. Dai-Ichi Hotel*, 2002 MP 5 ¶ 29

The moving party on a motion for summary judgment has the burden to show no genuine issues of material fact exist. The moving party bears the initial and ultimate burden of establishing its entitlement to summary judgment. This burden includes the need to conclusively establish that the facts alleged by the non-moving party are not susceptible to an interpretation that might give rise to the cause of action alleged. Where the evidence

supporting the summary judgment motion does not conclusively establish the absence of every genuine issue of material fact, summary judgment must be denied even if no opposing evidentiary matter is presented. *Bank of Saipan v. Superior Ct. (Carlsmith)*, 2001 MP 7 ¶ 26

In a motion for summary judgment, all inferences to be drawn from the underlying facts are to be viewed in a light most favorable to the non-moving party. *Bank of Saipan v. Superior Ct. (Carlsmith)*, 2001 MP 7 ¶ 27

Plaintiff moving for summary judgment has burden of establishing absence of genuine issue of material fact as to its prima facie case. Once plaintiff does so, it becomes defendant's responsibility to set forth specific facts, admissible in evidence, showing genuine issue for trial. Com. R. Civ. P. 56(c), (e). *Eurotex (Saipan), Inc. v. Muna*, 4 N.M.I. 280 (1995).

When a party moves for summary judgment, it is incumbent upon that party to show that there are no genuine issues of material fact. Once this has been shown, the burden shifts to the opposing party to show that such an issue does exist. Com. R. Civ. P. 56. *Castro v. Hotel Nikko Saipan, Inc.*, 4 N.M.I. 268 (1995), appeal dismissed, 96 F.3d 1259 (9th Cir. 1996).

A moving party bears the initial and ultimate burden of establishing its entitlement to summary judgment. *Santos v. Santos*, 4 N.M.I. 206 (1994).

If party moving for summary judgment is the plaintiff, he or she must prove that undisputed facts establish every element of presented claim; if movant is the defendant, he or she has correlative duty of showing that undisputed facts establish every element of an asserted affirmative defense. If movant satisfies this burden, non-moving party must establish genuine issue of material fact. *Santos v. Santos*, 4 N.M.I. 206 (1994).

Once a movant for summary judgment has shown that no genuine issue of material fact exists, the burden shifts to the opponent to show that such an issue does exist. *Riley v. Public Sch. Sys.*, 4 N.M.I. 85 (1994).

In motion for summary judgment, the movant has the initial burden of showing that no genuine issue of material fact exists. Once the moving party meets that burden, the burden shifts to the opponent to show that a genuine issue of material fact does exist. *Cabrera v. Heirs of De Castro*, 1 N.M.I. 172 (1990).

DC App. Div. 1988. Once a party seeking summary judgment meets the initial responsibility of informing the court of the basis of the motion, and identifying those portions of the pleadings, depositions, answers to interrogatories and admissions of file, together with the affidavits, if any, which the moving party believes demonstrate the absence of a genuine issue of material fact, the burden then shifts to the party opposing the motion to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at mal. The moving party will be entitled to judgment as a matter of law if the nonmoving party fails to make a sufficient showing on an essential element of their case. Com.R.Civ.P.56(c). *Aldan-Pierce v. Mafnas*, 3 CR 326.

DC App. Div. 1988. A motion for summary judgment is no place for conjecture and speculation and where the defendant failed to provide evidence of the appraised value of property in support of claim of unconscionability, summary judgment was properly granted. Com.R.Civ.P.56. *Aldan-Pierce v. Mafnas*, 3 CR 326.

DC App. Div. 1987. On a motion for summary judgment the Court must construe the pleadings, other record evidence, and its attendant inferences most favorably to the party opposing the motion. Com.R.Civ.P.56(c). *Saipan Secretarial Employment Services, Inc. v. CNMI*, 3 CR 168.

CTC 1988. Rule mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. Com.R.Civ.P.56. *Tenorio v. Camacho*, 3 CR 364.

——Particular Cases

In action for specific performance of option agreement in lease, plaintiff lessee moving for summary judgment met burden of establishing absence of genuine issue of material fact as to its prima facie case—validity, enforceability and proper exercise of option—by presenting: (1) signed and notarized lease containing option agreement; (2) proof that it paid, pursuant to terms of lease, rent in full and consideration for option; (3) proof that it tendered and defendant lessor accepted sum for exercise of option; (4) proof that it took possession and control of additional property leased under terms of option; (5) concession by defendant lessor that he voluntarily signed lease containing option and

believed at the time of signing that it was legally binding; (6) evidence refuting defendant lessor's claim that he had attorney-client or agency relationship with government attorney who assisted in negotiating lease price for plaintiff lessee; and (7) evidence that defendant lessor was aware of lease terms, including option, and of plaintiff's exercise of option. *Eurotex (Saipan), Inc. v. Muna*, 4 N.M.I. 280 (1995).

In quiet title action, defendants moving for summary judgment on basis that claim to certain parcels of real property was barred by res judicata had burden of establishing absence of genuine issue of material fact. Because movants did not establish that parcels were clearly distributed in prior probate proceeding distributing other, related parcels, and made no showing that claims should have been brought in related proceeding, defendants failed to meet burden, and trial court erred in granting summary judgment in their favor. *Santos v. Santos*, 4 N.M.I. 206 (1994).

In quiet title action, defendants moving for summary judgment on basis that claim to certain parcel of real property was barred by res judicata met burden of establishing ownership of parcel with certificate of title issued by NMI Land Commission, which constituted prima facie evidence of ownership. 2 CMC § 4251(a). *Santos v. Santos*, 4 N.M.I. 206 (1994).

—Continuance

CTC 1987. The party moving for a continuance of a summary judgment motion must make an attempt to identify: (1) what facts were within the defendants' exclusive control; and (2) how discovery would assist plaintiff in bringing those facts to light. Comm.R.Civ.P.56(f). *Guerrero v. L & T International Corp.*, 2 CR 1060.

CTC 1987. The party moving for a continuance of a summary judgment motion cannot simply rely on vague assertions that additional discovery will produce needed, but unspecified facts. Comm.R.Civ.P.56(f). *Guerrero v. L & T International Corp.*, 2 CR 1060.

CTC 1987. An affidavit submitted in support of a continuance of a summary judgment motion is insufficient under the Rules, where the affidavit not set forth specific facts to be adduced to counter those in the affidavits of the defendants where: (1) plaintiff has had six months to discover facts to support claim; (2) there is no doubt that the plaintiff anticipated or should have anticipated the need for discovery on the issue, (3) there have been no limitations imposed on plaintiff in her discovery attempts insofar as the controlling issue was concerned; (4) the information concerning the claim was not with the exclusive control of the defendants; and (5) the defendant has already answered under oath plaintiff's questions on the matter and was not withholding any confidential or secret matters. Comm.R.Civ.P.56(f). *Guerrero v. L & T International Corp.*, 2 CR 1060.

CTC 1987. The justification for a continuance of a motion for summary judgment proceeding must be genuine and convincing to the court rather than merely colorable. Comm.R.Civ.P.56(f). *Guererro v. L&T International Corp.*, 2 CR 1060.

—Contracts

Whether notice is defective is a question of law, not fact. *Sablan Enter. v. New Century, Inc.*, 1997 MP 32 ¶10

Language of contract terms need only be given legal effect, or construed, by court, and may be disposed of by summary judgment. Summary judgment is inappropriate, however, where the court, as fact-finder, must resort to determining the parties' intent because of ambiguity arising from disputed relevant evidence. *Riley v. Public Sch. Sys.*, 4 N.M.I. 85 (1994).

To defeat construction of contract terms argued by movant in summary judgment proceeding, it is incumbent upon opposing party to raise disputed evidence regarding intent of contracting parties. *Riley v. Public Sch. Sys.*, 4 N.M.I. 85 (1994).

—Conversion Of Motion To Dismiss

CTC 1989. Where matters outside the scope of the pleadings must be considered on motion to dismiss and because defendant's motion seeks to determine plaintiffs interest as a matter of law, the court will regard the motion as one for summary judgment. Com.R.Civ.P.12, 56. *Duty Free Shoppers Ltd v. Sablan*, 3 CR 623.

CTC 1988. Where affidavits and documents are submitted pursuant to a motion to dismiss for failure to state a claim, the motion to dismiss is treated as a motion for summary judgment. Com.R.Civ.P. 56; Com.R.Civ.P.12(b). *Formanes v. Sablan*, 3 CR 309.

—Discovery

DC App. Div. 1988. Where nonmoving party simply did not take advantage of the time within which discovery could and should have been conducted, motion for summary judgment was not prematurely granted. Com.R.Civ.P. 560. *Aldan-Pierce v. Mafnas*, 3 CR 326.

—Exhibits

It is improper for the court to rely on documents that have not be authenticated when considering a motion for summary judgment, because a motion for summary judgment must be based on admissible evidence. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 95

Merely because documents are attached in support of or in opposition to a motion for summary judgment does not mean that the documents have been judicially admitted. *Manglona v. Kaipat*, 3 N.M.I. 322 (1992).

—Factual Issues

In considering motion for summary judgment, the trial court must view the evidence as a whole and in the light most favorable to the non-moving party. *Lifoifoi v. Lifoifoi-Aldan*, 1996 MP 14 ¶38

A trial court cannot weight the evidence and make findings on disputed factual issues on motion for summary judgment. *Rios v. Marianas Pub. Land Corp.*, 3 N.M.I. 512 (1993).

In considering a motion for summary judgment, the trial court must review the evidence and inferences in the light most favorable to the non-moving party. *Estate of Mendiola v. Mendiola*, 2 N.M.I. 233 (1991).

In considering motion for summary judgment, trial court must review the evidence and inferences in a light most favorable to the non-moving party. *Cabrera v. Heirs of De Castro*, 1 N.M.I. 172 (1990).

——Particular Cases

Where the amount of money owed has not clearly been established, for example where a declaration was not properly proffered for the trial court's review, a genuine issue in dispute exists such that the trial court is precluded from summarily adjudicating on the issue of damages. *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22 ¶ 12

Where a trial court relied upon a declaration to ascertain the calculation of damages upon which it based its summary judgment, and where that declaration was inadmissible evidence, then the trial court erred in granting a summary judgment as to damages. *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22 ¶ 19

Where an affidavit is based on personal knowledge of the declarant, but no supporting documents to which the declaration refers are attached, the trial court may not rely on the amount of damages stated in the declaration as a basis for granting summary judgment on the issue of damages. *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22 ¶ 22

A fact in contention is considered material only if its determination may affect the outcome of the case. *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builders*, 2002 MP 15 ¶ 24

A determination regarding the existence of genuine issues of material fact is made viewing the evidence in a light most favorable to the non-moving party. *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builders*, 2002 MP 15 ¶ 24

A fact is material only if its determination may affect the outcome of a case. *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builders*, 2002 MP 15 ¶ 28

A fact in contention is considered material only if its determination may affect the outcome of the case. *Triple J Saipan Inc. v. Agulto*, 2002 MP 11 ¶ 8

A determination regarding the existence of genuine issues of material fact is made viewing the evidence in a light most favorable to the nonmoving party. *Triple J Saipan Inc. v. Agulto*, 2002 MP 11 ¶ 8

When ruling on a summary judgment motion, the court may not pick between two reasonable inferences, that choice must be left to the trier of fact. The court cannot weigh the evidence and make findings on disputed factual issues when considering a motion for summary judgment. Questions of intent are factual questions which are particularly inappropriate for summary judgment. *Bank of Saipan v. Superior Ct. (Carlsmith)*, 2001 MP 7 ¶ 30

Where appellant did assign his interest in a property to the bank, the type of interest he once held is irrelevant to the determination of appellee's contractual obligations to him. Regardless of appellant's interest, his assignment of his interest obligated appellee to transfer the proceeds of the sale to the bank and not to appellant. Further, the bank was not precluded from accepting payment from appellee. Based on these facts, the trial court did not

err in determining that no genuine issues of material fact existed and thereby granting summary judgment. *Cushnie v. Arriola*, 2000 MP 7 ¶ 23

In action for recovery of land, trial court erred in ruling on ownership issue in summary judgment order, in light of factual dispute concerning ownership. *Rios v. Marianas Pub. Land Corp.*, 3 N.M.I. 512 (1993).

In action for recovery of land based on longstanding ownership claim, in summary judgment proceeding question of ownership of land was not material in determining whether claim was barred by statute of limitations. Although trial court improperly ruled upon disputed factual question of ownership, ruling was unnecessary and did not render erroneous its ruling that action was barred by statute of limitations. *Rios v. Marianas Pub. Land Corp.*, 3 N.M.I. 512 (1993).

In action on longstanding ownership claim to land, because of existence of unanswered questions of fact trial court erred in granting summary judgment against plaintiffs based on laches. Plaintiffs' contention that they lacked notice that land had previously escheated to government rebutted presumption of laches (arising because statute of limitation for recovery of land had run) and raised material question of fact concerning first element of laches, inexcusable delay in bringing action. Since plaintiffs were non-moving party, evidence and inferences to be drawn therefrom should have been resolved in their favor. As to second element of laches, prejudice to defendant, there were no facts in record showing whether plaintiffs' delay in bringing action caused defendant to suffer any prejudice. *Rios v. Marianas Pub. Land Corp.*, 3 N.M.I. 512 (1993).

—Generally

Where a party fails to answer a request to admit and fails to move for withdrawal of matters deemed admitted, the trial judge has the discretion to award summary judgment to the requesting party. *Estate of Muna v. Commonwealth,* 2007 MP 16 ¶ 8

Matters admitted are conclusively established as true unless the trial court, on motion by the defendant, permits withdrawal or amendment of the admissions. *Park v. Kim,* 2007 MP 13 ¶ 13

Where a party fails to answer a request to admit and fails to move for withdrawal of matters deemed admitted, the trial judge has the discretion to award summary judgment to the requesting party. *Park v. Kim,* 2007 MP 13 ¶ 16

Generally, a denial of a motion for summary judgment is not a final order. *Villagomez v. MICO,* 2006 MP 21 ¶ 6

A court's granting of summary judgment on a cross-motion can be viewed as a final decision giving it jurisdiction to review its denial of plaintiff's motion for summary judgment. The cross-summary judgment, however, must act as a final order. *Villagomez v. MICO,* 2006 MP 21 ¶ 6

Summary judgment is appropriate where the record indicates that no genuine issue of material fact exists. In making this determination, the evidence is viewed in a light most favorable to the non-moving party. The burden falls initially on the moving party to demonstrate the absence of a genuine issue of material fact. After the moving party has satisfied the court in this respect, the burden shifts to the non-moving party to show specific evidence that demonstrates the existence of a genuine issue of material fact. *Waibel v. Farber,* 2006 MP 15 ¶ 22

The threshold question for determining a genuine issue of material fact is whether, based on the evidence before the court, a reasonable jury might find for the non-moving party. However, determining the legal sufficiency of the evidence is within the province of the court, and Comm. R. Civ. P. 56 empowers the court to filter out meritless claims. *Waibel v. Farber,* 2006 MP 15 ¶ 23

The NMI Supreme Court will affirm the trial court's granting of summary judgment if it finds that, as to the legal basis relied upon, there was no genuine issue of material fact, and the trial court correctly applied the substantive law. *Aplus Co., Ltd. v. Niizeki Intern'l Saipan, Co., Ltd.,* 2006 MP 13 ¶ 9

Summary Judgment may be granted only when the court, after viewing facts and inferences in a light most favorable to the non-moving party, finds as a matter of law that the moving party is entitled to judgment as a matter of law. *Aplus Co., Ltd. v. Niizeki Intern'l Saipan, Co., Ltd.,* 2006 MP 13 ¶ 10

A trial court cannot weigh the evidence and make findings on disputed factual issues on a motion for summary judgment. *Aplus Co., Ltd. v. Niizeki Intern'l Saipan, Co., Ltd.,* 2006 MP 13 ¶ 11

Summary Judgment may be granted where there is no genuine issue as to any material fact and the moving

party is entitled to judgment as a matter of law. *Merci Corp. v. World Int'l Corp*., 2005 MP 10 ¶ 15

A fact in contention is considered material, and properly may preclude the entry of summary judgment, only if its determination may affect the outcome of the case. *Merci Corp. v. World Int'l Corp*., 2005 MP 10 ¶ 19

If the court hears and denies a motion for summary judgment before the appeal time of the judgment would have run, the appeal must be taken with the prior period measured from the date of the judgment, not from denial of the motion. *Merci Corp. v. World Int'l Corp*., 2005 MP 10 ¶ 24

Summary judgment can be granted on the issue of liability alone, even if there is a genuine issue as to the amount of damages. *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22 ¶ 9

In deciding whether to grant a summary judgment motion, the trial court will construe the evidence in favor of the non-moving party. *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22 ¶ 9

A genuine issue exists if a reasonable jury could return a verdict for the non-moving party. *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22 ¶ 9

If one party moves for a summary judgment and, at the hearing, it is made to appear from all the records, files, affidavits and documents presented that there is no genuine dispute as to a material fact essential to the proof of the movant's case and that the movant's case could not be proved should a trial be held, the court may *sua sponte* grant a summary judgment to the non-moving party. *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22 ¶ 24

The appellate court has the discretion to order that a summary judgment be entered for the non-moving party without requiring that a cross-motion for a summary judgment be filed in the non-moving party's favor. *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22 ¶ 24

The Commonwealth's summary judgment procedures and standards are clear and well-developed. A moving party bears the initial and the ultimate burden of establishing its entitlement to summary judgment. If a moving party is the plaintiff, he or she must prove that the undisputed facts establish every element of the presented claim. If a movant is the defendant, he or she has the correlative duty of showing that the undisputed facts establish every element of an asserted affirmative defense. Once the moving party satisfies the initial burden, the nonmoving party must respond by establishing that a genuine issue of material fact exists. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 90

The fact that opposing parties have both moved for summary judgment is not determinative of whether summary judgment should be granted. A summary judgment cannot be granted if a genuine issue as to any material fact exists. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 91

When a party is represented by counsel, formal notice that a court may choose to treat a motion to dismiss as a motion for summary judgment may be unnecessary. Notice occurs when a party has reason to know that the court will consider matters outside the pleadings. *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builders*, 2002 MP 15 ¶ 10

When a party is aware that the opposing party has filed a motion to dismiss, or in the alternative, a motion for summary judgment, and that attached to the motion is an affidavit and exhibit, and when that party has responded to the motion with a motion in opposition, the party cannot argue that it was not fairly appraised of the potential that the court might choose to look beyond the pleadings when considering the motion. *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builders*, 2002 MP 15 ¶ 13

When a party is obliged to respond to a motion for summary judgment and the party is aware that the court has been presented with an affidavit and exhibits for its consideration, the party will not be allowed to claim that the granting of a summary judgment was a complete and utter surprise. *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builders*, 2002 MP 15 ¶ 14

On appeal, an order granting summary judgment will be upheld only in cases where there are no genuine issues of material fact. *Triple J Saipan Inc. v. Agulto*, 2002 MP 11 ¶ 8

On an appeal from a grant of summary judgment, review is limited to determining whether there is a genuine issue of material fact, and if there is none, then whether the law was correctly applied. *Manglona v. Commonwealth*, 2002 MP 7 ¶ 15

Summary judgment will be affirmed if there is no genuine issue of material fact and the trial court

correctly applied the substantive law. *Manglona v. Commonwealth*, 2002 MP 7 ¶ 16

In deciding whether a genuine issue of material fact exists which precludes the granting of a summary judgment, the court will examine the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any. *Manglona v. Commonwealth*, 2002 MP 7 ¶ 25

In order to prevail on a summary judgment motion, if a moving party is a plaintiff, he or she must prove that the undisputed facts establish every element of the presented claim; if the movant is the defendant, he or she has the correlative duty of showing that the undisputed facts establish every element of an asserted affirmative defense. *Furoka v. Dai-Ichi Hotel*, 2002 MP 5 ¶ 22

The N.M.I. Supreme Court will affirm orders granting summary judgment if there is no genuine issue of material fact and the trial court correctly applied the substantive law. *Furoka v. Dai-Ichi Hotel*, 2002 MP 5 ¶ 3

Summary judgment may be granted where there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. *Cabrera v. Young*, 2001 MP 19 ¶ 3

In deciding a summary judgment motion, a court will construe the evidence, and inferences drawn therefrom, in favor of the non-moving party. *Cabrera v. Young*, 2001 MP 19 ¶ 3

If the court determines that no genuine issue of material fact exists, the analysis shifts to whether the substantive law was correctly applied. *Cabrera v. Young*, 2001 MP 19 ¶ 3

The N.M.I. Supreme Court reviews the Superior Court's grant of summary judgment de novo. To affirm, it must be found that there was no genuine issue of material fact and that the court below correctly applied the substantive law. *Cushnie v. Arriola*, 2000 MP 7 ¶ 5

The N.M.I. Supreme Court can affirm the Superior Court's grant of summary judgment if it finds that the result is correct under a different theory. In de novo review of a grant of summary judgment, evidence and inferences will be drawn in favor of the non-moving party. *Cushnie v. Arriola*, 2000 MP 7 ¶ 5

Summary judgment may be granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Com. R. Civ. P. 56(c). *Santos v. Santos*, 4 N.M.I. 206 (1994).

In deciding a summary judgment motion a court will construe the evidence and inferences therefrom in favor of the non-moving party. *Santos v. Santos*, 4 N.M.I. 206 (1994).

Summary judgment is appropriate where the court, upon viewing the facts most favorable to the non-moving party, finds as a matter of law that the moving party is entitled to the requested relief. *Aguon v. Marianas Pub. Land Corp.*, 2001 MP 4 ¶ 23

When on a motion to dismiss under Commonwealth Rules of Civil Procedure 12(b)(6), matters outside the pleadings are presented to and not excluded by the judge, such motion is treated as one for summary judgment. Com. R. Civ. P. 12(b)(6); Com. R. Civ. P. 56(c). *In re Estate of Roberto*, 2002 MP 23 ¶ 13

Like a motion to dismiss, a motion for summary judgment also tests whether a case should move forward toward trial, however the motion for summary judgment also assesses the existence of genuine disputes of material fact and the movant's entitlement to judgment as a matter of law. Com. R. Civ. P. 12(b)(6); Com. R. Civ. P. 56(c). *In re Estate of Roberto*, 2002 MP 23 ¶ 14

Courts considering motions for summary judgment pursuant to Commonwealth Rules of Civil Procedure 56 must view all undisputed facts in the light most favorable to the non-moving party. Com. R. Civ. P. 56. *In re Estate of Roberto*, 2002 MP 23 ¶ 15

A fact is undisputed if it is established, free of genuine controversy, under the applicable evidentiary burden. *In re Estate of Roberto*, 2002 MP 23 ¶ 15

Summary judgment is proscribed where a reasonable inference can be deduced under which the non-moving party could recover. *In re Estate of Roberto*, 2002 MP 23 ¶ 16

To survive summary judgment once a moving party has successfully asserted an affirmative defense, a non-moving party must produce evidence creating a genuine issue of material fact in support of a theory which could defeat the defense, or if the non-moving party is not in possession of sufficient evidence, but believes such to exist, additional time for discovery should be sought pursuant to Commonwealth Rules of Civil Procedure 56(f). Com. R. Civ. P. 56(f). *In re Estate of Roberto*, 2002 MP 23 ¶ 18

—Findings of Fact and Conclusions of Law

See **Findings of Fact and Conclusions of Law – Summary Judgment**, this topic.

—Hypothetical Question

CSC 1989. Where the only fact in dispute on summary judgment is a purely hypothetical question, the answer to which would necessarily rest on speculation, a trial to resolve such an issue would be an exercise in futility. Com.R.Civ.P.56(c). *Borja v. Rangamar*, 3 CR 890.

—Legal Theory

CSC 1989. On a motion for summary judgment, the existence of a genuine issue of fact is predicated upon the existence of a viable legal theory. Com.R.Civ.P.56(c). *Borja v. Rangamar*, 3 CR 890.

—Jurisdiction

Pursuant to Article IV, Section 3 of the N.M.I. Constitution and 1 CMC § 3102(a), the NMI Supreme Court has jurisdiction over an appeal from the trial court's granting of a summary judgment motion. *Aplus Co., Ltd. v. Niizeki Intern'l Saipan, Co., Ltd.*, 2006 MP 13 ¶ 8

The Supreme Court has jurisdiction pursuant to Article IV, Section 3 of the Commonwealth Constitution and Title 1, Section 3102(a) of the Commonwealth Code, over an appeal challenging the trial court's grant of summary judgment against appellants on a defaulted loan claim by the Commonwealth Development Authority. *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22 ¶ 6

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands and pursuant to 1 CMC § 3102(a), the N.M.I. Supreme Court has jurisdiction over an appeal of a grant of summary judgment and an award of damages. N.M.I. Const. art. IV, § 3, 1 CMC § 3102(a). *KTT Corp. v. Tomokane*, 2003 MP 17 ¶ 1

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, the N.M.I. Supreme Court has jurisdiction over the appeal from the trial court's grant of summary judgment. N.M.I. Const. art. IV, § 3. *Iglesias v. Realty Trust Corp.*, 2003 MP 7 ¶ 1

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, and pursuant to 1 CMC § 3102(a), the N.M.I. Supreme Court has jurisdiction over an appeal of a grant of summary judgment. N.M.I. Const. art. IV, § 3, 1 CMC § 3102(a). *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builders*, 2002 MP 15 ¶ 1

The N.M.I. Supreme Court has jurisdiction, pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, and pursuant to 1 CMC § 3102(a), over the appeal of a trial court's grant of summary judgment. N.M.I. Const. art IV, § 3, 1 CMC § 3102(a). *Triple J Saipan Inc. v. Agulto*, 2002 MP 11 ¶ 1

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, and pursuant to 1 CMC § 3102(a), the N.M.I. Supreme Court has jurisdiction over an appeal of a dismissal, on summary judgment, of a breach of contract and equitable estoppel claim. N.M.I. Const. art. IV, § 3, 1 CMC § 3102(a). *Manglona v. Commonwealth*, 2002 MP 7 ¶ 2

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, and pursuant to 1 CMC § 3102(a), the N.M.I. Supreme Court has jurisdiction over an appeal from the Superior Court's order granting summary judgment. N.M.I. Const. art. IV, § 3, 1 CMC § 3102(a). *Furoka v. Dai-Ichi Hotel*, 2002 MP 5 ¶ 1

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, and pursuant to 1 CMC § 3102(a), the N.M.I. Supreme Court has jurisdiction to review a lower court's order granting summary judgment. N.M.I. Const. art. IV, §3, 1 CMC § 3102(a). *Cabrera v. Young*, 2001 MP 19 ¶ 4

The N.M.I. Supreme Court has jurisdiction, to review a Superior Court grant of summary judgment and order of sanctions for failure to prosecute pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands. N.M.I. Const. art. IV, § 3. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 1

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands and 1 CMC § 3102(a), the N.M.I. Supreme Court has jurisdiction over appeals from the trial court's order striking hearsay evidence, and from the lower court's grant of summary judgment. N.M.I.

Const. art. IV, § 3; 1 CMC § 3102(a). *Aguon v. Marianas Pub. Land Corp.*, 2001 MP 4 ¶ 1

The N.M.I. Supreme Court has jurisdiction, pursuant to Article IV, Section 3 of the Commonwealth Constitution, over appeals from orders by the Superior Court granting summary judgment. N.M.I. Const. art. IV, § 3. *Cushnie v. Arriola*, 2000 MP 7 ¶ 1

The N.M.I. Supreme Court has jurisdiction, pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, over appeals from the trial court's order granting summary judgment. N.M.I. Const. art. IV, § 3. *Estate of Muna v. Commonwealth*, 2000 MP 2 ¶ 1

Sanctions must be limited to what is sufficient to deter repetition of the sanctionable conduct. If the court awards attorney fees as part of a sanction, such fees must be reasonable and must be incurred as a direct result of the violation. Com. R. Civ. P. 11(c)(2). *Ferreira v. Borja*, 1999 MP 23 ¶ 12.

——Particular Cases

NMI Supreme Court had jurisdiction under 1 CMC § 3102(a) over appeal of Superior Court order granting summary judgment. *Lifoifoi v. Lifoifoi-Aldan*, 1996 MP 14 ¶1; *Milne v. Estate of Hillblom*, 1997 MP 11 ¶1; *Mitchell v. Estate of Hillblom*, 1997 MP 30 ¶1; *Sablan Enter. v. New Century, Inc.*, 1997 MP 32¶1; *Rasa v. Dep't of Lands and Resources*, 1998 MP 7 ¶1

NMI Supreme Court had jurisdiction, pursuant to 1 CMC § 3102, over appeal of Superior Court order denying motion for summary judgment on quiet title claim and granting summary judgment. *Dela Cruz v. Hotel Nikko Saipan, Inc.*, 1997 MP 16 ¶1

NMI Supreme Court had jurisdiction, pursuant to article IV, § 3 of the Commonwealth Constitution, over appeal from Superior Court order granting motion for summary judgment. N.M.I. Const. art. IV, § 3 (1997). *Taman v. Marianas Pub. Land Corp.*, 1998 MP 13 ¶1; *Transamerica (Saipan) Corp. v. Wabol*, 1999 MP 1 ¶1

NMI Supreme Court had jurisdiction, pursuant to Article IV, § 3 of the Commonwealth Constitution, over issues: (1) whether complaint stated a cause of action that members of the Board of Elections violated the equal protection rights of plaintiff voters, (2) whether members of the Board of Elections may be held liable in their individual capacities under 42 U.S.C. § 1983 for such violation, (3) whether trial court erred in holding that members of the Board of Elections are entitled to qualified immunity for such alleged violation, and (4) whether the trial court erred in granting summary judgment on plaintiffs' claims for the tortious intentional infliction of emotional distress. *Charfauros v. Board of Elections*, 1998 MP 16 ¶31

NMI Supreme Court had jurisdiction, under Article IV, section 3 of the Commonwealth Constitution, over appeal from Superior Court order granting the Commonwealth of the Northern Mariana Islands summary judgment. *Commonwealth v. Anglo*, 1999 MP 6 ¶1

NMI Supreme Court had jurisdiction, pursuant to Article IV, section 3 of the Commonwealth Constitution, over appeal by the Secretary of Finance of Superior Court order granting partial summary judgment. N.M.I. Const. art. IV, § 3 (1997). *Pellegrino v. Commonwealth*, 1999 MP 10 ¶1

NMI Supreme Court had jurisdiction, pursuant to general jurisdictional statute, over appeal from grant of summary judgment. 1 CMC § 3102(a). *Wabol v. Camacho*, 4 N.M.I. 388 (1996).

—Opposition

If the evidence set forth by a non-moving party to defend a motion for summary judgment is merely colorable or is not significantly probative, then summary judgment may be granted. *Aplus Co., Ltd. v. Niizeki Intern'l Saipan, Co., Ltd.,* 2006 MP 13 ¶ 10

All that is required in order to oppose a motion for summary judgment is that sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial. It is not necessary that the issue of material fact be resolved conclusively in favor of the party asserting its existence. *Aplus Co., Ltd. v. Niizeki Intern'l Saipan, Co., Ltd.,* 2006 MP 13 ¶ 11

Party opposing motion for summary judgment raises genuine factual dispute if the evidence is such that a reasonable jury could return a verdict for the non-moving party. If evidence set forth by party opposing motion is merely colorable or is not sufficiently probative, summary judgment may be granted. *Eurotex (Saipan), Inc. v. Muna*, 4 N.M.I. 280 (1995).

Mere conclusions will not suffice to defeat summary judgment motion after movant has established

absence of genuine issue of material fact as to its prima facie case. *Eurotex (Saipan), Inc. v. Muna*, 4 N.M.I. 280 (1995).

Party opposing summary judgment motion must set forth, by affidavit or otherwise, specific facts showing a genuine issue for trial. General denials or conclusory statements are insufficient. Com. R. Civ. P. 56. *Castro v. Hotel Nikko Saipan, Inc.*, 4 N.M.I. 268 (1995), appeal dismissed, 96 F.3d 1259 (9th Cir. 1996).

To defeat a supported motion for summary judgment, the non-moving party must assert sufficient factual indicia from which a reasonable trier of fact could reasonably find in his or her favor. Otherwise, issue of material fact is not "genuine." In essence, inquiry is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. Com. R. Civ. P. 56. *Castro v. Hotel Nikko Saipan, Inc.*, 4 N.M.I. 268 (1995), appeal dismissed, 96 F.3d 1259 (9th Cir. 1996).

In determining if level of evidence presented by party opposing motion for summary judgment is sufficient to raise genuine issue of material fact, defeating the motion, court applies same evidentiary burden (e.g., preponderance of the evidence) that it does at trial. Both the quantum and quality of proof is to be considered, and a mere scintilla of evidence offered in support of a position is insufficient. Com. R. Civ. P. 56. *Castro v. Hotel Nikko Saipan, Inc.*, 4 N.M.I. 268 (1995), appeal dismissed, 96 F.3d 1259 (9th Cir. 1996).

An adverse party must set forth specific facts showing that there is a genuine issue for trial. Mere conclusions will not suffice. Com. R. Civ. P. 56(e). *Santos v. Santos*, 4 N.M.I. 206 (1994).

Pursuant to Com. R. Civ. P. 56(e), the opponent of a motion for summary judgment must set forth specific facts, by affidavit or otherwise, showing a genuine issue for trial. General denials or conclusory statements are insufficient. *Riley v. Public Sch. Sys.*, 4 N.M.I. 85 (1994).

Conclusions submitted in a memorandum, with no supporting evidence or affidavits, are not sufficient to oppose a motion for summary judgment. Com. R. Civ. P. 56. *Riley v. Public Sch. Sys.*, 4 N.M.I. 85 (1994).

A party cannot circumvent summary judgment by later refuting what he or she initially admitted. *Ferreira v. Borja*, 2 N.M.I. 514 (1992), vacated, 1 F.3d 960 (9th Cir. 1993).

In summary judgment proceeding, mere allegations and assertions are not enough to raise a genuine issue of material fact. *Estate of Mendiola v. Mendiola*, 2 N.M.I. 233 (1991).

Summary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. If the nonmoving party fails to present a genuine dispute concerning a material fact, the trial court may properly grant summary judgment to the movant. *Borja v. Rangamar*, 1 N.M.I. 347 (1990).

Absent any probative evidence to support a claim, mere assertions of a dispute will not preclude summary judgment. *Borja v. Rangamar*, 1 N.M.I. 347 (1990).

Party opposing motion for summary judgment cannot rely on conclusive statements in affidavit. *Cabrera v. Heirs of De Castro*, 1 N.M.I. 172 (1990).

CSC 1989. On a motion for summary judgment, to create a question of fact, the adverse party responding to a properly made and supported summary judgment motion must set forth specific facts showing that there is a genuine issue for trial. C0m.R.Civ.P. 56(c). *Borja v. Rangamar*, 3 CR 890.

CSC 1989. It is a general rule of summary judgment procedure that denying the allegations of affidavits supporting a motion for summary judgment does not, ipso facto, create a genuine issue of material fact. Com.R.Civ.P.56(c). *Borja v. Rangamar*, 3 CR 890.

CSC 1989. On a motion for summary judgment, mere denials unaccompanied by statements of any facts which would be admissible in evidence at a hearing, are not sufficient to raise a genuine issue of fact. Com.R.Civ.P. 56(c). *Borja v. Rangamar*, 3 CR 890

CSC 1989. On a motion for summary judgment, the non-moving party may not merely state that it will discredit the moving party's evidence at trial and proceed in the hope that something can be developed at trial in the way of evidence to support its claim; instead, it must produce at least some significant probative evidence in opposition to the motion. Com.R.Civ.P.56(c). *Borja v. Rangamar*, 3 CR 890

—Partial Summary Judgment

Commonwealth Rule of Civil Procedure 56(d) does not permit an independent motion to obtain summary judgment on part of a claim, but is an ancillary tool to a motion for summary judgment. Rule 56(d) allows a court to determine some material facts that appear without substantial controversy, but only when a party has unsuccessfully moved for a full summary judgment under Rule 56(a) or (b). Com. R. Civ. P. 56. *Bank of Saipan v. Superior Ct. (Carlsmith)*, 2001 MP 7 ¶ 20

In order to maintain the integrity of the judicial process, piecemeal litigation adjudicating non-dispositive factual issues should be avoided. Commonwealth Rule of Civil Procedure 56(d) is not a device for bringing stand-alone, non-dispositive partial summary judgment motions. *Bank of Saipan v. Superior Ct. (Carlsmith)*, 2001 MP 7 ¶ 25

—Particular Actions

DC App. Div. 1989. Where party opposing summary judgment motion possessed relevant information but chose not to file any affidavits or documentary evidence in opposition to the motion for summary judgment but relied on legal argument only, party opposing summary judgment did not satisfy the clear mandate of summary judgment. Com.Tr.C.R. Civ.P 56. *CNMI v. Micronesian Insurance Underwriters, Inc.*, 3 CR 73 1.

DC App. Div. 1988. Where the decision of the trial court was substantially dependent on the court's finding that person was the victim of compulsion or duress or was unduly influenced by the church, but the facts before the court at that time were simply not sufficient to support summary judgment on the issue of person's intent or state of mind and material factual issues remain as to the relationship between person and the church, summary judgment was inappropriate. *Agulto v. Villaluz*, 3 CR 534.

DC App. Div. 1988. Where the defendant presented no facts on a motion for summary judgment which raised a genuine issue of material fact whether an agent/principal relationship continued beyond the time when a lease is granted by an NMI person who took fee title to non NMI persons, and any alleged control of a principle over an agent ceases, the grant of summary judgment was proper on the issue of whether the arrangement violated the land alienation restriction. Com.Tr.C.R.Civ.P.56(c); NMI Const., Art. XII. *Aldan-Pierce v. Mafnas*, 3 CR 326.

DC App. Div. 1987. Where on a motion for summary judgment the trial court may have committed error by considering an exhibit to a deposition, not filed with the court, the fact that the exhibit was properly before the court through another deposition renders this error harmless. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 1164.

DC App. Div. 1987. Where by implication trial court ruled on summary judgment motion that the one party's documentary evidence was more credible than another party's deposition testimony, court error in granting judgment. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 1164.

DC NMI 1983. The type of limited inquiry required to dispositively answer the question of what constitutes the outer perimeter of an official's duties, in order to determine whether there is an immunity defeating a suit for defamation, may typically be dealt with on a motion for summary judgment. Fed.R.Civ.P.56. *Isuka v. Camacho*, 1 CR 724.

DC NMI 1983. Whether public housing authority fairly considered all proposals submitted to it in response to its solicitation of bids raises disputed factual issue of substantial import precluding the grant of summary judgment. *Maruyama & Associates, Ltd. v. Mariana Islands Housing Authority*, 1 CR 798.

DC NMI 1980. On a motion for summary judgment, the facts and all reasonable inferences to be drawn from these facts must be viewed in light most favorable to the party against whom the motion is made; summary judgment may be granted only when no material question of fact remains. Fed.R. Civ.P. 56. *Atalig v. Camacho*, 1 CR 93, *rev'd*, sub nom. *Taisacan v. Carnacho*, 660 F.2d 41 1 (9th Cir. 1981).

DC NMI 1980. It is clear that a motion for summary judgment for equitable relief may be properly brought in the District Court. Fed.R.Civ.P.56. *Atalig v. Camacho*, 1 CR 93, rev'd, sub nom. *Taisacan v. Camacho*, 660 F.2d 41 1 (9th Cir. 1981).

CSC 1989. Where party contended that sketch accurately delineated the boundary between lots, other party merely asserted that this may or may not be true, absent any probative evidence tending to support a claim, the mere assertions of a dispute will not preclude summary judgment. Com.R.Civ.P. 56(c). *Borja v. Rangamar*, 3 CR 890.

CTC 1986. A party moving for summary judgment need not support its motion with affidavits or similar

materials that negate the opposing party's claim, but need only point out that there is the absence of evidence to support the nonmoving party's claim. Fed.R.Civ.P. 56. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 760.

——Particular Cases

In opposing motion for summary judgment, party failed to establish genuine issue of material fact by averring conclusory statements rather than facts in response to facts established by movant. *Eurotex (Saipan), Inc. v. Muna*, 4 N.M.I. 280 (1995).

In quiet title action, after defendants moving for summary judgment met burden of showing that claim to certain parcel of real property was barred by res judicata, plaintiff's conclusory statement to the effect that he believed parcel had been given to him by his father pursuant to partida did not, without more, create factual dispute on issue of ownership. Trial court did not err in granting summary judgment in favor of defendants. *Santos v. Santos*, 4 N.M.I. 206 (1994).

Since party presented no timely affidavits to oppose movant's assertions concerning manner of distribution of gift, no genuine issue of material fact was raised and trial court properly granted summary judgment. *Estate of Mendiola v. Mendiola*, 2 N.M.I. 233 (1991).

Although party presented evidence indicating that government survey was not necessarily accurate, it failed to present evidence to affirmatively demonstrate that contested boundary was other than boundary indicated in survey. Claim that survey delineated true boundary was thus not genuinely disputed, and summary judgment was properly granted. *Borja v. Rangamar*, 1 N.M.I. 347 (1990).

—Standard

Summary judgment may be granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. In making a summary judgment determination, the trial court is required to consider the evidence and inferences most favorable to the party opposing the motion. *Century Ins. Co., Ltd. v. Hong Kong Entm't. (Overseas) Inv., Ltd., et al.*, 2009 MP 4 ¶ 14 (2009).

DC App. Div. 1989. A motion for summary judgment is proper when there is no genuine issue of material fact. Com.R.Civ.P.56. *CNMI v. Micronesia Insurance Underwriters, Inc.*, 3 CR 731.

DC App. Div. 1987. Summary judgment is appropriate only if it is demonstrated that there exists no genuine dispute as to any material fact and that movant is entitled to judgment as a matter of law. Com.R.Civ.P.56(c). *Saipan Secretarial/Employment Services, Inc. v. CNMI*, 3 CR 168.

DC App. Div. 1987. On a motion for summary judgment, a predicate to a finding of a genuine factual issue which would entitle plaintiff to judgment if she proved her asserted version of the facts, is a viable legal theory. Com.R.Civ.P.56(c). *Saipan Secretarial/Employment Services, Inc. v. CNMI*, 3 CR 168.

DC App. Div. 1987. Summary judgment is appropriate where a trial court finds that there are no material issues of fact and, therefore, the moving party is entitled to judgment as a matter of law. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 1164.

DC App. Div. 1987. The party moving for summary judgment must demonstrate to the trial court through the pleadings, depositions, answers to interrogatories, affidavits, and exhibits that there are no genuine issues of material fact. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 1164.

DC App. Div. 1987. Generally, evidence submitted in support of a motion for summary judgment must comply with the rules governing admissibility of evidence in a trial. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 1164.

DC App. Div. 1987. The trial court views the evidence and inferences in a light most favorable to the non-moving party and the lack of a genuine issue of material fact results in a judgment in movant's favor as a matter of law. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 1164.

DC App. Div. 1983. Summary judgment is proper when it appears that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed.R.Civ.P.56. *Manglona v. Camacho*, 1 CR 820.

DC App. Div. 1983. Summary judgment is appropriate only if it is demonstrated that there exists no genuine dispute as to any material fact and movant

is entitled to judgment as a matter of law. Fed.R.Civ.P.56. *Pangelinan v. Castro*, 2 CR 366, *aff'd*, sub nom. *DeMesa v. Castro*, 844 F.2d 642 (9th Cir. 1988).

DC App. Div. 1983. In addressing a motion for summary judgment, the court must construe the pleadings, other record evidence and its attendant inferences most favorably to the party opposing the motion. Fed.R.Civ.P. 56. *Pangelinan v. Castro*, 2 CR 366, *aff'd*, sub nom. *DeMesa v. Castro*, 844 F.2d 642 (9th Cir. 1988).

DC App. Div. 1983. On a motion for summary judgment, a genuine factual issue may exist only if a viable legal theory would entitle plaintiffs to judgment if they prove their asserted version of the facts. Fed.R.Civ.P.56. *Pangelinan v. Castro*, 2 CR 366, *aff'd*, sub nom. *DeMesa v. Castro*, 844 F.2d 642 (9th Cir. 1988).

DC App. Div. 1983. Summary judgment is proper when it appears that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed.R.Civ.P.56(c). *Marianas General Corporation v. Government CNMI*, 1 CR 408.

DC NMI 1986. For purposes of summary judgment, a material issue of fact is one that affects the outcome of the litigation and requires a trial to resolve the parties' differing version of the truth. Fed. R. Civ. P. 56. *Lizama v. Rios*, 2 CR 568.

DC NMI 1986. Court may deny summary judgment on issue in the exercise of its sound discretion, even though it believes movant technically is entitled to judgment, where granting of summary judgment on this issue would not lessen the quantity of evidence which moving party would be required to offer. Fed.R.Civ.P.56. *Concepcion v. American International Knitters Corp.*, 2 CR 939.

DC NMI 1986. To defeat a summary judgment motion, the opponent must set forth specific facts showing that there is a genuine issue for trial. Fed.R.Civ.P.56(e). *Concepcion v. American International Knitters Corp.*, 2 CR 939.

DC NMI 1986. A material fact is "genuine" if the evidence presented is such that a reasonable jury could return a verdict for the nonmoving party; there is no genuine issue of material fact if the evidence presented in opposing affidavits is of insufficient caliber or quantity to allow a rational finder of fact to find for the opponent by clear and convincing evidence. Fed.R.Civ.P.56. *Concepcion v. American International Knitters Corp.*, 2 CR 939.

DC NMI 1986. Although all reasonable doubts touching the existence of a genuine issue as to a material fact must be resolved against the party moving for summary judgment, the Court cannot invent evidence or hypothesize randomly to deny summary judgment to which movant is otherwise entitled. *Concepcion v. American International Knitters Corp*., 2 CR 939.

DC NMI 1986. When reviewing the record on a motion for summary judgment the court views the evidence in a light most favorable to the party opposing the motion. Fed. R. Civ. P.56. *Lizama v. Rios*, 2 CR 568.

DC NMI 1986. Summary judgment is appropriate only if it is demonstrated that there exists no genuine dispute as to any material fact and movant is entitled to judgment as a matter of law. Fed.R.Civ.P.56. *Pangelinan v. Castro*, 2 CR 429.

DC NMI 1986. On motion for summary judgment, the Court must construe the pleadings, other record evidence and its attendant inferences most favorably to the party opposing the motion. Fed.R.Civ.P.56. *Pangelinan v. Castro*, 2 CR 429.

DC NMI 1986. On motion for summary judgment, a genuine factual issue may exist only if a viable legal theory would entitle plaintiffs to judgment if they prove their asserted version of the facts. Fed.R.Civ.P. 56. *Pangelinan v. Castro*, 2 CR 429.

DC NMI 1984. Summary judgment is appropriate only if it is demonstrated that there exists no genuine dispute as to any material fact and movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. *Hill v. CNMI*, 1 CR 990.

DC NMI 1984. On a motion for summary judgment, the Court must construe the pleadings and other record evidence and its attendant inferences most favorably to the nonmoving party. Fed. R. Civ. P. 56. *Hill v. CNMI*, 1 CR 990.

DC NMI 1984. On a motion for summary judgment a genuine factual issue may exist only if a viable legal theory would entitle plaintiffs to judgment if they prove their asserted versions of the facts. Fed. R. Civ. P. 56. *Hill v. CNMI*, 1 CR 990.

DC NMI 1984. Summary judgment is proper if, when viewing the evidence in the light most

favorable to the party opposed to the motion, the movant is entitled to judgment as a matter of law. *Nakazato v. Microl Corporation, Inc.*, 1 CR 887.

DC NMI 1984. The trial court may grant motion for summary judgment only when no material questions of fact remain. *Nakazato v. Microl Corporation, Inc.*, 1 CR 887.

DC NMI 1984. Summary judgment is appropriate only if no material factual issues exist and the movant is entitled to judgment as a matter of law; the Court must construe the pleadings, other record evidence and its attendant inferences most favorably to the party opposing the motion. Fed.R.Civ. P. 56. *Maruyama & Associates, Ltd. v. Mariana Islands Housing Authority*, 1 CR 798.

DC NMI 1984. The showing of a "genuine issue for trial" is predicated upon the existence of a legal theory which remains viable under the asserted version of the facts, and which would entitle the party opposing the motion - assuming his version to be true - to a judgment as a matter of law. Fed.R.Civ. P. 56. *Maruyama & Associates, Ltd. v. Mariana Islands Housing Authority*, 1 CR 798

DC NMI 1984. Summary judgment is appropriate only if it is demonstrated that there exists no genuine dispute as to any material fact and movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. *Hill v. Government NMI*, 1 CR 990.

DC NMI 1984. On a motion for summary judgment, the Court must construe the pleadings, other record evidence and its attendant inferences most favorably to the party opposing the motion. Fed. R. Civ. P. 56. *Hill v. Government NMI*, 1 CR 990.

DC NMI 1984. On a motion for summary judgment, a genuine factual issue may exist only if a viable legal theory would entitle plaintiffs to judgment if they prove their asserted version of the facts. Fed. R. Civ. P. 56. *Hill v. Government NMI*, 1 CR 990.

DC NMI 1983. Where the court has considered affidavits and other extra-pleading material submitted by the parties, under Federal Rules of Civil Procedure a motion to dismiss is converted into summary judgment motion. Fed.R.Civ.P.12(b)(6), 56. *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1983. Summary judgment is appropriate only if no material factual issue exists and movant is entitled to judgment as a matter of law. Fed.R.Civ.P. 56. *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1983. On motion for summary judgment, the court must construe the pleadings, other record evidence and its attendant inferences most favorably to plaintiffs. Fed.R.Civ.P.56. *Temengil v. Trust Territory of the Pacific Islands*,1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1983. A genuine factual issue may exist only if a viable legal theory would entitle plaintiffs to judgment if they prove their asserted version of the facts. Fed.R.Civ.P.56. *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir.1989).

DC NMI 1983. Where facts are undisputed, summary judgment is inappropriate when contradictory inferences may be drawn from those facts or where motive and intent play a leading role in determining liability and the proof is largely in defendants' hands. Fed.R.Civ.P56. *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir.1989).

DC NMI 1983. In considering defendant's motion for summary judgment the Court must determine whether there exists any genuine issue of material fact. Fed.R.Civ.P.56. *Isuka v. Camacho*, 1 CR 724.

DC NMI 1983. Summary judgment is proper if, when viewing the evidence in the light most favorable to the party opposing the motion, the movant is clearly entitled to judgment as a matter of law. Fed.R.Civ.P.56. *Isuka v. Camacho*, 1 CR 720

DC NMI 1983. Summary judgment is appropriate only if no material factual issues exist and the movant is entitled to judgment as a matter of law. Fed.R.Civ.Pro.56. *Matsunaga Fishing Company v. New Hampshire Insurance Company*,1 CR 864.

DC NMI 1983. On a motion for summary judgment, the Court must construe the pleadings, other record evidence, and attendant inferences most favorably to plaintiff. *Matsunaga Fishing Company v. New Hampshire Insurance Company*,1 CR 864.

DC NMI 1983. In considering a motion for summary judgment, a genuine factual issue may exist only if a viable legal theory would entitle plaintiff to judgment if it proves its asserted version of the facts.

Matsunaga Fishing Company v. New Hampshire Insurance Company, 1 CR 864.

DC NMI 1983. Although a court must, on a motion for summary judgment, view the evidence in a light most favorable to the party opposing the motion, it is not required to consider obviously false testimony. Fed. R. Civ.P.56. *Matsunaga Fishing Company v. New Hampshire Insurance Company*, 1 CR 864.

DC NMI 1983. Party opposing motion for summary judgment does not create issue of fact by contradicting earlier statements as to his intent. Fed. R. Civ. P. 56. *Matsunaga Fishing Company v. New Hampshire Insurance Company*, 1 CR 864.

DC NMI 1983. Where court considers affidavits and other extra-pleading material in reviewing motion to dismiss, under Federal Rule of Civil Procedure 12(b), the motion converts to one for summary judgment. Fed.R.Civ.P.12(b). *Matsunaga Fishing Company v. New Hampshire Insurance Company*, 1 CR 864.

DC NMI 1983. Summary judgment is proper if, when viewing the evidence in the light most favorable to the party opposing the motion, the movant is clearly entitled to judgment as a matter of law. Fed.R.Civ.P.56. *Island Aviation, Inc. v. Mariana Islands Airport Authority*, 1 CR 633.

DC NMI 1983. The Court and the parties have great flexibility with regard to evidence that may be used in a summary judgment proceeding. Fed.R.Civ.P.56. *Island Aviation, Inc. v. Mariana Islands Airport Authority*, 1 CR 633.

DC NMI 1983. That both parties have moved simultaneously for summary judgment does not, standing alone, empower Court to enter judgment as it sees fit without determining independently whether a genuine issue of material fact is present. Fed. R. Civ. Proc.56. *Island Aviation, Inc. v. Mariana Islands Airport Authority*, 1 CR 633.

DC NMI 1983. In considering a motion for summary judgment the Court must determine whether there exists any genuine issue of material fact. Fed. R.Civ.P.56. *Island Aviation, Inc. v. Mariana Islands Airport Authority*, 1 CR 633.

DC NMI 1983. In order to prevail in a motion for summary judgment a party must demonstrate that there is no material factual issue and that the party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. *Island Aviation, Inc. v. Mariana Islands Airport Authority*, 1 CR 353.

DC NMI 1982. A motion to dismiss is converted to a motion for summary judgment where the court considers matters outside of the pleadings. Fed.R.Civ.P.12,56. *Bauer v. McCoy*, 1 CR 248.

DC NMI 1982. Summary judgment is appropriate only if no genuine material factual issue exists and movant is entitled to judgment as a matter of law and the court must construe the pleadings, other record evidence, and their attendant inferences most favorably to plaintiff. Fed.R.Civ.P.56. *Bauer v. McCoy*, 1 CR 248.

DC NMI 1981. Both in contract related litigation and in other actions, questions of intent are factual questions which are particularly inappropriate for summary judgment. Fed.R.Civ.P.56. *Mariana Islands Airpport Authority v. The Ralph M. Parsons Company*, 1 CR 181.

DC NMI 1981. Summary judgment lies only where there is no genuine issue of material fact and movant is therefore entitled to judgment as a matter of law. Fed.R.Civ.P.56. *Mariana Islands Airpport Authority v. The Ralph M. Parsons Company*, 1 CR 181

DC NMI 1981. On a motion for summary judgment, courts liberally construe the pleadings and other record evidence in the light most favorable to the party opposing the motion. Fed.R.Civ.P.56. *Mariana Islands Airpport Authority v. The Ralph M. Parsons Company*, 1 CR 181.

DC NMI 1979. Summary judgment can be granted only where there is no genuine issue of any material fact and where viewing the evidence and the inferences which may be drawn therefrom in the light most favorable to the adverse party, the movant is clearly entitled to prevail as a matter of law. Fed.R.Civ.P.56. *Abrams v. Sailboat Cutter "Slow Dancer"*, 1 CR 17, *aff'd*, 700 F.2d 569 (9th Cir. 1983).

DC NMI 1979. Party moving for summary judgment has the burden to show that there is no genuine issue of material fact. Fed.R.Civ.P.56. *Abrams v. Sailboat Cutter "Slow Dancer"*, 1 CR 17, *aff'd*, 700 F.2d 569 (9th Cir. 1983).

CSC 1989. A summary judgment will be granted only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Com.R.Civ.P.56. *Borja v. Rangamar*, 3 CR 890.

CSC 1989. To withstand a motion for summary judgment, the non-moving party must show that there are genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party. Com.R.Civ.P.56. *Borja v. Rangarnar*, 3 CR 890.

CSC 1989. In determining whether a genuine issue of fact exists, the court can only consider evidence which would be admissible and have probative force at trial. Com.R.Civ.P.56(c). *Borja v. Rangamar*, 3 CR 890.

CSC 1989. A summary judgment may be granted only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Com.R.Civ.P.56(c). *Bank of Hawaii v. Teregeyo*, 3 CR 876.

CSC 1989. To withstand a motion for summary judgment, the non-moving party must show that there are genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party. Com.R.Civ.P.56(c). *Bank of Hawaii v. Teregeyo*, 3 CR 876.

CSC 1989. A summary judgment will be granted only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Com.R.Civ.P.56(c). *Apatang v. MPLC*, 3 CR 935.

CSC 1989. To withstand a motion for summary judgment, the non-moving party must show that there are genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party. Com.R.Civ.P.56(c). *Apatang v. MPLC*, 3 CR 935.

CTC 1989. A summary judgment will be granted only if there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Com.R.Civ.P.56. *Duty Free Shoppers Ltd. v. Sablan*, 3 CR 623.

CTC 1988. A summary judgment will be granted only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Com.R.Civ.P.56. *Pelisamen v. Land Commission of the Commonwealth Government*, 3 CR 790.

CTC 1988. To withstand a motion for summary judgment, the non-moving party must show that there are genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party. Com.R.Civ.Pro.56. *Pelisamen v. Land Commission of the Commonwealth Government*, 3 CR 790.

CTC 1987. Summary judgment may be entered where there is no disputed issue of material fact and a party so moving is entitled to judgment as a matter of law. Com.R.Civ.P.56. *Atalig v. M.I.C. Corporation*, 3 CR 270.

CTC 1987. Entry of summary judgment is mandated, after adequate time for discovery and upon motioil, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. Comm.R.Civ.P. 56. *Guerrero v. L & T International Corp*, 2 CR 1068.

CTC 1986. The constitutionality of a statute can be tested by the summary judgment procedure only where there is no genuine issue of fact. Fed.R.Civ.P.56. *Amog v. Keatley*, 2 CR 155, *aff'd*, 2 CR 751.

CTC 1986. After adequate time for discovery and upon motion, summary judgment is mandated against the nonmoving party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. Com.R.Civ.P.56. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 760.

CTC 1986. Summary judgment under Rule 56 is mandated, after adequate time for discovery and on motion, against a party who fails to make a showing sufficient to establish the existence of an element of that party's case, and on which that party will bear the burden of proof at trial. Fed. R. Civ. P. 56. *Aldan-Pierce v. Mafnas*, 2 CR 855, *aff'd*, 3 CR 326 (DNMI App. Div. 1988).

CTC 1986. Summary judgment is mandated against party on his counterclaim for undue influence where party does not claim that further discovery time will produce any facts other than those set forth in the affidavits, and the affidavits of the party present no issue of fact to support any of the elements of undue influence. Fed. R. Civ. P. 56. *Aldan-Pierce v. Mafnas*, 2 CR 855, *aff'd*, 3 CR 326 (DNMI App. Div. 1988).

CTC 1986. On a motion for summary judgment, belief and speculation by the nonmoving party does not satisfy the requirement of setting forth specific

facts showing that there is a genuine issue for trial. Fed.R.Civ.P.56. *Aldan-Pierce v. Mafnas*, 2 CR 855, *aff'd*, 3 CR 326 (DNMI App. Div. 1988).

CTC 1985. For purposes of resolving a motion for summary judgment, the court draws all inferences in the light most favorable to the non-moving party. Com.Tr.C.R.Civ.P. 56. *Arriola v. Insurance Company of North America*, 2 CR 113.

CTC 1985. A motion for summary judgment is tested on the evidence which a jury would not be at liberty to disbelieve and which would require a directed verdict for the moving party. Com.Tr.C.R.Civ.P.56. *Arriola v. Insurance Company of North America*, 2 CR 113.

CTC 1985. Summary judgment is proper only when there is no genuine issue of any material fact or where viewing the evidence and inferences which may be drawn therefrom in the light most favorable to the adverse party, the moving party is clearly entitled to prevail as a matter of law. Com.Tr.C.R.Civ.P.56. *Arriola v. Insurance Company of North America*, 2 CR 113.

—Writings

See also **CONTRACTS – Interpretation and Construction – Generally**

Where the language of a writing is plain and precise, the court can, as a matter of law, establish the parties' intent from the writing. *Cabrera v. Young*, 2001 MP 19 ¶ 15

Summons

The purpose of a summons is to command a person to appear or otherwise plead to the complaint filed. *Santos v. Santos*, 2001 MP 12 ¶ 12

The purpose of a summons is to command a person to appear or otherwise plead to the complaint filed. Com. R. Civ. P. 4. *Taimanao v. Superior Ct.*, 4 N.M.I. 94 (1994).

Third Party Complaint

DC App. Div. 1983. Trial courts have broad discretion to determine whether or not to allow the filing of a third-party complaint. *Manglona v. Camacho*, 1 CR 820.

DC App. Div. 1983. In determining whether or not to allow the filing of a third-party complaint, the court must determine the propriety of granting the motion by balancing the potential prejudice to the plaintiff in delaying the resolution of the issues presented against the desirability of reducing the time and cost of further litigation in the resolution of issues stemming from the same fact situation. *Manglona v. Camacho*, 1 CR 820.

DC App. Div. 1983. Trial court acted within its discretion in denying leave to file third-party complaint where party waited more than three months after the entry of partial summary judgment to request leave, and the appellate record does not contain the motion requesting or order denying leave to file a thirdparty complaint, as required by the Rules of Appellate Procedure. Dist.C.R.App.P. 6(a). *Manglona v. Camacho*, 1 CR 820.

Venue

Venue should involve the place where an action occurred, and should consider the convenience of the parties as well as the fair administration of justice. *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26 ¶ 12

Fairness considerations need not prompt a change in venue if it is possible to empanel an impartial jury. *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26 ¶ 13

The right to an impartial jury does not mean that the jury must be ignorant of the subject matter involved. The fact that some of our islands have small populations which may implicate certain community knowledge and family ties cannot lead to a presumption against fairness and what would surely be a resulting loss of participation in the judicial process. *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26 ¶ 13

DC NMI 1987. Once a defense of improper venue has been raised by a defendant, the plaintiff bears the burden of providing the facts necessary to establish proper venue. *Misch v. Zee*, 2 CR 11 12, *aff'd* in part and vacated in part, 879 F.2d 628 (9th Cir. 1989).

DC NMI 1987. Plaintiff's allegation that the defendants were "doing business" within the CNMI, unsupported by any evidence that any of the defendants reside or maintain their principal office in the CNMI, fails to meet the burden of showing proper venue under the Jones Act. 46 U.S.C. §688. *Misch v. Zee*, 2 CR 1112, *aff'd* in part and vacated in part, 879 F.2d 628 (9th Cir. 1989).

CIVIL RIGHTS

Alienage

DC NMI 1983. All persons are protected against governmental discrimination based on alienage. 42 U.S.C. §1981. *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

Color of State Law

DC NMI 1983. Action under color of state or territorial law is a jurisdictional prerequisite to an action under 42 U.S.C. §1983. 42 U.S.C. §1983. *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1982. Action is taken under color of state or territorial law only if the power exercised is possessed by virtue of local law and made possible only because defendant is clothed with the authority of that law. 42 U.S.C. §1983. *Bauer v. McCoy*, 1 CR 248.

Damages

—Punitive

DC NMI 1985. Punitive damages may be assessed against individuals in actions brought under federal civil rights statute. 42 U.S.C. §§1981, 41983. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 34, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1985. Punitive damages may not be assessed against municipalities in §1983 actions. 42 U.S.C. §1983. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 34, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1985. The Trust Territory Government is not liable for punitive damages under §1983. 42 U.S.C. §1983. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 34, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir.1989)

Due Process Claims

—Freedom Of Speech

DC NMI 1988. Where plaintiff has alleged that he was fired solely as retaliation for exercising his constitutional right of freedom of speech, it is not merely a garden-variety breach of contract claim disguised as a legitimate civil rights claim. 42 U.S.C §1983. *Cruz v. Quichocho*, 3 CR 353.

—Post Deprivation Remedies

CTC 1986. Neither negligent nor intentional random acts which deprive one of property are actionable under the federal civil rights law if there exists adequate post deprivation remedies for the plaintiff. 42 U.S.C. §1983. *Employment Consultants, Inc. v. O'Connor*, 2 CR 535.

CTC 1986. Deputy attorney general's decision to rescind the business license revocation thirty days later does not cure the due process violation nor does it relieve the Deputy Attorney General from liability for the resulting damages from original order to plaintiff business college to cease doing business and suspending its contracts with the government. *Employment Consultants, Inc. v. O'Connor*, 2 CR 535.

Employment

DC NMI 1983. A private suit challenging employment practices is unavailable under Title VI where the primary purpose of federal financial assistance to defendant is not the provision of employment. *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1983. The failure to file a claim altogether deprives the district court of subject matter jurisdiction over Title VII claims. 42 U.S.C. §§2000 e-5(e). *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1983. Where discrimination alleged is discrimination in Trust Territory government employment, complaint does not state a claim under Title VII. *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

Federal Law

DC NMI 1982. Section 1983 is not a remedy against action under color of federal law. 42 U.S.C. §1983. *Bauer v. McCoy*, 1 CR 248.

DC NMI 1982. Although federal statutory reservation of administrative authority to local government does not in itself warrant the authority's characterization as "federal," unlawful exercise of the

authority is "under color of federal law" if it is action implementing a federal policy. *Bauer v. McCoy*, 1 CR 248.

DC NMI 1982. High Commissioner's action determining educational allowances under federal statutes is not action under color of territorial law and thus not cognizable under federal statutes. 5 U.S.C. §5924; 42 U.S.C. §1983. *Bauer v. McCoy*, 1 CR 248.

DC NMI 1982. Where plaintiff alleges the violation by High Commissioner of clearly protected constitutional rights which the judiciary primarily enforces, a Bivens claim may be brought for alleged violation of the Fifth Amendment. U.S. Const, Amend. 5. *Bauer v. McCoy*, 1 CR 248.

Judgments

—Enforcement

DC App. Div. 1986. Commonwealth law protecting funds of the Mariana Islands Housing Authority from execution does not prevent the federal court from issuing a writ to execute on such funds where the underlying judgment is based on federal civil rights law. 42 U.S.C. §1988. *Maruyama & Associates, Ltd. v. Mariana Islands Housing Authority*, 2 CR 511.

Liability

—Immunity

CTC 1986. It is in the personal capacity action that the official may assert personal immunity defenses such as absolute or qualified immunity; in official capacity actions, however, the only immunity available is sovereign immunity. *Employment Consultants, Inc. v. O'Connor*, 2 CR 535.

—Generally

DC NMI 1983. Liability pursuant to the Civil Rights Act arises when one person causes any other person to be deprived of any rights, privileges or immunities secured by the Constitution and laws; such liability arises not only in the context of one person who "subjects" another to the deprivation of a constitutional right through an affirmative act but also if he omits to perform an act which he is legally required to do that causes the deprivation for which complaint is made. 42 U.S.C. §1983. *Island Aviation, Inc. v. Mariana Islands Airport Authority*, 1 CR 633.

CTC 1986. In order to maintain an action under the federal civil rights law, the plaintiff must show that the government official deprived her of a property interest or a right secured by the constitution and laws of the United States. 42 U.S.C. §1983. *Saipan Secretarial/Employment Services v. CNMI*, 2 CR 700, *aff'd*, 3 CR 168 (DNMI App. Div. 1987).

CTC 1986. The initial inquiry that must be made in any civil rights claim is whether the plaintiff has been deprived of a right secured by the Constitution and laws of the United States. *Saipan Secretarial/Employment Services, Inc. v. CNMI*, 2 CR 819, *aff'd*, 3 CR 168 (DNMI App. Div. 1987).

CTC 1986. To state a claim for relief under civil rights statute, the plaintiff must allege (1) that the defendants acted "under color of state law" and (2) that the defendants deprived the plaintiff of rights, privileges, or immunities secured by the Constitution or the laws of the United States. 42 U.S.C. § 1983. *Employment Consultants, Inc. v. O'Connor*, 2 CR 535.

CTC 1986. A federal civil rights action is not one sounding in tort for purposes of the Commonwealth tort claims act. 42 U.S.C. §1983; 7 C.M.C. §2201-2254. *Employment Consultants, Inc. v. O'Connor*, 2 CR 535.

National Origin

DC NMI 1983. Claims of national origin discrimination are actionable under 42 U.S.C. §1981. *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

Persons Liable

—Generally

DC NMI 1985. A government is not liable under federal civil rights statute solely on the basis of respondent superior for the torts committed by its employees. 42 U.S.C. §1983. *Fleming v. Department of Public Safety*, 2 CR 308, *aff'd* in part and *rev'd* in part, 837 F.2d 401 (9th Cir. 1988).

CTC 1986. To establish personal liability in a civil rights action, it is enough to show that the official, acting under color of state law, caused the deprivation of federal right. 42 U.S.C. §1983. *Employment Consultants, Inc. v. O'Connor*, 2 CR 535.

—Government

DC NMI 1986. The Commonwealth is a suable "person" under federal civil rights statute and defenses of governmental immunity are available. 42 U.S.C. §1983. *Pangelinan v. Castro*, 2 CR 429.

DC NMI 1985. The Commonwealth is subject to suit for declaratory and injunctive relief for deprivations of constitutional rights. 42 U.S.C. §1983. *Fleming v. Department of Public Safety*, 2 CR 308, *aff'd* in part and *rev'd* in part, 837 F.2d 401 (9th Cir. 1988).

DC NMI 1985. The Commonwealth is a "person" liable for monetary damages under civil rights statute. 42 U.S.C. §1983. *Fleming v. Department of Public Safety*, 2 CR 308, *aff'd* in part and *rev'd* in part, 837 F.2d 401 (9th Cir. 1988).

DC NMI 1985. The Commonwealth and its agencies are proper defendants in an action brought pursuant to 42 U.S.C. §1983. 42 U.S.C. §1983. *Fleming v. Department of Public Safety*, 2 CR 207.

DC NMI 1983. States are not persons within the meaning of the Civil Rights Act because the Eleventh Amendment bars suits against states and their "alter ego" agencies when they are sued directly in federal court either for damages or for declaratory and injunctive relief. 42 U.S.C. §1983; U.S. Const., Amend. XI. *Island Aviation, Inc. v. Mariana Islands Airport Authority*, 1 CR 633

CTC 1986. For the purposes of civil rights actions, municipalities are 'persons' and under certain circumstances are liable in such actions. 42 U.S.C. §1983. *Employment Consultants, Inc. v. O'Connor*, 2 CR 535.

CTC 1986. A state has no liability for monetary damages under the federal civil rights law unless the State has unequivocably waived its immunity and consented to the suit. 42 U.S.C. §1983. *Employment Consultants, Inc. v. O'Connor*, 2 CR 535.

CTC 1986. Suits against persons in their official state capacity are to be treated as suits against the governmental entity by whom the official is employed. *Employment Consultants, Inc. v. O'Connor*, 2 CR 535.

CTC 1986. Congress did not intend by the general language of 42 U.S.C. §1983 to override the traditional sovereign immunity of the States. 42 U.S.C. §1983. *Employment Consultants, Inc. v. O'Connor*, 2 CR 535.

CTC 1986. The Covenant contains no unmistakable expression of the United States Congress that the Commonwealth is subject to suit for federal civil rights actions. 42 U.S.C. §1983. *Employment Consultants, Inc. v. O'Connor*, 2 CR 535.

CTC 1986. The Commonwealth has not waived its immunity to suit against federal civil rights actions. 42 U.S.C. §1983. *Employment Consultants, Inc. v. O'Connor*, 2 CR 535

—Official Policy

DC NMI 1986. Where the execution of a government's policy by those whose edicts or acts may fairly be said to represent official policy inflicts civil rights injury, the government is liable for the resulting damages. 42 U.S.C. §1983. *Pangelinan v. Castro*, 2 CR 429.

DC NMI 1985. When execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury complained of, the government as an entity is responsible under federal civil rights statute. 42 U.S.C. §1983. *Fleming v. Department of Public Safety*, 2 CR 308, *aff'd* in part and *rev'd* in part, 837 F.2d 401 (9th Cir. 1988).

DC NMI 1985. A single isolated incident of unconstitutional conduct by a low level employee without decision-making authority does not establish municipal liability; however, a single incident of unconstitutional conduct will establish government liability where that conduct is traceable to official policy, such as where the action is taken by an employee imbued with general authority to act for the government. *Fleming v. Department of Public Safety*, 2 CR 308, *aff'd* in part and *rev'd* in part, 837 F.2d 401 (9th Cir. 1988).

DC NMI 1985. Where Director of Public Safety is appointed by the Governor with the advice and consent of the Senate, is the administrative officer of the Department, is given the authority to employ staff, and has the primary duty of providing effective police protection to the Commonwealth, his actions in recruiting and employing police officers represent official Commonwealth policy and render the Commonwealth liable for his unconstitutional conduct. *Fleming v. Department of Public Safety*, 2 CR 308, *aff'd* in part and *rev'd* in part, 837 F.2d 401 (9th Cir. 1988).

DC NMI 1983. Where the executive director of the Airport Authority possessed: (1) full charge and control of the operations of the airports (2) power to ensure that all of the rules and regulations of the Authority were enforced; (3) authority to organize, coordinate, and control the services of the Authority employees; and (4) ex-officio membership in the Board of Trustees for the Authority, his acts unquestionably involved official policy, especially where, in view of the expansive authority that is conferred upon the executive director by statute and by regulation, as a practical matter, the principal way that MIAA and CPA conduct their official business is by and through their executive director. *Island Aviation, Inc. v. Mariana Islands Airport Authority*, 1 CR 633.

CTC 1985. Claims for civil rights violations against government port authority would be dismissed where there was no showing that acts performed by government employees were the result of an official custom or policy to purposely discriminate on the basis of race or alienage. 42 U.S.C. §§1981, 1983 and 1985. *Mega v. Soo*, 2 CR 141, *aff'd*, 2 CR 1031 (DNMI App. Div. 1987)

—Respondeat Superior

CTC 1986. A government official is not liable for the unconstitutional acts of his/her subordinates solely on the basis of respondeat superior. 42 U.S.C. §1983. *Employment Consultants, Inc. v. O'Connor*, 2 CR 535

—Trust Territory

DC NMI 1983. The Trust Territory government and the Hight Commissioner must be considered to be "persons" against whom §1983. *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1983. Trust Territory of the Pacific Islands is a temtory for the purposes of federal civil rights statute. 42 U.S.C. §1983. *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1983. The Equal Protection Clause of the Trust Territory Bill of Rights operates as a restraint on the actions of the Trust Territory and remains effective even after January 9, 1978. 1 T.T.C. §7. *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989) 7.

—United States

DC NMI 1983. The United States is not subject to suit under 42 U.S.C. §1981 or §1983. *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1983. The equal protection clause of the Trust Territory Bill of Rights is not a restraint upon the United States government. 1 T.T.C. §7. *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1983. Title VI does not authorize private suits against the United States, Cabinet departments, or federal agency officials. *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

Standing

CTC 1986. Disappointed bidders do not have standing to sue under federal civil rights statute when the government retains discretion in awarding a contract. 42 U.S. C. §1983. *Saipan Secretarial/Employment Services v. CNMI*, 2 CR 700, aff'd, 3 CR 168 (DNMI App. Div. 1987).

COMMONWEALTH PORTS AUTHORITY

See **PORTS**

COMPETENCY

—Generally

DC App. Div. 1983. Finding a serious question of competency falls far short of a finding of incompetency. *Pangelinan v. Tudela*, 1 CR 708, aff'd, 733 F.2d 1341 (9th Ci. 1986).

DC App. Div. 1983. The law presumes a person to be sane until he is proven insane. *Pangelinan v. Tudela*, 1 CR 708, *aff'd*, 733 F.2d 1341 (9th Cir. 1986).

DC App. Div. 1983. Because the law presumes a person to be sane until the contrary is shown, land registration team could impliedly deem land claimant competent and consider his affidavit relinquishing his land interest. *Pangelinan v. Tudela*, 1 CR 708, *aff'd*, 733 F.2d 1341 (9th Cir. 1986).

CONSTITUTION (NMI)

Analysis

The Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands (Dec. 6, 1976) is extremely persuasive authority when one is called upon to discern the intent of the framers when the language of the Constitution presents an ambiguity. Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands (Dec. 6, 1976). *Rayphand v. Tenorio*, 2003 MP 12 ¶ 71

CTC 1983. The analysis of the Constitution of the Commonwealth of the Northern Mariana Islands is at most an attempt to clarify what the law is as stated in the Constitution, but to use the Analysis as authority to overcome the clear language of the Constitution is not permissable. *Camacho v. Camacho*, 1 CR 620

Clean and Healthful Environment

See **ENVIRONMENT - Actions**

Confrontation Clause

Because the C.N.M.I. Confrontation Clause, N.M.I. Const. art I, § 4(b), is patterned after the U.S. Constitution's Confrontation Clause in the Sixth Amendment, C.N.M.I. courts may resort to the U.S. Supreme Court's interpretation of the federal Confrontation Clause in interpreting the C.N.M.I. Confrontation Clause. N.M.I. Const. art I, § 4(b); U.S. Const. amend. VI. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 54

While defendants must be afforded sufficient opportunity to confront adverse witnesses through cross-examination, the court is not required to permit cross-examination on topics of very slight or marginal relevance simply upon the theory that bias or prejudice might be disclosed. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 56

An appellate cannot merely assert that his right of confrontation is violated by the trial court's limiting cross examination of a particular subject with a witness; he must also show how he was prejudiced by the court's limitation. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 57

Confrontation, Right of

See **CRIMINAL PROCEDURE - Confrontation, Right of**

Construction

See **Interpretation and Construction**, this topic.

Constitutional Judiciary

For purposes of statutory construction, rules issued by courts with statutory grants of authority are comparable to administrative regulations with their relative standing in the hierarchy of law. Thus, prior to 1997, when the C.N.M.I. Supreme Court was transformed from a statutory court into a constitutional judiciary, the C.N.M.I. court rules were trumped when in direct conflict with a duly enacted statute. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 12

While a statutory court is dependent on the legislature for its authority and power, a constitutional court exercises its authority as a coequal branch of government. If there is expressed or implied constitutional authority for the judiciary to promulgate rules of practice and procedure, then this power is regarded as legislative power. The rules issued have the status of statutes enacted by the legislature. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 14

Constitutional courts are generally acknowledged to have the inherent or implied power to regulate practice and procedure as a necessary function of their duty to efficiently administer cases. The inherent power of the C.N.M.I. court to create rules of procedure is expressly recognized in the C.N.M.I. Constitution. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 15

The 1997 amendment to the C.N.M.I. Constitution affected the court rules in place at that time by giving them the same status as rules of procedure promulgated by the constitutionally created court. Thus the court rules are legislative in nature and have the status of statutes. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 16

The power to set bail is procedural in nature and therefore under the auspices of the court's constitutionally granted rule-making power. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 18

Counsel, Right to

Pursuant to Article I, Section 4(a) of the Commonwealth Constitution, a person accused of a crime has the right to the assistance of counsel, and if convicted, has the right to counsel in all appeals. N.M.I. Const. art. I, § 4(a). *Commonwealth v. Suda*, 1999 MP 17 ¶ 10

The right to counsel under the Sixth Amendment to the U.S. Constitution, and thus the counterpart Commonwealth Constitution Article I, Section 4(a), does not attach until the initiation of adversary judicial proceedings by formal charge, preliminary hearing, indictment, information, or arraignment. U.S. Const. amend. VI; N.M.I. Const. art. I, § 4(a). *Commonwealth v. Suda*, 1999 MP 17 ¶ 11

Where the accused repeatedly requests access to counsel, prior to being formally indicted, but after being taken into police custody and subjected to interrogations aimed toward eliciting incriminating statements, and those requests are repeatedly denied, the accused is denied the right to counsel since the investigation had ceased to be a general inquiry into an unsolved crime and had begun to focus on a particular suspect. *Commonwealth v. Suda*, 1999 MP 17 ¶ 13

The right to counsel under the Commonwealth Constitution Article I, Section 4(a), attaches no earlier than the counterpart Sixth Amendment right to counsel under the U.S. Constitution. The United States Supreme Court's cases have long recognized that the Sixth Amendment right to counsel attaches only at, or after, the initiation of adversary judicial proceedings. N.M.I. Const. art. I, § 4(a); U.S. Const. amend. VI. *Commonwealth v. Suda*, 1999 MP 17 ¶ 17

While the decision whether to submit to intoxication testing may be critical for the accused in the sense that it can have serious consequences at trial, it is not "critical" in the constitutional sense. No right to counsel under Article I, Section 4(a) of the Commonwealth Constitution attaches prior to intoxication testing. N.M.I. Const. art. I, § 4(a). *Commonwealth v. Suda*, 1999 MP 17 ¶ 18

During a general roadside inquiry into a traffic offense, a suspect does not have a right to counsel under Article I, Section 4(a) of the Commonwealth Constitution. N.M.I. Const. art. I, § 4(a). *Commonwealth v. Suda*, 1999 MP 17 ¶ 20

While an individual placed under arrest has a right to counsel prior to questioning, such right does not arise from Article I, Section 4(a) of the Commonwealth Constitution. To invoke the right to counsel provided by Article I, Section 4(a), adversary proceedings must have commenced. N.M.I. Const. art. I, § 4(a). *Commonwealth v. Suda*, 1999 MP 17 ¶ 21

An individual enjoys the right to counsel only where the assistance of counsel is required to protect other rights guaranteed by law. A Breathalyzer test threatens no invasion of a protected right. An individual who operates a vehicle on Commonwealth highways is deemed, as a matter of law, to have consented to testing for intoxication. Neither consent nor refusal is constitutionally protected, and thus no right to consult counsel attaches to a choice between the two. *Commonwealth v. Suda*, 1999 MP 17 ¶ 24

The right to counsel under N.M.I. Const. art. I, § 4(a) is not implicated when a defendant is asked to submit to intoxication testing at the police station. Rather, the right to counsel is derived from the privilege against self-incrimination under N.M.I. Const. art. I, § 4(c). Since a request to submit to intoxication testing involves no compulsion for a defendant to testify against herself, her privilege against self-incrimination is not violated. N.M.I. Const. art. I, § 4(a); N.M.I. Const. art. I, § 4(c). *Commonwealth v. Suda*, 1999 MP 17 ¶ 25

—Self-Incrimination, Privilege Against

The right to counsel after arrest, but prior to questioning derives from Article I, Section 4(c) of the Commonwealth Constitution, which provided that no person shall be compelled to give self-incriminating testimony. N.M.I. Const. art. I, § 4(c). *Commonwealth v. Suda*, 1999 MP 17 ¶ 22

The privilege against self-incrimination provided by Fifth Amendment to the U.S. Constitution, and the counterpart Article I, Section 4(c) of the Commonwealth Constitution, protects an accused only from being compelled to testify against himself, or otherwise provide the State with evidence of a testimonial or communicative nature. U.S. Const. amend. V; N.M.I. Const. art. I, § 4(c). *Commonwealth v. Suda*, 1999 MP 17 ¶ 23

When a defendant is asked to submit to a field sobriety test and a breathalyzer test after she is arrested and taken to the police station, the privilege against self-incrimination is not implicated because the privilege is a bar against compelling communications or testimony, but that compulsion which makes a suspect or accused the source of real or physical evidence does not violate it. *Commonwealth v. Suda*, 1999 MP 17 ¶ 24

Double Jeopardy

See also **CRIMINAL PROCEDURE - Double Jeopardy**

The Fifth Amendment to the United States Constitution provides that no person shall be subject for the same offence to be twice put in jeopardy of life or limb. Article I, § 4(e) of the Commonwealth Constitution similarly states that no person shall be put twice in jeopardy for the same offense regardless of the governmental entity that first instituted prosecution. *Commonwealth v. Peter*, 2010 MP 15 ¶ 5 (2010).

The CNMI Constitution's double jeopardy clause is patterned after the Double Jeopardy Clause of the U.S. Constitution, and when the Supreme Court is faced with a double jeopardy issue, it resorts to federal case law which interprets the U.S. Constitution's Double Jeopardy Clause to ensure that its interpretation of the Commonwealth Constitution's double jeopardy provision provides at least the same protection granted defendants under the federal Double Jeopardy Clause. *Commonwealth v. Peter*, 2010 MP 15 ¶ 5 (2010).

The Double Jeopardy Clause protects an individual against: (1) a second prosecution for the same offense after acquittal; (2) a second prosecution for the same offense after conviction; and (3) multiple punishments for the same offense. *Commonwealth v. Peter*, 2010 MP 15 ¶ 5 (2010).

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution is replicated in Article 1, Section 4(e) of the Constitution of the Commonwealth of the Northern Mariana Islands. U. S. Const. amend. V; N.M.I. Const. art. I, § 4(e). *Commonwealth v. Atalig*, 2002 MP 20 ¶ 36

The prohibition of double jeopardy contained in Article 1, Section 4(e) of the Constitution of the Commonwealth of the Northern Mariana Islands, protects against three types of abuses: a second prosecution for the same offense after acquittal; a second prosecution for the same offense after conviction; and multiple punishments for the same offense. N.M.I. Const. art. I, § 4(e). *Commonwealth v. Atalig*, 2002 MP 20 ¶ 36

There is no double jeopardy where a defendant is prosecuted for the same act or transaction which constitutes a violation of two distinct statutory provisions. The test to be applied to determine whether there are two offenses or only one is whether each provision required proof of a fact which the other does not. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 38

Notwithstanding a substantial overlap in the proof offered to establish two crimes, if each statute requires proof of a fact that the other does not, then there is no violation of double jeopardy. Courts are to look at the statutory elements of the crime for which the defendant was charged in evaluating whether double jeopardy has been implicated. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 39

It is clear from a comparison of Disturbing the Peace in violation of 6 CMC § 3101(a) and Assault and Battery in violation of 6 CMC § 1202(a), that each statute requires proof of elements not required by the other statute, thus conviction under both statutes does not violate double jeopardy. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 43

The double jeopardy clause, contained at Article I, Section 4(e) of the Constitution of the Northern Mariana Islands, bars the N.M.I. Supreme Court from entertaining an appeal of a judgment of acquittal in criminal prosecutions but does not bar consideration of an appeal of a judgment of acquittal for a traffic infraction. N.M.I. Const. art. I, § 4(e). *Commonwealth v. Abuy*, 2001 MP 8 ¶ 1

A settled principle of double jeopardy provides that the commissions of a substantive offense and a conspiracy to commit the offense are separate and distinct crimes to which double jeopardy is not a defense. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 46

Because the double jeopardy clause of the N.M.I. constitution is patterned after the double jeopardy clause in the United States Constitution, it is appropriate to resort to federal case law to ensure that the C.N.M.I. interpretation of Article I, Section 4(e) provides at least the same protection granted under the federal Constitution. N.M.I. Const. art. I, § 4(e). *Commonwealth v. Camacho*, 2002 MP 6 ¶ 47

Article I, Section 4(e) of the N.M.I. Constitution does not prohibit the subsequent prosecution of any offense related to the same underlying conduct. N.M.I. Const. art. I, § 4(e). *Commonwealth v. Camacho*, 2002 MP 6 ¶ 47

Due Process

—Attorney Sanctions

There is no due process violation when sanctions are imposed against counsel without prior notice or a hearing, when counsel was alerted, by being served with the notice of motion to dismiss and schedule of hearing, to the fact that the court would be considering the question of whether to impose the harsh penalty of dismissal, or less drastic alternatives, in light of his failure to prosecute the case and when at the hearing, Counsel was given every opportunity to fully explain the three-year delay in pursuing his client's case. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 32

—Administrative Proceedings

See **ADMINISTRATIVE LAW - Agency Action - Due Process, Generally**

—Counsel, Right to

The due process guarantee of counsel is limited to civil proceedings, quasi-civil proceedings, or appeals. *Commonwealth v. Suda*, 1999 MP 17 ¶ 38

—Criminal Prosecution

See generally **CRIMINAL PROCEDURE**

—Deportation

See **IMMIGRATION AND DEPORTATION - Deportation - Constitutional Questions**

—Fundamental Rights

Under the Commonwealth's standard for determining substantive due process violations, the Court must first determine whether the infringed-upon right is fundamental or non fundamental. Liberty is a fundamental right that is recognized in the constitutional sense as carrying a preferred status and so is entitled to special protection. *Castro v. Castro*, 2009 MP 8 ¶ 20 (2009).

While the Supreme Court has never adopted a conclusive list of fundamental rights in the context of a due process analysis, the court notes that the United States Supreme Court has held certain individual interests to be fundamental. Among these interests are the right to vote, the right to travel, the right to privacy, and rights guaranteed by the First Amendment. *Castro v. Castro*, 2009 MP 8 ¶ 21 (2009).

History and tradition are the starting point when deciding whether to recognize a right as fundamental. One only has to look to the preamble of the Commonwealth Constitution to understand that its framers based the rights and regulations therein on historical and cultural considerations. It states in part that, "[w]e the people . . . ordain and establish this Constitution as the embodiment of our traditions and hopes for the Commonwealth . . . ." NMI Const. pmbl. The Covenant also recognizes that history and tradition are central factors in determining the importance of certain individual rights over others. Indeed, some individual interests are so enshrined, whether through historical or cultural considerations, or through the text of the Constitution itself, that they are insulated from government intrusion unless there is a compelling reason to permit such intrusion. *Castro v. Castro*, 2009 MP 8 ¶ 23 (2009).

Property rights and the proverbial "bundle of sticks" are essential and unique individual interests that must be guarded with the utmost vigilance. However, provisions found in Commonwealth Constitution and subsequent statutes lead the Supreme Court to believe that property rights are not fundamental for purposes of due process analysis. For example, and most relevant to the case at hand, a landowner must allow a holdover tenant to remain on his or her property for three days prior to commencing eviction proceedings for nonpayment of rent, 2 CMC § 40204(b), and fifteen days for a failure to cure a material breach other than nonpayment of rent, 2 CMC § 40204(c). *Castro v. Castro*, 2009 MP 8 ¶ 24 (2009).

Absolute property rights are not fundamental for due process purposes. Likewise, the Supreme Court does not consider an owner's interest in his or her property to be fundamental, such that his use and access should be free from government interference absent compelling circumstances. *Castro v. Castro*, 2009 MP 8 ¶ 25 (2009).

When evaluating government infringement on a non fundamental right, the Supreme Court should determine whether the challenger has shown that the state action adversely affected a recognized property entitlement, and in doing so failed to promote a legitimate state objective. *Castro v. Castro*, 2009 MP 8 ¶ 26 (2009).

When a challenger asserts a deprivation of a property entitlement, a substantive due process violation occurs only when it amounts to an arbitrary deprivation of that entitlement. *Castro v. Castro*, 2009 MP 8 ¶ 26 (2009).

To satisfy due process requirements in criminal matters, a guilty plea must be voluntary and intelligent. *Commonwealth v. Chen*, 2006 MP 14 ¶ 7

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

The Double Jeopardy Clause at N.M.I. Const. art. I, § 4(e) is patterned after the Double Jeopardy Clause of the U.S. Constitution, which is made applicable to the Commonwealth through the Covenant. Federal case law which interprets the U.S. Constitution's Double Jeopardy Clause are relied upon by the N.M.I. Court's to ensure that interpretation of the Commonwealth Constitution's Double Jeopardy Clause provides at least the same protection granted defendants under the federal Double Jeopardy Clause. N.M.I. Const. art. I, § 4(e); U.S. Const. amend. V. *Commonwealth v. Taisacan*, 2005 MP 9 ¶ 21

Double jeopardy and collateral estoppel are related but analytically distinct concepts. Double jeopardy prohibits the re-prosecution of the same offense and collateral estoppel deals with the re-litigation of the same factual issue. *Commonwealth v. Taisacan*, 2005 MP 9 ¶ 22

There is no double jeopardy issue where a defendant is charged under different statutes, the statutes establish different offenses and the defendant is only prosecuted once for each offense. *Commonwealth v. Taisacan*, 2005 MP 9 ¶ 22

Collateral estoppel does not apply where a defendant is tried in a single proceeding, in which the adjudications as to his guilt are rendered by concurrent as opposed to successive triers as there is no prior judgment. *Commonwealth v. Taisacan*, 2005 MP 9 ¶ 25

The traditional concern of the collateral estoppel doctrine is not with the outcome of a decisional race between different triers, but with the need to protect a party from the rigors of twice litigating the same issue. *Commonwealth v. Taisacan*, 2005 MP 9 ¶ 28

Collateral estoppel principles do not extend to bar the situation in which several criminal charges against the same defendant have been allocated between two triers for concurrent adjudication upon virtually identical evidence. *Commonwealth v. Taisacan*, 2005 MP 9 ¶ 28

Where a defendant's criminal trial is a single proceeding, even if differing triers will render concurrent adjudications upon the evidence, the doctrine of collateral estoppel does not apply. *Commonwealth v. Taisacan*, 2005 MP 9 ¶ 29

Collateral estoppel is embodied in the guarantee against double jeopardy. *Commonwealth v. Taisacan*, 2005 MP 9 ¶ 23

A defendant has no constitutional right to plea bargain. The decision whether to offer a plea bargain is a matter of prosecutorial discretion. The government can refuse to bargain altogether, as well as cut off or limit negotiations if it chooses to. *Commonwealth v. Attao*, 2005 MP 8 ¶ 13

In the prosecution of former public officials for misconduct in public office, there is a strong interest in moving criminal proceedings along for two reasons: 1) the defendants are entitled to a speedy trial under the Constitution; and 2) there is great public interest in expeditiously resolving cases involving official misconduct. *Commonwealth v. Superior Court (Ada)*, 2004 MP 14 ¶ 13

Under N.M.I. Const. art. I, § 5, guaranteeing substantive as well as procedural due process rights, the right of personal liberty—the right to live in freedom from unwarranted interference by the state—is a fundamental right. *In re Seman*, 3 N.M.I. 57 (1992).

—Generally

Article I § 5 of the CNMI Constitution provides due process protection in the Commonwealth much like the Fourteenth Amendment of the United States. *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶ 32

Due process prevents the State from depriving a plaintiff of a protected property interest without a fair trial in a fair tribunal. *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶ 32

There are two main categories of due process challenges based on structural bias. First, due process is violated if a decision maker has a direct, personal, substantial pecuniary interest in the proceedings. Second, even if the decision maker does not stand to gain personally, due process may also be offended where the decision maker, because of his institutional responsibilities, would have so strong a motive to rule in a way that would aid the institution. *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶ 33

There was no violation of a due process right under the U.S. and N.M.I. Constitutions by the trial court, where the trial court made no substantive finding which deprived any party of any property right. *In re Fleming*, 2005 MP 13 ¶ 9

In an administrative proceeding where a person's life, liberty, or property is at stake, the Commonwealth Constitution requires, at a minimum, that the person be accorded meaningful notice and a meaningful opportunity to a hearing, appropriate to the nature of the case. N.M.I. Const, art. I, § 5. *Office of the Attorney Gen. v. Estel,* 2004 MP 20 ¶ 10

Due process dictates that the portion of Commonwealth Rules of Criminal Procedure 30, which provides that a party may not assign as error any portion of the charge or omission therefrom unless that party objects thereto before the jury retires to consider the verdict, is inapplicable to the extent that it is inconsistent with the duty of the court to instruct sua sponte regarding lesser included offenses. Com. R. Crim. P. 30. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 63

No person shall be deprived of life, liberty, or property without due process of law. N.M.I. Const., art. I, § 5. *Ferreira v. Borja*, 1999 MP 23 ¶ 8

A party is entitled to notice and a hearing before sanctions are imposed. When the sanctions imposed include attorney fees, an additional hearing on the amount of the fees is not necessary to satisfy the due process requirement of the Constitution. *Ferreira v. Borja*, 1999 MP 23 ¶ 10

While due process requires fair notice and an opportunity to be heard before attorney fees are imposed as a sanction, it does not require both an oral hearing on whether attorney fees should be imposed and a separate oral hearing on the amount of such fees. *Ferreira v. Borja*, 1999 MP 23 ¶ 10

Due process is a constitutional right against the improper deprivation of a property interest, to be brought by interested persons. N.M.I. Const. art. I, § 5. *Estate of Faisao v. Tenorio*, 4 N.M.I. 260 (1995).

Due process provision of NMI Constitution affords the same protection as Due Process Clause of U.S. Constitution. N.M.I. Const. art. I, § 5; U.S. Const. Fourteenth Amendment. *Office of the Attorney General v. Rivera*, 3 N.M.I. 436 (1993).

Due process guarantee in N.M.I. Const. art. I, § 5 is similar to due process guarantee in Fourteenth Amendment to the U.S. Constitution. *Office of the Attorney General v. Deala*, 3 N.M.I. 110 (1992).

Like the due process provisions of the Fifth and Fourteenth Amendments to the U.S. Constitution, N.M.I. Const. art. I, § 5, providing that no person shall be deprived of life, liberty or property without due process of law, contains both procedural and substantive components. *In re Seman*, 3 N.M.I. 57 (1992).

N.M.I. Const. art. I, § 5 provides prohibition similar to the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, but specifically against the Commonwealth government. NMI Supreme Court would apply N.M.I. Const. art. I, § 5 using the same analysis it would apply under Fourteenth Amendment. *Commonwealth v. Bergonia*, 3 N.M.I. 22 (1992).

Due process provision in the NMI Constitution is patterned after the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. N.M.I. Const. art. I, § 5. *In re "C.T.M.,"* 1 N.M.I. 410 (1990).

—Illegitimate Children

See **FAMILY LAW - Children Born Out of Wedlock - Constitutional Questions**

— Interests Protected

Article I, Section 5 of the Commonwealth Constitution states that no person shall be deprived of life, liberty or property without due process of law. NMI Const. art. I § 5. Put another way, due process is a constitutional right against the improper deprivation of a property interest. *Castro v. Castro*, 2009 MP 8 ¶ 16 (2009).

—Involuntary Commitment

See **MENTAL ILLNESS - Involuntary Commitment - Constitutional Questions**

—Juvenile Delinquency Proceedings

See **MINORS - Juvenile Delinquency Proceedings - Constitutional Questions**

—Licensing

See **ADMINISTRATIVE LAW - Licensing - Constitutional Questions**

—Plea Agreement

Detrimental reliance on a plea agreement could trigger a defendant's due process rights violation argument. *Commonwealth v. Camacho*, 2002 MP 21 ¶ 9

A plea bargain standing alone is without constitutional significance; in itself it is a mere executory agreement which, until embodied in the judgment of a court, does not deprive an accused of liberty or any other constitutionally protected interest. It is the ensuing guilty plea that implicates the Constitution. *Commonwealth v. Camacho*, 2002 MP 21 ¶ 10

When a defendant enters a guilty plea, as part of a plea agreement, due process required that the government honor its promises. *Commonwealth v. Camacho*, 2002 MP 21 ¶ 10

The Government may withdraw its plea agreement offer prior to a defendant's entry of a guilty plea because the defendant's due process rights are not implicated until the guilty plea is entered. *Commonwealth v. Camacho*, 2002 MP 21 ¶ 11

—Penal Statutes

See **CRIMINAL LAW - Penal Statutes - Constitutional Questions**

—Preliminary Examination

——Criminal Prosecution

See **CRIMINAL PROCEDURE - Preliminary Examination**

— Procedural Due Process

Due process has both a procedural and a substantive component. The concept of procedural due process implies that official action must meet a minimum standard of fairness to the individual, conferring the right, for example, to adequate notice and a meaningful opportunity to be heard. *Castro v. Castro*, 2009 MP 8 ¶ 17 (2009).

—Substantive Due Process

The Commonwealth's Due Process Clause, like its federal counterpart, ensures not only a fair process, but protects individuals against improper substantive deprivations of property, whether by legislative or executive action, or by court order. A statute or order violates substantive due process when a litigant with standing shows that a challenged statute or order adversely affects a recognized life, liberty, or property entitlement and in doing so does not promote a legitimate state objective by reasonable means. A due process infringement of an individual's non fundamental life, liberty, or property entitlement occurs only when it amounts to an arbitrary deprivation of that entitlement. When, however, the Commonwealth places a restriction on a fundamental individual right, the Commonwealth must provide a compelling justification for such an abridgment. *Castro v. Castro*, 2009 MP 8 ¶ 17 (2009).

A statute violates substantive due process when a litigant with standing shows that a challenged statute adversely affects a recognized life, liberty or property entitlement and in doing so does not promote a legitimate state objective by reasonable means. N.M.I. Const. art. I, § 5. *In re Seman*, 3 N.M.I. 57 (1992).

A due process infringement of an individual's non-fundamental life, liberty or property entitlement occurs only when it amounts to an arbitrary deprivation of that entitlement. N.M.I. Const. art. I, § 5. *In re Seman*, 3 N.M.I. 57 (1992).

When the individual interest restricted by statute is a fundamental right, the appropriate test, in determining the constitutionality of a challenged statute on substantive due process grounds, is the compelling state interest test—i.e., whether there is a compelling need or justification for the state action, by statute or otherwise, to override the personal right asserted. *In re Seman*, 3 N.M.I. 57 (1992).

—Taking Without Compensation

See **REAL PROPERTY - Taking Without Compensation**

Eminent Domain

See **EMINENT DOMAIN**

Environment, Clean and Healthful

See **ENVIRONMENT - Actions**

Equal Protection

—Generally

In the Commonwealth, the equal protection of the laws is guaranteed under Article I, Section 6 of the Commonwealth Constitution, which is applied using the same analysis as for the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Government of the Northern Mariana Islands is to be considered a State government for the purpose of applying the Equal Protection Clause. The Equal Protection Clause applies to aliens and United States citizens alike. N.M.I. Const. art. I, § 6; U.S. Const. amend. XIV. *Commonwealth v. Attao*, 2005 MP 8 ¶ 16

The Equal Protection Clause contained at Article I, Section 6 of the Commonwealth Constitution, creates no substantive rights, and is not susceptible of exact delimitation. No definite rule, which automatically will solve the question of whether equal protection has been violated in specific instances, can be formulated, rather, the clause embodies a general rule that the Commonwealth must treat like cases alike but may treat unlike cases accordingly. *Commonwealth v. Attao*, 2005 MP 8 ¶ 16

No statutory provision exists in the Commonwealth mandating that a prosecutor offer the same plea bargain to all codefendants charged with similar offenses in a given case, but the exercise of selectivity in law enforcement by the prosecution violates the Equal Protection Clause if the selection is deliberately based upon an unjustifiable standard such as race, religion, or some other arbitrary classification. *Commonwealth v. Attao*, 2005 MP 8 ¶ 17

To challenge a prosecutor's plea bargaining or charging decision, a defendant must show both a discriminatory effect and a discriminatory intent, i.e., that: others similarly situated were not prosecuted or were given more favorable plea bargains; and the defendant's prosecution was based on an impermissible motive. *Commonwealth v. Attao*, 2005 MP 8 ¶ 18

A violation of a party's equal protection rights exists when the government imposes a requirement on the party that is irrational and arbitrary, especially if the party is treated differently than others similarly situated. *Commonwealth v. Yi Xiou Zhen*, 2004 MP 4 ¶ 28

There is no demonstration of disparate treatment when a plaintiff has properly been provided a bench trial, having been assessed a fine of less than $2,000, because this is the same treatment other individuals assessed such a penalty would receive. *Commonwealth v. Yi Xiou Zhen*, 2004 MP 4 ¶ 29

—Illegitimate Children

See **FAMILY LAW - Children Born Out of Wedlock - Constitutional Questions**

—Land Alienation Restriction

See **LAND ALIENATION RESTRICTION (N.M.I. Const. art. XII) - Constitutional Challenge - Equal Protection**

—Marital Property

See **FAMILY LAW - Marital Property - Generally**

—Sexual Discrimination

An award of attorney fees based solely on gender is untenable discrimination based on sex in direct violation of the CNMI Constitution. *Reyes v. Reyes*, 2004 MP 1 ¶81

Because N.M.I. Const. art. I, § 6 expressly prohibits discrimination based on sex, any discrimination based thereon is suspect and must withstand strict judicial scrutiny. Unless justified by a compelling state interest, it is invalid. *Ada v. Sablan*, 1 N.M.I. 415 (1990).

Executive

—Appointment and Removal Power

DC 1981. Generally with the executive power of appointment goes the power of removal. NMI Const., Art III. *Izuka v. Camacho*, 1 CR 210.

DC 1981. Where a term of office and the mode for removal from office are fixed by statute or regulation the general proposition that the power of removal is inherently incident to the power of appointment does not apply and the executive power of removal is limited. *Izuka v. Camacho*, 1 CR 210.

DC 1981. Governor's attempted removal of his appointee to the Economic Development Loan Fund Board was without force and effect when not in accordance with prescribed procedures, i.e. a recommendation by a majority of the Board that the member be removed. *Izuka v. Camacho*, 1 CR 210.

—Delegation of Authority

CTC 1985. The delegation of authority by the governor to the Chief of Immigration with respect to promulgation of amendments to or the issuance of new immigration regulations was invalid and therefore regulations made pursuant to that delegation were invalid. *Office of the Attorney General v. Arriola*, 3 CR 1

—Generally

Article III, Section 15 of the Commonwealth Constitution is the source of the governor's power to reorganize the executive branch. While a governor is given broad powers of reorganization by this section, the Supreme Court is tasked with determining the extent of this power. *Torres, et al. v. Commonwealth Utilities Corp.*, 2009 MP 14 ¶ 11 (2011).

A governor cannot take on functions that are constitutionally delegated to another branch, even if that branch passively acquiesces to the governor's actions. *Torres, et al. v. Commonwealth Utilities Corp.*, 2009 MP 14 ¶ 14 (2011).

A governor may dissolve a government instrumentality and reestablish it within a different department when required to do so by the Commonwealth Constitution. *Torres, et al. v. Commonwealth Utilities Corp.*, 2009 MP 14 ¶ 15 (2011).

Article III, Section 15 states that the governor may make changes in the allocation of offices, agencies, and instrumentalities and in their functions and duties that are necessary for efficient administration. NMI Const. art. III, § 15 (emphasis added). A transfer of functions and duties from one office to another is an "allocation of" an executive branch entity by the governor under Article III, Section 15. An allocation of offices by a governor is permissible, while the creation of an entirely new government entity is not. *Torres, et al. v. Commonwealth Utilities Corp.*, 2009 MP 14 ¶ 18 (2011).

The functions and duties of the principal departments and of other agencies of the Commonwealth shall be provided by law. *Torres, et al. v. Commonwealth Utilities Corp.*, 2009 MP 14 ¶ 19 (2011).

While the term "provided by law" normally refers to legislatively-created statutes, the Supreme Court recognizes that law can be created in other ways as well, such as by executive order. *Torres, et al. v. Commonwealth Utilities Corp.*, 2009 MP 14 ¶ 20 (2011).

While certainly not binding, the Governmental Institutions' Report to the 1976 Constitutional Convention provides a deeper insight into the framers' intent in adopting Article III, Section 15, and lends credence to the Supreme Court's finding that the legislature alone may create an executive branch agency. *Torres, et al. v. Commonwealth Utilities Corp.*, 2009 MP 14 ¶ 21 (2011).

Article II of the Commonwealth Constitution vests law-making authority exclusively in the legislature. A governor does not have the authority to take on functions which are delegated to the legislature by the constitution, even if the legislature declines to act. It is true that Article III, Section 15 allows a governor to reorganize the executive branch in ways that "affect existing law," but the Constitution does not sanction a governor's complete abolition and overhaul of existing statutes that are the foundation of executive branch entities. *Torres, et al. v. Commonwealth Utilities Corp.*, 2009 MP 14 ¶ 25 (2011).

DC App. Div. 1986. The functions of the liaison offices in Guam and Hawaii are more akin to the administrative and executive functions of the Governor's office than they are to the offices of the Washington Representative and therefore are appropriately placed under the control of the Governor. NMI Const., Art. III, §1. *NMI Representative to the U.S., Tenorio v. CNMI* 2 CR 725.

DC NMI 1983. The duties of the Office of the Governor encompass the broadest range of discretionary and policy-making functions of any official in the Commonwealth. NMI Const., Art. 111, §1. *Isuka v. Camacho*, 1 CR 724.

DC App. Div. 1982. Executive order, which divested plaintiff of his authority for the implementation of the Civil Service System as it applied to the executive branch and created entirely new office within the executive branch called Office of Personnel, headed by a Personnel Management Officer, was within the constitutional powers of the Governor. NMI Const., Art. 111, §15. *Mafnas v. Camacho*, 1 CR 301.

DC App. Div. 1982. The duties and functions of the Personnel Office are executive functions that may be subject to reorganization and reallocation through an executive order, including the transferring of the functions and duties of the Personnel Office to the Office of Personnel established by executive order. NMI Const., Art. 111, §15. *Mafnas v. Camacho*, 1 CR 301.

DC App. Div. 1982. Constitution provided the governor the authority to transfer the funds from the Personnel Office to the Office of the Governor in order to carry out the purpose of executive order, which transferred the functions and duties from the Personnel Office to Office of Personnel, where order was subject to sixty-day consideration by the legislature and legislature did not take any action to modify or disapprove the entire order. NMI Const., Art. 111, § 15. *Mafnas v. Camacho*, 1 CR 301.

DC NMI 1983. The duties of the Office of the Governor encompass the broadest range of discretionary and policy-making functions of any official in the Commonwealth. NMI Const., Art. 111, § 1. *Isuka v. Camacho*, 1 CR 724

—Immigration Matters

CTC 1985. The governor, as chief executive of the Commonwealth, was within his powers when he promulgated rules and regulations pertaining to Commonwealth immigration matters. 53 TTC §54. *Office of the Attorney General v. Arriola*, 3 CR 1.

—Veto Power

DC NMI 1981. The Governor of the Northern Mariana Islands possesses line item veto authority. *Bradshaw v. Camacho*, 1 CR 165.

DC NMI 1981. The Governor's veto exercise is not unlimited and will be reviewed for abuse of discretion. *Bradshaw v. Camacho*, 1 CR 165.

DC NMI 1980. The item veto, as limited to items of appropriations, is generally available to the executives of the several states and territories of the United States, although there is considerable variation among provisions as to the precise limits of the power. *Atalig v. Camacho*, 1 CR 93, *rev'd*, sub nom. *Taisacan v. Camacho*, 660 F.2d 4 11 (9th Cir. 198 1).

DC NMI 1980. No authority is granted to the governor of the Northern Mariana Islands which would permit him to reduce the amounts for specific items appropriated by the Legislature. NMI Const., Art. 111, §7. *Atalig v. Carnacho*, 1 CR 93, *rev'd*, sub nom. *Taisacan v. Camacho*, 660 F.2d 41 1 (9th Cir. 1981).

Freedom of Speech

The free exchange of expression, thoughts and ideas requires that statements involving monies paid to persons who hold or are seeking public office and statements concerning the receipt of funds from third persons by those seeking public office or holding public officer be protected as a matter of law. Because the population of the Commonwealth is so small, third persons could easily influence and control any election by giving gifts and loans. *Sekisui House, Ltd. v. Superior Court (Hiraga)*, 1999 MP 21 ¶ 20

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

Initiatives

See **ELECTIONS - Initiatives**

Interpretation and Construction

—Counterpart Federal Provision

The Constitution of the Commonwealth of the Northern Mariana Islands and the United States Constitution require that when private property is taken for public use by eminent domain, just compensation must be provided to the owner. *Estate of Muna v. Commonwealth*, 2007 MP 16 ¶ 13

The Fifth Amendment requires that a land owner be awarded an amount more or less equal to the fair market value of the property on the date that payment is actually tendered. Valuation is determined both by the value at the actual time of the physical taking as well as the time of the payment for the taking. *Estate of Muna v. Commonwealth*, 2007 MP 16 ¶ 17

The First Amendment, made applicable in the Commonwealth by section 501(a) of the Covenant, includes among its protected rights that of free expression. Similar protections are found at Article I, Section 2 of the Commonwealth Constitution, which prohibits any law abridging the freedom of speech, or of the press. With respect to defamation, the provisions of Amendment I to the U.S. Constitution are similar to the provisions of section 2, article I of

the NMI Constitution. This is due to the fact that Section 2, Article 1 is drawn from the First Amendment to the United States Constitution which is made applicable to the states by the Fourteenth Amendment, which in turn is made applicable in the Northern Mariana Islands by section 501 of the Covenant. *Tan v. Younis*, 2007 MP 11 ¶ 33

The CNMI double jeopardy clause is patterned after the Double Jeopardy Clause of the U.S. Constitution. The Double Jeopardy Clause of the United States Constitution applies to the Commonwealth. In our analysis of cases involving double jeopardy issues, we resort to federal case law which interprets the U.S. Constitution's Double Jeopardy Clause to ensure that our interpretation of the Commonwealth Constitution's double jeopardy provision provides at least the same protection granted defendants under the federal Double Jeopardy Clause. *Commonwealth v. Crisostomo*, 2007 MP 7 ¶ 13

The CNMI double jeopardy clause is patterned after the double jeopardy clause of the United States Constitution, which is applicable to the Commonwealth. We thus resort to federal case law which interprets the United States Constitution's double jeopardy clause to ensure that our interpretation of the CNMI Constitution's double jeopardy clause provides at least the same protection granted defendants under the federal double jeopardy clause. *Commonwealth v. Milliondaga*, 2007 MP 6 ¶ 4

Because the Confrontation Clause at Article I, section 4(b) of the Constitution of the Northern Mariana Islands is patterned after that of the Sixth Amendment to the United States Constitution, it is appropriate to refer to the federal case law for guidance in interpreting the N.M.I. Confrontation Clause. N.M.I. Const. art. I, § 4(b); U.S. Const. amend. VI. *Commonwealth v. Attao*, 2005 MP 8 ¶ 2

Commonwealth Constitution Article I, Section 4(a) is based on the Sixth Amendment to the United States Constitution, which provides that in all criminal prosecutions, the accused has the right to the assistance of counsel for his or her defense. N.M.I. Const. art. I, § 4(a); U.S. Const. amend. VI. *Commonwealth v. Suda*, 1999 MP 17 ¶ 10

Article I, Section 4(c) of the Commonwealth Constitution is based directly on the Fifth Amendment to the U.S. Constitution. Accordingly, the N.M.I. Supreme Court may look to case law interpreting the Fifth Amendment to interpret the protections provided by Article I, Section 4(c). N.M.I. Const. art. I, § 4(c); U.S. Const. amend. V. *Commonwealth v. Suda*, 1999 MP 17 ¶ 22

Because NMI Constitution's confrontation clause (N.M.I. Const. art. I, § 4(b)) is patterned after U.S. Constitution's Confrontation Clause in Sixth Amendment, NMI Supreme Court would resort to U.S. Supreme Court's interpretation of federal provision in interpreting NMI provision. *Commonwealth v. Condino*, 3 N.M.I. 501 (1993), aff'd, 33 F.3d 58 (9th Cir. 1994), *cert. denied*, 514 U.S. 1021, 115 S. Ct. 1368, 131 L. Ed. 2d 224 (1995).

—Express Mention and Implied Exclusion

For purposes of constitutional interpretation, the express mention of one thing implies the exclusion of another which might logically have been considered at the same time. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 27

For purposes of constitutional interpretation, the express mention of one thing implies the exclusion of another which might logically have been considered at the same time. *Aldan-Pierce v. Mafnas*, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994), *cert. denied*, 513 U.S. 1116, 115 S. Ct. 913, 130 L. Ed. 2d 794 (1995).

It is not for the court to engraft an exception to a constitutional restriction where none is expressed in the constitution, no matter how desirable or expedient such an exception might seem. *Aldan-Pierce v. Mafnas*, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994), *cert. denied*, 513 U.S. 1116, 115 S. Ct. 913, 130 L. Ed. 2d 794 (1995).

—Generally

Unlike the Federal Constitution – which is an instrument of enumerated powers – state constitutions are not grants of power, but limitations upon the branches of state government. In other words, all powers not expressly limited by a state constitution inhere in the people of that state. It is a fundamental principle of constitutional law that each department of government has without any express grant, the inherent right to accomplish all objects naturally within the orbit of that department, not expressly limited by the fact of the existence of a similar power elsewhere or the express limitations in the constitution. Accordingly, Article IV, section 3 of the NMI Constitution and 1 CMC § 3102 is construed as limiting rather than granting the Supreme Court's jurisdiction, *i.e.*, all powers not

expressly or by natural implication limited by the NMI Constitution, and that are within the natural orbit of the Commonwealth Supreme Court's judicial function, remain with the Court. *Kabir v. Barcinas*, 2009 MP 19 ¶ 17 (2009).

Neither Article IV, section 3 of our constitution nor 1 CMC § 3102 limit the Supreme Court's jurisdiction to appellate jurisdiction only. Indeed, the applicable provision of 1 CMC § 3102 vests the Supreme Court with jurisdiction over "all other writs or orders necessary and appropriate to the full exercise of its *appellate and supervisory jurisdiction*," and Article IV, section 3 (as amended in 1997) provides that the Supreme Court "shall have all inherent powers, including the power to issue all writs necessary to the complete exercise of its duties and jurisdiction under this constitution and the laws of the Commonwealth." Thus, Rule 5 of the Commonwealth Rules of Appellate Procedure is not unconstitutional. *Kabir v. Barcinas*, 2009 MP 19 ¶ 18 (2009).

It is a fundamental rule of constitutional interpretation that a state constitution is an instrument of limitation and not of grant; that all power not expressly, or by necessary implication, limited by a state constitution inheres in the people of that state either through the legislature as the law making branch of government or through the judiciary as the branch of government that interprets the law. *Kabir v. Barcinas*, 2009 MP 19 ¶ 14 (2009).

The N.M.I. Constitution requires the house of representatives to be reapportioned or redistricted at least once every ten years to ensure sufficient representational equality between Commonwealth residents. N.M.I. Const. art. II, § 4. The principal responsibility rests with the legislature, which must reapportion the house within 120 days after publication of a decennial census. However, if the legislature does not act within its prescribed time, the governor is charged with curing the deficiency and must within 120 days promulgate a reapportionment plan. If the governor fails to act, any person qualified to vote may petition this Court to establish such a plan. *In re Pangelinan,* 2008 MP 12 ¶ 4 (2008).

The N.M.I. Equal Protection Clause is analogous to the federal Equal Protection Clause and will generally be given the same interpretation. However, the N.M.I. Equal Protection Clause, like all provisions of the N.M.I. Constitution, is subservient to the Covenant. It must be interpreted in accordance with Covenant requirements; it may not contravene them. Where Covenant language renders federal authority inapplicable, no N.M.I. Constitutional provision may resurrect it. *In re Pangelinan,* 2008 MP 12 ¶ 100 (2008).

The term "nonresident worker" is an immigration status unrelated to legislative apportionment. The large number of noncitizens does not, by itself, warrant a departure from previous apportionment plans relying on total population. *In re Pangelinan,* 2008 MP 12 ¶ 101 (2008).

The N.M.I. Constitution requires regular reapportionment or redistricting to ensure representation by each member of the house of representatives of approximately the same number of residents. The Constitution does not define "residents," but the *N.M.I. Constitutional Analysis* states that "residents" *may* mean persons who are counted in a census or other enumeration made by the government. This language clearly permits an apportionment plan to be based on total population, but it does not specifically require it. If "residents" may mean all persons counted in a census, it might also mean fewer than all persons. Accordingly, we read Article II, Section 4(a) to permit the legislature discretion over who should be counted. *In re Pangelinan,* 2008 MP 12 ¶ 103 (2008).

In both instances where it addressed the issue, the N.M.I. legislature relied on total population. If any category of persons is to be excluded for purposes of legislative apportionment, the Court is not the proper body to pioneer it. *In re Pangelinan,* 2008 MP 12 ¶ 104 (2008).

The N.M.I. Constitution requires the house of representatives be regularly reapportioned or redistricted to account for population changes in the Commonwealth. Mandatory reapportionment or redistricting ensures voting power remains distributed among Commonwealth residents on a sufficiently proportional basis. Distributing voting power according to population implicates the one person, one vote principle. But, as mentioned above, the one person, one vote principle does not necessitate a particular legal standard. Rather, the context in which the principle is applied determines the degree of permissible deviation from perfect equality, and the legislative interests justifying those deviations. *In re Pangelinan,* 2008 MP 12 ¶ 105 (2008).

The N.M.I. Constitutional requirement of population-based apportionment in the house of representatives is flexible. Each house member must represent approximately the same number of residents to the extent permitted by the separate islands and the distribution of population in the Commonwealth. The drafters recognized a flexible application of the

one person, one vote principle was necessary given the N.M.I.'s unique challenges. *In re Pangelinan,* 2008 MP 12 ¶ 106 (2008).

The legislature is not required to increase house membership in order to achieve greater equality across election districts. *In re Pangelinan,* 2008 MP 12 ¶ 107 (2008).

We conclude the N.M.I. Constitution requires population be the starting point when apportioning the house of representatives or revising its election districts. *In re Pangelinan,* 2008 MP 12 ¶ 109 (2008).

Neither the 1991 Apportionment Act, nor the apportionment plan created by our previous decision, violates the N.M.I. Constitution by deviating too far from strict population equality across election districts. Any departure from pure population-based apportionment, other than those specified in the N.M.I. Constitution or previous legislation, should originate though the political process, not through judicial proceedings. *In re Pangelinan,* 2008 MP 12 ¶ 110 (2008).

The N.M.I. House of Representatives must be apportioned based on population. However, population is not the sole criterion that must be considered. Election districts must be contiguous and compact. Apportionment plans must ensure representation by each member of the house of representatives of approximately the same number of residents to the extent permitted by the separate islands and the distribution of population in the Commonwealth. *In re Pangelinan,* 2008 MP 12 ¶ 111 (2008).

In contrast to legislative reapportionment, when we exercise our N.M.I. Const. art. II, § 4(b) reapportionment authority, we seek to divide the N.M.I. population into substantially equal election districts. We consider only those other factors required by our constitution or long-recognized policy goals such as maintaining historically distinct subdivisions. Our decision to reapportion the house by total population rather than United States citizens was similarly rooted in N.M.I. Constitutional language and legislative policy. *In re Pangelinan,* 2008 MP 12 ¶ 113 (2008).

When a person claiming involuntary servitude is simply expected to seek employment, if available, none of the aspects of 'involuntary servitude' which invoke the need to apply a contextual approach to the Thirteenth Amendment analysis are present. *Bank of Guam v. Ruben,* 2008 MP 22 ¶ 18 (2008).

Under the Due Process Clauses of the United States and Commonwealth Constitutions, a trial judge must apprise criminal defendants of the direct consequences of their guilty pleas, but need not inform them of the collateral consequences of their pleas. Direct consequences have a definite, immediate and largely automatic effect on the range of the defendant's punishment. Conversely, collateral consequences are not automatic, but are contingent on action taken by an individual or individuals other than the sentencing court. Deportation is a collateral consequence of a criminal conviction based on two crucial determinations. First, the decision to initiate deportation proceedings against an alien defendant in the Commonwealth is not left to the sentencing court, but to the Attorney General's Office. Second, deportation is a civil matter, wholly separate from a criminal proceeding. A trial judge need not inform criminal defendants of the potential immigration consequences of their guilty pleas. *Commonwealth v. Shimabukuro,* 2008 MP 10 ¶ 15 (2008).

Deportation is a collateral consequence of a guilty plea in the Commonwealth. We therefore join with the majority of jurisdictions and hold that defense counsel has no duty to inform defendants of the collateral consequences of their guilty pleas. As such, failure to advise a defendant of a collateral penalty is not objectively unreasonable under *Strickland's* performance prong and therefore does not amount to ineffective assistance of counsel. *Commonwealth v. Shimabukuro,* 2008 MP 10 ¶ 16 (2008).

Before this Court reviews certified legal questions, the Commonwealth Constitution mandates that four prerequisites are satisfied: (1) A dispute exists between or among elected or appointed Commonwealth officials; (2) the dispute implicates the constitutional or statutory powers or responsibilities of these officials; (3) the parties to the dispute set forth the stipulated facts upon which the issue arises; and (4) the officials submit the legal questions arising from their dispute to this Court. Only if these four prerequisites are satisfied may we review the merits of a certified legal question. However, even if a petitioner satisfies all four perquisites, our review is discretionary. When we do review certified legal questions, the Commonwealth Constitution states that our ruling shall be binding upon the parties before the court. *In the Matter of Benavente and Bennett,* 2008 MP 4 ¶ 5 (2008).

In determining whether the dispute requirement is satisfied, our primary consideration is whether the parties petitioning the Court are engaged in a dispute with each other. We cannot adequately ascertain the existence of a dispute unless at least two adversarial parties to the dispute properly petition the Court's assistance. *In the Matter of Benavente and Bennett,* 2008 MP 4 ¶ 8 (2008).

The first prerequisite for submitting a certified legal question not only requires a dispute, but a dispute between or among Commonwealth officials who are elected by the people or appointed by the governor. The Constitution mandates that the dispute must be *between or among* Commonwealth officials, indicating that at least one Commonwealth official must be involved on both sides of a dispute. *In the Matter of Benavente and Bennett,* 2008 MP 4 ¶ 9 (2008).

The second constitutional prerequisite for certifying questions to this Court is the existence of a dispute between Commonwealth officials that implicates their constitutional or statutory powers or responsibilities. *In the Matter of Benavente and Bennett,* 2008 MP 4 ¶ 10 (2008).

The third constitutional prerequisite for certifying questions is that parties to a dispute must set forth the stipulated facts upon which the dispute arises. Stipulated facts comprise an agreement between opposing parties as to relevant factual considerations. *In the Matter of Benavente and Bennett,* 2008 MP 4 ¶ 11 (2008).

The final constitutional prerequisite is that the relevant parties must submit a legal question arising from their dispute to the Court. *In the Matter of Benavente and Bennett,* 2008 MP 4 ¶ 12 (2008).

Article II, Section 4 of the Constitution of the Northern Mariana Islands requires the house of representatives be reapportioned or redistricted at least every ten years to compensate for population changes. *In re Pangelinan,* 2007 MP 14 ¶ 3

The Commonwealth Supreme Court has original and exclusive jurisdiction to review a reapportionment or redistricting plan and to amend it to comply with the requirements of the Constitution or to establish a plan if the legislature and governor fail to act within time prescribed in the Constitution. N.M.I. Const. art. II, § 4(b). *In re Pangelinan,* 2007 MP 14 ¶ 3

Where more than 240 days passed since publication United States Census without legislative or gubernatorial action to reapportion or redistrict the house of representatives, jurisdiction vested in the Court. *In re Pangelinan,* 2007 MP 14 ¶ 7

The term nonresident worker is an immigration status bearing no direct relationship with legislative apportionment. For purposes of reapportionment or redistricting, 'residents' may mean persons who are counted in a census or other enumeration made by the government. This language is permissive, leaving some degree of discretion to the legislature. Article II, Section 4(a) does not, by its own language, exclude nonresident workers. Evidence indicates the legislature considered total population as reported by the United States Census in both reapportionments since our Constitution's drafting. *In re Pangelinan,* 2007 MP 14 ¶ 11

Article II, Section 4(a) does not require, and the legislature has not relied upon, figures other than total population. *In re Pangelinan,* 2007 MP 14 ¶ 12
If any category of persons is to be excluded for purposes of legislative apportionment, the Court is not the proper body to pioneer it. *In re Pangelinan,* 2007 MP 14 ¶ 12

The N.M.I. Constitution requires contiguous and compact districts which ensure representation by each member of the house of representatives of approximately the same number of residents to the extent permitted by the separate islands and the distribution of population in the Commonwealth. *In re Pangelinan,* 2007 MP 14 ¶ 14

The duty to reapportion or redistrict the house of representatives is, by nature and by law, a legislative function. *In re Pangelinan,* 2007 MP 14 ¶ 17

Under the CNMI Constitution, the board of regents of NMC shall have autonomy in the administration of its affairs and shall formulate policy relating to the higher education needs of the Commonwealth. Autonomy is defined as the sovereign authority to govern oneself. *N. Marianas Coll. v. Civ. Serv. Comm'n II,* 2007 MP 8 ¶ 6

Generally, only the legislature can exempt employees from the civil service system. NMC, however, is granted autonomy separately from the Civil Service Commission through Article XV, Section 2(a) of the CNMI Constitution so that it can fully control the administration of its affairs. *N. Marianas Coll. v. Civ. Serv. Comm'n II,* 2007 MP 8 ¶ 8

There is a symbiotic relationship between Commonwealth-wide laws and the local laws of each senatorial district, including those enacted by local

initiatives. Each set of laws should be able to co-exist harmoniously, without either doing violence to the other. The unity of the entire Commonwealth must be a paramount consideration, but our Constitution nevertheless allows for a certain degree of flexibility permitting each of the Commonwealth's three senatorial districts to enact local laws pertaining only to that district. *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26 ¶ 31

There is a presumption that the provisions of a local initiative duly enacted pursuant to the Constitution are valid unless any provision of the local initiative conflicts with a provision of the U.S. Constitution, the Commonwealth Constitution, or a Commonwealth-wide law. The opponent of a local gambling initiative has the initial burden to show by clear and convincing evidence which provisions of the local gambling initiative are inconsistent and in conflict with which constitutional provisions or Commonwealth-wide laws, and why. *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26 ¶ 32

If any provision of a local initiative conflicts with a provision of the U.S. Constitution, the Commonwealth Constitution, or a Commonwealth-wide law, that provision must fall, unless, with respect to a Commonwealth-wide law, the application of the Commonwealth-wide law would frustrate a constitutional provision. *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26 ¶ 32

Once it clearly is shown that there is a conflict between a Commonwealth-wide law and a local initiative, the Commonwealth-wide law prevails, unless the proponent of the initiative demonstrates by clear and convincing proof that the application of a Commonwealth-wide law would itself violate the Constitution. The proponent must show that a Commonwealth-wide law, if it were to supersede a provision of local law, would unduly and unreasonably interfere with a constitutional right. *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26 ¶ 32

The extent of the public benefit conferred by a suit brought by a taxpayer, pursuant to Article X, section 9 of the Commonwealth Constitution, is a question relevant to the damage calculation, not liability determination. N.M.I. Const. Art. X, § 9. *Pacific Amusement, Inc. v. Villanueva*, 2005 MP 11 ¶ 10

The appellate court has jurisdiction to review whether a statute is unconstitutional for vagueness, and whether the prosecution proved the elements that appellant engaged in unlawful conduct beyond a reasonable doubt. *Commonwealth v. Mundo*, 2004 MP 13 ¶ 11

Because courts lack the power of eminent domain, the Court is incapable of "taking" property as that term is defined in constitutional law. *In re Estate of Roberto*, 2004 MP 7 ¶ 7

The Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands (Dec. 6, 1976) is extremely persuasive authority when one is called upon to discern the intent of the framers when the language of the Constitution presents an ambiguity. Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands (Dec. 6, 1976). *Rayphand v. Tenorio*, 2003 MP 12 ¶ 71

In addition to any legislation, it is intended that the courts may interpret Article I, Subsection 4(j) of the N.M.I. Constitution, on a case by case basis and give it meaningful content over time. The Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands (Dec. 6, 1976) at 20. *Nakatsukasa v. Superior Court*, 1999 MP 25 ¶ 16

NMI Supreme Court's interpretation of provision in NMI Constitution should be conclusive in subsequent appellate review. *Aldan-Pierce v. Mafnas*, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994), *cert. denied*, 513 U.S. 1116, 115 S. Ct. 913, 130 L. Ed. 2d 794 (1995).

The general principles which apply to statutory construction are equally applicable in cases of constitutional construction. *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362 (1990).

DC App. Div. 1984. When the circumstances of a case are such that the provisions of the United States Constitution as they have been interpreted by the United States Supreme Court do not reflect the values of the people of the Commonwealth, the court should not hesitate to look to the Commonwealth's Constitution for the protections and guaranties placed there by and for the people. *Sirilan v. Castro*, 1 CR 1082.

DC App. Div. 1984. Reference to and reliance on the Commonwealth's independent constitutional provisions does not represent merely an available option but reflects a fundamental duty imposed upon us as judges of the highest court of the Commonwealth. *Sirilan v. Castro*, 1 CR 1082

—Government Budget

Because Article III, Section 9(a) of the Commonwealth Constitution provides that if a balanced budget is not approved before the first day of the fiscal year, appropriations for government operations and obligations shall be at the level for the previous fiscal year, a law which purports to allow expenditures in excess of the previous fiscal year is unconstitutional. N.M.I. Const. art. III, § 9(a). *Rayphand v. Tenorio*, 2003 MP 12 ¶ 59

During a year in which no balancedbudget has been enacted by the legislature, a governor who expends amounts in excess of the total appropriation from the last enacted budget violates the Commonwealth Constitution. N.M.I. Const. art. III, § 9(a). *Rayphand v. Tenorio*, 2003 MP 12 ¶ 68

Article III, Section 9(a) of the Commonwealth Constitution is facially ambiguous, for it is unclear whether this provision confines expenditures, in a fiscal year for which no budget was passed, to those which mirror the individual appropriation levels of the previously passed budget or whether the governor has plenary expenditure authority subject only to the overall total of the previously passed budget. N.M.I. Const. art. III, § 9(a). *Rayphand v. Tenorio*, 2003 MP 12 ¶ 69

Article III, Section 9(a) of the Commonwealth Constitution is properly interpreted as requiring the governor to expend public funds in the same manner as if the legislature had passed an omnibus appropriation bill containing the same figures as those of all the appropriation bills that passed in the previous year. The governor does not have plenary expenditure authority for the period of time when a balanced budget has not been passed. N.M.I. Const. art. III, § 9(a). *Rayphand v. Tenorio*, 2003 MP 12 ¶ 72

For the purposes of invoking qualified immunity, a competent public official is expected to know the law governing his conduct so far as it may be clearly established. Because Article III, Section 9(a) of the Commonwealth Constitution was facially ambiguous and had not been interpreted by the N.M.I. Supreme Court, the law governing how much and in what manner a governor could expend funds in a year in which no budget had been enacted was not clearly established, such that the governor was obligated to act in accordance with its provisions. N.M.I. Const. art III, § 9(a). *Rayphand v. Tenorio*, 2003 MP 12 ¶ 77

Prior to the N.M.I. Supreme Court's interpretation of Article III, Section 9(a) of the Commonwealth Constitution, a reasonable governor could have interpreted his constitutionally-granted expenditure authority in a fiscal year where no budget was passed as allowing for plenary expenditure authority subject only to the total of the previously passed budget and where a governor relied upon an opinion of the Attorney General's office advising that these actions were permissible, the governor acted reasonably, regardless of whether the Attorney General was correct or not. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 78

No rational governor could read Article III, Section 9(a) of the Commonwealth Constitution and believe that he was not restrained by the total ceiling of the last previously passed budget, regardless of when such budget was passed, and thus this governor would not be eligible for qualified immunity. N.M.I. Const. art. III, § 9(a). *Rayphand v. Tenorio*, 2003 MP 12 ¶ 82

Commonwealth courts are duty bound to give effect to the intention of the framers and the people adopting the N.M.I. Constitution. *Nakatsukasa v. Superior Court*, 1999 MP 25 ¶ 13

—Intent

In dealing with questions of Constitutional interpretation the starting point is the constitutional text itself, and if possible the text must be given its plain meaning. When presented with a question of constitutional interpretation the Court are duty-bound to give effect to the intention of the framers of the NMI Constitution. The intent of the framers may be determined through an examination of the relevant legislative history. *Dep't of Publ. Lands v. Commonwealth*, 2010 MP 14 ¶ 17 (2010).

The definition of "responsibility" is something for which one is accountable: Duty. The ordinary meaning of "duty" is function or work. The Supreme Court finds that the drafters used the terms "responsibilities" (as that term appears in Article XI §§ 3 and 5) interchangeably with the term "functions" (as it appears in Article XI § 4). The language in § 5 clearly distinguishes between the Marianas Public Land Corporation's fundamental policies and its responsibilities. The Court finds that the drafters intended the fundamental policies contained in § 5 to constitute something more

specific than the Corporation's functions. Indeed, looking at Article XI as a whole, it is clear that the drafters intended the fundamental policies to act as tools for the Corporation to carry out its constitutionally mandated functions of managing and disposing of public lands. *Dep't of Publ. Lands v. Commonwealth*, 2010 MP 14 ¶ 19 (2010).

For the purposes of constitutional interpretation, the express mention of one thing implies the exclusion of another which might logically have been considered at the same time. *Dep't of Publ. Lands v. Commonwealth*, 2010 MP 14 ¶ 20 (2010).

The repeated references to the Marianas Public Land Corporation in each of the subsections of Article XI § 5 raises the implication that the fundamental policies only applied to that entity. *Dep't of Publ. Lands v. Commonwealth*, 2010 MP 14 ¶ 20 (2010).

Because NMI Constitution does not specify the method and time of transmittal of bills to the governor, NMI Supreme Court must look to intent of framers of the constitution. *In re Tenth Legislature Bills*, 1998 MP 3 ¶12

Courts are duty-bound to give effect to the intention of the framers of the NMI Constitution and the people adopting it. *Aldan-Pierce v. Mafnas*, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994), *cert. denied*, 513 U.S. 1116, 115 S. Ct. 913, 130 L. Ed. 2d 794 (1995).

—Legislative History

If necessary, in construing constitutional provisions NMI Supreme Court will consult legislative history. *Aldan-Pierce v. Mafnas*, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994), *cert. denied*, 513 U.S. 1116, 115 S. Ct. 913, 130 L. Ed. 2d 794 (1995).

—Particular Provisions

Section 8 of Article VI of the Commonwealth Constitution is self-executing, in that it chartered Rota and Tinian and Aguiguan into municipalities. Nothing is committed to the legislature to do at a later date to bring the municipalities into existence. On November 3, 1985, the date of the ratification of Constitutional Amendment 25, portions of which became Section 8 of Article VI, Rota and Tinian and Aguiguan became chartered municipalities. N.M.I. Const. art. VI, § 8. *United States v. Borja (Mayor of Tinian)*, 2003 MP 8 ¶ 11

—Plain Meaning

The Constitution does not define the term "dispute." However, a basic principle of constitutional construction is that language must be given its plain meaning. We will apply the plain, commonly understood meaning of constitutional language unless there is evidence that a contrary meaning was intended. A dispute is often characterized as a "conflict or controversy," or "an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other." It is also described as "strife by opposing argument or expression of opposing views or claims." The word connotes the existence of at least two adversarial parties espousing contrary positions on a particular issue. *In the Matter of Benavente and Bennett*, 2008 MP 4 ¶ 6 (2008).

The Civil Service Commission ("CSC") does not have jurisdiction over Northern Marianas College's ("NMC") administrative appeals. *Northern Marianas Coll. v. Civil Serv. Cmm'n,* 2007 MP 30 ¶ 1 (2007).

The CNMI Constitution grants NMC's board autonomous powers over its affairs which CSC cannot infringe. *Northern Marianas Coll. v. Civil Serv. Cmm'n,* 2007 MP 30 ¶ 3 (2007).

A basic principle of constitutional construction is that language must be given its plain meaning. *N. Marianas Coll. v. Civ. Serv. Comm'n II,* 2007 MP 8 ¶ 9

In (NMI Constitution) Article XV, Section 2(a), the use of the term shall is mandatory and has the effect of creating a duty. The word shall is unambiguous and means must. Therefore, when the CNMI Constitution states that the board of regents shall have autonomy in the administration of its affairs, it means that NMC must have autonomy in the administration of its affairs. *N. Marianas Coll. v. Civ. Serv. Comm'n II,* 2007 MP 8 ¶ 9

The CNMI Constitution grants NMC's board autonomous powers over its affairs which CSC cannot infringe. *N. Marianas Coll. v. Civ. Serv. Comm'n II,* 2007 MP 8 ¶ 9

NMC is a fully autonomous agency under the CNMI Constitution. *N. Marianas Coll. v. Civ. Serv. Comm'n II,* 2007 MP 8 ¶ 16

The N.M.I. Supreme Court will apply the plain, commonly understood meaning of constitutional language unless there is evidence that a contrary meaning was intended. *United States v. Borja (Mayor of Tinian)*, 2003 MP 8 ¶ 9

The constitutional language that something "is hereby established" is self-executing, as opposed to language that something "should be established as provided by law," which is not. *United States v. Borja (Mayor of Tinian)*, 2003 MP 8 ¶ 10

NMI Supreme Court will apply the plain, commonly understood meaning of constitutional language unless there is evidence that a contrary meaning was intended. *In re Tenth Legislature Bills*, 1998 MP 3 ¶10

A basic principle of construction is that language must be given its plain meaning. *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362 (1990).

NMI Supreme Court will apply the plain, commonly understood meaning of constitutional language unless there is evidence that a contrary meaning was intended. *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362 (1990).

—Self-Executing Provisions

A constitutional provision is self-executing if it does not require legislation to put it into effect and a presumption exists that every provision in the Commonwealth Constitution is self-executing. *United States v. Borja (Mayor of Tinian)*, 2003 MP 8 ¶ 7

Every provision in the Commonwealth Constitution is not self-executing. A constitutional provision that contemplates and requires legislation is not self-executing. *United States v. Borja (Mayor of Tinian)*, 2003 MP 8 ¶ 8

In determining whether a constitutional provision is self-executing, courts are sometimes influenced by the fact that, if the provision in question is not treated as self-executing, the legislature would have the power to nullify the provision by inaction, thereby ignoring the will of the people. *United States v. Borja (Mayor of Tinian)*, 2003 MP 8 ¶ 12

Interpreter, Right to

Article XXII, Section 3 of the Commonwealth Constitution, in designating three official languages in the Commonwealth, gives litigants a constitutional right to speak Chamorro in judicial proceedings. N.M.I. Const. art. XXII, § 3. *Commonwealth v. Deleon Guerrero*, 2003 MP 15 ¶ 1

Native Chamorro-speaking people have a constitutional right to speak Chamorro in court in the Commonwealth. *Commonwealth v. Deleon Guerrero*, 2003 MP 15 ¶ 4

Although a defendant, his attorneys and his witnesses can all speak English well enough to conduct a trial in English, the defendant is allowed to conduct the trial in Chamorro because the Commonwealth Constitution provides that Chamorro is one of three official languages of the C.N.M.I.. This decision is not subject to the discretion of the trial court. *Commonwealth v. Deleon Guerrero*, 2003 MP 15 ¶ 7

The framers of the Commonwealth Constitution did not intend to create an absolute right of individuals to demand that government agencies conduct their official business in all three languages. Instead, the intent was that the agencies could choose one or more of the languages in which to carry out its official functions. However, because the courts have chosen to conduct its court proceedings in all three languages, then an individual may choose to have court proceedings conducted in any of the three languages, provided that they are a native speaker of one of these three languages. *Commonwealth v. Deleon Guerrero*, 2003 MP 15 ¶ 8

In order for a native Chamorro or Carolinian speaker to exercise their right to have court proceedings conducted in Chamorro or Carolinian, they must provide adequate notice in order that an interpreter may be hired. Five days notice is adequate. *Commonwealth v. Deleon Guerrero*, 2003 MP 15 ¶ 11

The N.M.I. Supreme court has jurisdiction, pursuant to N.M.I. Const. art. IV, § 3, over the appeal from an assault and battery conviction. N.M.I. Const. art. IV, § 3. *Commonwealth v. Deleon Guerrero*, 2003 MP 15 ¶ 3

——Particular Cases

Because Chamorro is one of the three official languages in the Commonwealth, pro se defendant's due process and equal protections rights under the NMI Constitution were violated when trial court did not allow him to question witnesses in Chamorro. *Jasper v. Quitugua*, 1999 MP 4 ¶11

Judiciary

DC NMI 1983. When the NMI Constitution took effect on January 9, 1978, the High Court lost jurisdiction over any actions filed in the Commonwealth on or after that date, including actions against the Trust Territory government or the High Commissioner. *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 88 1 F.2d 647 (9th Cir. 1989).

DC NMI 1982. It is the intent of the Commonwealth Constitution's Transitional Matters Schedule that a "finally decided case over which the District Court may take jurisdiction is one in which the Trial Division of the Trust Territory High Court has rendered a final judgment and even though the judgment had been appealed to the Appellate Division of the High Court, the District Court of the Northern Mariana Islands may recognize and reduce the final judgment of the Trial Division of the High Court to a District Court judgment. NMI Const., Sch. Trans. Mat. §4. *Diaz v. Diaz*, 1 CR 319.

CTC 1983. The Schedule on Transitional Matters of the NMI Constitution mandates that cases decided before or after January 9, 1978 in the Trial Division of the High Court remain in the court system of the High Court until the matter is finally disposed of, including the processing of all appeals. NMI Const., Sch. Trans. Mat., §4. *Camacho v. Camacho*, 1 CR 620.

CTC 1983. The term "finally decided," when used to describe court action, is that time when a judgment is rendered, the availability of an appeal is decided, and the time for any petition for certiorari has elapsed. NMI Const., Sch. Trans. Mat., §4. *Camacho v. Camacho*, 1 CR 620.

CTC 1983. The Schedule on Transitional Matters in the NMI Constitution contemplated and requires that High Court matters remain within the High Court system until any appeals are finally determined, including any remand from the Appellate Division to the Trial Division. NMI Const., Sch. Trans. Mat., §4. *Camacho v. Camacho*, 1 CR 620.

CTC 1981. In criminal matters a case is "finally decided" for purposes of interpreting NMI Constitution transitional provision when sentence has been imposed. NMI Const., Sch. Trans. Mat., §4. *CNMI v. Guerrero*, 1 CR 190.

CTC 1981. After January 9, 1978, the High Court had no enforcement power in the Commonwealth. NMI Const., Sch. Trans. Mat., §4. *CNMI v. Guerrero*, 1 CR 190.

CTC 1981. Once a new court is created which supplements the former, there is a transfer of operation of law either expressly or impliedly. NMI Const., Sch. Trans. Mat., 94. *CNMI v. Guerrero*, 1 CR 190.

CTC 1981. After January 9, 1978, Commonwealth Trial Court has jurisdiction over post-sentence motion to revoke probation where action was originally brought and sentence imposed in High Court. *CNMI v. Guerrero*, 1 CR 190

Jury Trial

—Right To Jury Trial

See also **JURIES - Right to Jury Trial**

The right to a jury trial attaches when the defendant is accused by information of committing a felony punishable by more than five years imprisonment or by more than $2,000 fine. *Commonwealth v. Sebuu*, 2011 MP 15 ¶ 5 (2011).

The limited right to a jury trial in the Commonwealth is provided by legislative enactment and has withstood constitutional scrutiny. N.M.I. Const., art. I, § 8. *Commonwealth v. Yi Xiou Zhen*, 2004 MP 4 ¶ 14

A defendant, charged with promoting prostitution in the second degree, in violation of 6 CMC § 1344(a) and 6 CMC § 1344(d)(2) is charged with a felony punishable by less than five years imprisonment and by less than a $2,000 fine, and therefore is not entitled to a jury trial under 7 CMC § 3101(a). This is so, although the defendant is subject to a fine of up to $1,000 under 6 CMC § 1346(c) and a "mandatory fee" of $2,000 under 6 CMC § 1346(e)(2), because the "mandatory fee" is a civil rather than a criminal penalty. 6 CMC § 1344(a), 6 CMC § 1344(d)(2), 7 CMC § 3101(a), 6 CMC § 1346(c). *Commonwealth v. Yi Xiou Zhen*, 2004 MP 4 ¶ 26

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*, 2004 MP 4 ¶ 27

Land Alienation

—Generally

DC App. Div. 1987. Where alien corporation leases land for a term of thirty years with a twenty year option to renew, lease was void ab initio under NMI Constitutional provision restricting leasehold interests of persons not of Northern Marianas descent to forty years. NMI Const., Art. XII. *Wabol v. Muna*, 2 CR 963.

DC App. Div. 1981. Trial court did not err in concluding that contract for the sale of land was void in part because it violated restriction on alienation of land to persons not of Northern Marianas descent, but unenforceability of one provision did not void the whole agreement. C.N.M.I. Const., Art XII, §1. *Hemlani v. Villagomez*, 1 CR 203.

CTC 1985. Lease under which corporation not of Northern Marianas descent takes interest in land for a 30 year term with an option to extend for an additional 20 years, at the option of the lessee, violates NMI Constitutional provision prohibiting the acquisition of long-term interests in real property. NMI Const., Art. XII. *Wabol v. Muna*, 2 CR 231, rev'd in part, 2 CR 963.

—Option Contracts

CTC 1989. Where plaintiff and defendant entered into a contract whereby plaintiff paid defendant not to lease or otherwise alienate his property for a one year period and this option did not give plaintiff any right to enter or otherwise use the property and plaintiff did not acquire any possessory interest in the property itself, the option period cannot be added to the length of the proposed lease for determining whether a long term interest in land has been conveyed in violation of the constitutional restriction on alienation of land. NMI Const., Art. XII. *Duty Free Shoppers Ltd. v. Sablan*, 3 CR 623.

—Partnership

CTC 1988. Acquisition of land by person of Northern Marianas descent for herself where she had a partnership agreement with her husband and two other persons not of Northern Marianas descent, using their combined money to acquire land in the Northern Marianas, violated land alienation restriction of the Northern Marianas Constitution. NMI Const., Art. XII. *Ferreira v. Borja*, 3 CR 472.

—Purpose

CTC 1985. The history of the Constitutional Convention shows that the purpose underlying land alienation restriction was to conserve the land of the Commonwealth for the indigenous people because of its limited quantity. NMI Const., Art. XII. *Wabol v. Mun*a, 2 CR 231, *rev'd* in part, 2 CR 963.

—Remedies

CTC 1985. The better and more enlightened rule and one which more effectively addresses the equities involved where lease is held to violate the Constitutional restriction on the alienation of land is that lease will be declared void only as to the excess term which violates the constitutional provisions. NMI Const., Art. XII. *Wabol v. Muna*, 2 CR 231, *rev'd* in part, 2 CR 963.

CTC 1985. Where defendants negotiated lease for 30 year term with option to extend for 20 years, portion of lease purporting to transfer interest greater than 40 years is void ab initio under NMI Constitution. NMI Const., Art. XII. *Wabol v. Muna*, 2 CR 231, *rev'd* in part, 2 CR 963.

—Purchase of Improvements

CTC 1989. Where the lease provided plaintiff with a lien on defendant's reversionary interest to secure defendant's performance of his obligation to purchase any permanent improvements constructed by plaintiff during the term of the lease, and defendant maintains that it is highly unlikely that he will be able to purchase the multimillion dollar improvements contemplated by plaintiff and, therefore, it is probable that he will lose the property by default, giving plaintiff an interest land exceeding the permissible limit, court would not render advisory opinion based on speculative events that could occur in the next 55 years of the lease period. NMI Const., Art. XII. *Duty Free Shoppers Ltd v. Sablan*, 3 CR 623.

—Settlements

CTC 1988. Where parties had stipulated to settlement of action, court would sua sponte void settlement as violative of land alienation restriction of the NMI Constitution. NMI Const., Art. XII. *Ferreira v. Borja*, 3 CR 472.

—Validity

CTC 1986. Where persons not of Northern Mariana descent directed the plaintiff, a person of Northern Mariana descent, to exercise an option agreement on

land owned by defendant, and pay the purchase price of the land so that the plaintiff does not take fee title but, in turn, executes a long term lease to those persons, the transaction does not violate the CNMI constitutional provision restricting permanent and long term interests in land to persons of Northern Mariana descent. CNMI Const., Art. XII, §1. *Aldan-Pierce v. Mafnas*, 2 CR 855, *aff'd*, 3 CR 326 (DNMI App. Div. 1988)

CTC 1985. NMI Constitutional restriction on the alienation of land based on the traditions, the cultures, the importance of the ownership of land and the potential for exploitation 'by more powerful economic sources can withstand scrutiny under the equal protection provisions of the Fourteenth Amendment and the restriction is a fair and reasonable result of the direction and authority of the U.S. Congress U.S. Const. in Art. IV, §3; U.S. Const., Amend. 14; NMI Const., Art. 1, §6. *Wabol v. Muna*, 2 CR 231, *rev'd* in part, 2 CR 963.

Legislature

—Generally

The legislature cannot pass a law that conflicts with any provision of the Commonwealth Constitution. *Dep't of Publ. Lands v. Commonwealth*, 2010 MP 14 ¶ 15 (2010).

When the constitution defines the functions of a constitutional entity—for example the Public Land Trust—the legislature cannot transfer the functions of that entity to another governmental body absent a constitutional amendment. *Dep't of Publ. Lands v. Commonwealth*, 2010 MP 14 ¶ 15 (2010).

The legislature cannot exceed its constitutional authority; it cannot pass a law that conflicts with the Commonwealth Constitution, and it cannot delegate the functions of a constitutional entity to another governmental body. *Dep't of Publ. Lands v. Commonwealth*, 2010 MP 14 ¶ 24 (2010).

While the legislature has the power under Article III § 15 to create and to define the functions of executive branch departments, it cannot do so in a way that conflicts with another constitutional entity's functions. *Dep't of Publ. Lands v. Commonwealth*, 2010 MP 14 ¶ 28 (2010).

DC NMI 1987. A CNMI House Special Committee has the power to issue a subpoena. NMI Const., Article 11, §14(b). *Millard v. Fifth NMI Legislature House of Representative*, 2 CR 1142.

DC NMI 1987. For the legislature to invoke its constitutional subpoena power, it is enough that the Legislature assert a legislative need to compel the attendance of a witness before one of its committees. *Millard v. Fifth NMI Legislature House of Representative*, 2 CR 1142.

—Legislative Budget Ceiling

DC App. Div. 1987. In light of the fact that, NMI Constitutional Amendment placing a ceiling on the budget of the legislature was a restriction on legislative authority, combined with the fact that it was approved by the electorate who were left to define those words for themselves, the trial court's determination that the term "operations and activities: in the amendment included legislators' salaries is not unreasonable under the circumstances and it shall be affirmed. *Pangelinan v. CNMI*, 2 CR 1148.

CTC 1987. In adopting Amendment 9 the people of the Commonwealth mandated that the legislative budget should be divided equally between the House of Representatives and the Senate. NMI Const., Art. 11, §16. *House of Representatives of the CNMI v. Senate of the CNMI*, 3 CR 256.

Local Laws

See **LOCAL LAWS - Generally**

Nature and Effect

—Generally

The Commonwealth Supreme Court shall hear appeals from final judgments and orders of the superior court. The Supreme Court shall have all inherent powers, including the power to issue all writs necessary to the complete exercise of its duties and jurisdiction under the Constitution and laws of the Commonwealth. *Commonwealth v. Repeki*, 2004 MP 8 ¶ 8

The Commonwealth constitution and statutory scheme require at least three justices to hear and determine an appeal. *Commonwealth v. Repeki*, 2004 MP 8 ¶ 8

NMI Constitution is a paramount source of Commonwealth law, guaranteeing basic rights for all

persons, both male and female. NMI courts must be ever watchful when considering the application of common law principles that either on their face or as applied violate such rights. *Ada v. Sablan*, 1 N.M.I. 415 (1990).

—Prospective Application

The presumption is that a constitutional amendment is to be given only prospective application unless the intention to make it retrospective in operation clearly appears from its terms. This presumption of prospective application applies equally to statutes. Generally speaking, changes in statutory laws apply prospectively unless there is a clear manifestation of intent that they should be applied retroactively. *Cody v. NMI Retirement Fund*, 2011 MP 16 ¶ 29 (2011).

There is no indication that the legislature intended section 6 of P.L. 13-60 to apply retroactively to persons who were members of the NMI Retirement Fund prior to the enactment of the law. Section 6 of P.L. 13-60 was intended to apply only prospectively, to persons who became members of the Fund after its enactment date. Section 6 of P.L. 13-60 was not intended to apply retrospectively to persons who were Fund members before its enactment date. *Cody v. NMI Retirement Fund*, 2011 MP 16 ¶ 31 (2011).

The presumption is that a constitutional amendment is to be given only prospective application unless the intention to make it retrospective in operation clearly appears from its terms. This presumption of prospective application applies to statutes as well. Changes in statutory laws and constitutional provisions apply prospectively, unless there is a clear manifestation of intent that they should be applied retroactively. *Torres, et al. v. Commonwealth Utilities Corp.*, 2009 MP 14 ¶ 29 (2011).

The presumption is that a constitutional amendment is to be given only prospective application unless the intention to make it retrospective in operation clearly appears from its terms. *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362 (1990).

Office of the Representative

DC App. Div. 1986. The Office of the Representative to the United States is an independent constitutional office which does not fall neatly within any of the three traditional branches of government; however, it is not a fourth branch of government. *NMI Representative to the U.S., Tenorio v. CNMI*, 2 CR 725.

DC App. Div. 1986. The Legislature has the authority pursuant to the NMI constitution to prescribe the duties of the Representative to the United States; accordingly, its action removing from the Representative control over the liaison offices which it had previously given are constitutional. NMI Constitution, Art. V, §1. *NMI Representative to the U.S., Tenorio v. CNMI*, 2 CR 725.

Official Languages

Article XXII, Section 3 of the Commonwealth Constitution, in designating three official languages in the Commonwealth, gives litigants a constitutional right to speak Chamorro in judicial proceedings. N.M.I. Const. art. XXII, § 3. *Commonwealth v. Deleon Guerrero*, 2003 MP 15 ¶ 1

Native Chamorro-speaking people have a constitutional right to speak Chamorro in court in the Commonwealth. *Commonwealth v. Deleon Guerrero*, 2003 MP 15 ¶ 4

Although a defendant, his attorneys and his witnesses can all speak English well enough to conduct a trial in English, the defendant is allowed to conduct the trial in Chamorro because the Commonwealth Constitution provides that Chamorro is one of three official languages of the C.N.M.I.. This decision is not subject to the discretion of the trial court. *Commonwealth v. Deleon Guerrero*, 2003 MP 15 ¶ 7

The framers of the Commonwealth Constitution did not intend to create an absolute right of individuals to demand that government agencies conduct their official business in all three languages. Instead, the intent was that the agencies could choose one or more of the languages in which to carry out its official functions. However, because the courts have chosen to conduct its court proceedings in all three languages, then an individual may choose to have court proceedings conducted in any of the three languages, provided that they are a native speaker of one of these three languages. *Commonwealth v. Deleon Guerrero*, 2003 MP 15 ¶ 8

In order for a native Chamorro or Carolinian speaker to exercise their right to have court proceedings conducted in Chamorro or Carolinian, they must provide adequate notice in order that an interpreter may be hired. Five days notice is adequate. *Commonwealth v. Deleon Guerrero*, 2003 MP 15 ¶ 11

The N.M.I. Supreme court has jurisdiction, pursuant to N.M.I. Const. art. IV, § 3, over the appeal from an

assault and battery conviction. N.M.I. Const. art. IV, § 3. *Commonwealth v. Deleon Guerrero*, 2003 MP 15 ¶ 3

Plea Agreement

A criminal defendant has no constitutional right to a plea bargain. *Commonwealth v. Camacho*, 2002 MP 21 ¶ 9

Privacy, Right to

—Tax Returns

——Particular Cases

Commonwealth taxpayers seeking to enjoin NMI Director of Finance from disclosing confidential tax documents and related information to Inspector General of U.S. Department of the Interior had right to privacy in returns under N.M.I. Const. art. I, § 10. Since information in returns was property of taxpayers, only taxpayers had right to authorize release of information. *Sablan v. Inos*, 2 N.M.I. 388 (1991)

Public Lands

See also **PUBLIC LAND**

CTC 1987. The Tinian Airport is within the constitutional definition of public lands. NMI Const., Art. XI, §1. *MPLT v. CNMI*, 3 CR 120

Retirement and Pensions

See **RETIREMENT AND PENSIONS - Benefits - Constitutional Questions**

Right of Confrontation

See **CRIMINAL PROCEDURE - Confrontation, Right of**

Right to Privacy

See **Privacy, Right to**, this topic.

Remain Silent, Right To

Fifth amendment doctrine recognizes a general prohibition against prosecutorial comments about a defendant's post-arrest silence. U.S. Const. amend. V. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 76

To inform a person that he has the right to remain silent and then allow an unfavorable inference to be drawn from such silence at trial would be fundamentally unfair and a deprivation of due process. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 77

Search and Seizure

See **CRIMINAL PROCEDURE - Search and Seizure**

Schedule on Transitional Matters

DC NMI 1986. The Schedule on Transitional Matters is an attachment to the Constitution, not a part of the body of the Constitution, and is not subject to amendment by a Constitutional Convention and any attempt by a Constitutional Convention to amend the schedule is null and void. NMI Const., Schedule on Transitional Matters, §8. *Taguchi v. Government NMI*, 2 CR 518

Speedy Trial, Right to

The prohibition in our criminal justice system against unnecessary delay is designed to protect against undue and oppressive incarceration prior to trial; to minimize anxiety and concern accompanying public accusation; and to protect the ability of an accused to defend himself. *Commonwealth v. Palacios*, 2003 MP 6 ¶ 19

Standing

—Political Subdivision

CTC 1987. The Commonwealth Ports Authority, as a political subdivision of the Commonwealth Government, does not have standing to claim that a portion of the Commonwealth Constitution is not applicable to it based on an asserted deprivation of consititutional rights because the Constitution applies to the political subdivision. NMI Const., Art. XI. *MPLT v. CNMI*, 3 CR 120.

Trusteeship

CTC 1984. When the Commonwealth Consititution became effective upon the Proclamation of the President of the United States, all substantive and meaningful relationships between the Commonwealth and the rest of the Trust Territory ceased. *CNMI v. Nabors*, 2 CR 277, *aff'd*, sub nom. *CNMI v. Bordallo*, 3 CR 805 (DNMI App. Div. 1989).

Taxpayer Suits

See **TAXES - Taxpayer Actions**

CONSTITUTIONAL LAW

Civil Rights Enforcement Actions

—Generally

Federal statute authorizing private civil rights enforcement actions against persons allegedly violating such rights applies to the Commonwealth as it is applicable to the several states. Covenant § 502(a)(2); 42 U.S.C. § 1983. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

When properly invoked, defenses such as absolute immunity from suit under federal statute authorizing private civil rights enforcement actions against persons allegedly violating such rights defeat an action at the outset. A court need not proceed further; it should not pass upon a constitutional question, although properly presented by the record, if there is also present some other ground upon which the case may be disposed of. 42 U.S.C. § 1983. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

Federal law requires that a litigant complaining of a violation of a constitutional right utilize federal statute authorizing private civil rights enforcement actions. 42 U.S.C. § 1983. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

Federal statute authorizing private civil rights enforcement actions is not a source of substantive rights, but rather provides a means of vindicating federal rights conferred by provisions of the U.S. Constitution. Statute provides a substitute remedy which is equally effective to a direct cause of action under the U.S. Constitution. 42 U.S.C. § 1983. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

—Government Officials

Commonwealth officers can be sued in their official capacity for injunctive relief under federal statute authorizing private civil rights enforcement actions against persons allegedly violating such rights. 42 U.S.C. § 1983. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

When sued in his official capacity for injunctive relief, the Governor is a "person" within meaning of federal statute authorizing private civil rights enforcement actions against persons allegedly violating such rights, and is subject to suit brought under statute. 42 U.S.C. § 1983. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

A state official sued for injunctive relief in his or her official capacity under federal statute authorizing private civil rights enforcement actions against persons allegedly violating such rights normally may not claim absolute immunity for his or her official action. Officials asserting such immunity must show that the immunity is justified for the governmental function at issue. 42 U.S.C. § 1983. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

To determine whether particular task performed by public official is legislative, executive or judicial for purposes of extending immunity from suit for injunctive relief under federal statute authorizing private civil rights enforcement actions against persons allegedly violating such rights, the function performed by the defendant official, and not his or her title, is determinative. 42 U.S.C. § 1983. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

Public officials engaged in legislative activity have absolute immunity from suit for injunctive relief under federal statute authorizing private civil rights enforcement actions against persons allegedly violating such rights. Absolute immunity is justifiable to insure that legislative function may be performed independently, without fear of outside interference. To preserve legislative independence, legislators engaged in the sphere of legitimate legislative activity should be protected not only from consequences of litigation's results but also from burden of defending themselves. 42 U.S.C. § 1983. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

——Particular Cases

Where there was neither a compelling nor a rational basis for separating challenged voters into two classes; the Board of Elections had had specific notice of its duty to revise voter challenge procedures; the Board of Elections used a process for disqualifying challenged voters that disqualified voters using procedures that had not been published, had not been subject to public comment, were clearly inadequate, and were not informed by legal research or analysis and conducted hearings at which it was evident registered voters were being challenged on the basis of woefully inadequate evidence, members of the Board of Elections violated voters' clearly established rights to Equal Protection, could not be said to have acted in reasonable fashion viewed from

an objective standpoint, and were not entitled to qualified immunity. *Charfauros v. Board of Elections*, 1998 MP 16 ¶58

NMI Governor enjoyed absolute immunity from NMI Senator's civil rights action for injunctive relief based on alleged unconstitutionality of apportionment of NMI Senate because suit sought to compel Governor to perform legislative tasks—constitutionally-delegated function of developing and submitting legislative redistricting and reapportionment plan, and enactment of legislation calling special election to elect new Senators. N.M.I. Const. art. II, § 4(b); 42 U.S.C. § 1983. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

—Limitations

In action brought under federal statute authorizing private civil rights enforcement suits against persons allegedly violating such rights, where complaint itself establishes legislative immunity, action should be dismissed under Com. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. 42 U.S.C. § 1983. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

The Commonwealth is not a "person" within meaning of federal statute authorizing private civil rights enforcement actions against persons allegedly violating such rights. Rule bars suits for injunctive and monetary relief brought under statute. 42 U.S.C. § 1983. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

Rule that Commonwealth is not a "person" within meaning of federal statute authorizing private civil rights enforcement actions against persons allegedly violating such rights bars suits brought under statute for monetary relief against Commonwealth officers acting in their official (not personal) capacity. 42 U.S.C. § 1983. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

Under rule that Commonwealth is not a "person" within meaning of federal statute authorizing private civil rights enforcement actions against persons allegedly violating such rights, "Commonwealth" means Commonwealth government as a whole and governmental entities that would be considered arms of the Commonwealth for purposes of immunity under U.S. Const. amend. XI. 42 U.S.C. § 1983. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

The Commonwealth Legislature is an arm of the Commonwealth government, and therefore not a "person" within meaning of federal statute authorizing private civil rights enforcement actions against persons allegedly violating such rights. Legislature is immune from suits for injunctive and monetary relief brought under statute. 42 U.S.C. § 1983. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

Confrontation, Right of

See **CRIMINAL PROCEDURE - Confrontation, Right of**

Criminal Procedure

See generally **CRIMINAL PROCEDURE**

Cruel and Unusual Punishment

See **CRIMINAL PROCEDURE - Punishment, Cruel and Unusual**

Construction of Constitution

CTC 1987. Constitutional interpretation is the responsibility of the court. *House of Representatives of the CNMI v. Senate of the CNMI*, 3 CR 256.

DC App. Div. 1987. Any presumption created by law in favor of the legislative interpretation of a constitutional provision is rebuttable at best, and this is particularly so where provision is tied directly to the legislators' pocketbook. *Pangelinan v. CNMI*, 2 CR 1148.

DC App. Div. 1987. The judiciary is the ultimate interpreter of the Constitution. *Pangelinan v. CNMI*, 2 CR 1148.

DC App. Div. 1987. The general principles which apply to statutory construction are equally applicable in cases of constitutional construction. *Pangelinan v. CNMI*, 2 CR 1148.

DC App. Div. 1987. In interpreting the language of a constitutional provision, the Court applies the plain and commonly understood meaning of the words, unless there is evidence that a contrary meaning was intended. *Pangelinan v. CNMI*, 2 CR 1148.

DC App. Div. 1987. When applying the plain meaning of the words used in a constitutional amendment the Court gives effect to the words a they were understood by the electorate which adopted the amendment. *Pangelinan v. CNMI*, 2 CR 1148.

Double Jeopardy

See **CRIMINAL PROCEDURE - Double Jeopardy**

Because the double jeopardy clause of the N.M.I. constitution is patterned after the double jeopardy clause in the United States Constitution, it is appropriate to resort to federal case law to ensure that the C.N.M.I. interpretation of Article I, Section 4(e) provides at least the same protection granted under the federal Constitution. N.M.I. Const. art. I, § 4(e). *Commonwealth v. Camacho*, 2002 MP 6 ¶ 47

A juvenile is put in jeopardy within the meaning of the Fifth Amendment to the United States Constitution if he is subjected to a proceeding that may result in an adjudication that he has committed criminal acts, and that may put his liberty and reputation at risk. U.S. Const. amend. V. *In re J.J.C.*, 2000 MP 8 ¶ 33

Jeopardy attaches if the minor is exposed to the risk of adjudication of the underlying criminal offense during a transfer hearing, even though the court does not actually adjudicate the underlying crime. *In re J.J.C.*, 2000 MP 8 ¶ 33

The use of the term "offender" by the relevant statute or the juvenile court's use of the words, "in light of the crime that was committed" during a transfer hearing cannot be said to have exposed a juvenile to the risk of adjudication or have resulted in an actual adjudication that the juvenile committed the underlying crime. *In re J.J.C.*, 2000 MP 8 ¶ 35

As long as the transfer hearing does not involve the risk of an adjudication of guilt, the juvenile court is not prohibited from conducting such a hearing, even if substantial evidence that the juvenile committed the alleged offense is a prerequisite to the transfer. *In re J.J.C.*, 2000 MP 8 ¶ 36

Unless the risk of adjudication was present or an actual adjudication was made by the juvenile court during the transfer hearing, double jeopardy does not attach. *In re J.J.C.*, 2000 MP 8 ¶ 37

A settled principle of double jeopardy provides that the commissions of a substantive offense and a conspiracy to commit the offense are separate and distinct crimes to which double jeopardy is not a defense. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 46

Due Process

—Administrative Agency Decisions

See **ADMINISTRATIVE LAW - Agency Action - Due Process, Generally**

——Generally

Right to due process of law under the Fifth and Fourteenth Amendments to the United States Constitution is applicable in the Commonwealth pursuant to Covenant § 501. Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America § 501. *Office of the Attorney General v. Honrado*, 1996 MP 15 ¶15

Due process protections of Art. I, § 5 of the Commonwealth Constitution are coextensive with the due process protections of the Fifth and Fourteenth Amendments to the U.S. Constitution. *Office of the Attorney General v. Honrado*, 1996 MP 15 ¶15

——Particular Cases

Petitioner's due process rights were not violated by denial of motion to substitute counsel where requested counsel had conflicts of interest, petitioner had adequate notice and opportunity to be heard in respect to the motion to substitute counsel, petitioner filed the motion to substitute and requested that the matter be heard on shortened time, petitioner was personally present and represented by counsel at the hearing for the motion, and Superior Court considered declarations filed by petitioner after deadline for their submission. Petitioner had right to counsel, but not to conflicted counsel. *Feliciano v. Superior Court (In re Estate of Hillblom)*, 1999 MP 3 ¶35

——Right to Counsel in Deportation Proceedings

Right to counsel in deportation hearings flows independently from the Fifth and Fourteenth Amendments, as well as from the statute and regulations. *Office of the Attorney General v. Honrado*, 1996 MP 15 ¶17

Due Process Clauses of the Fifth and Fourteenth Amendments and Art. I, § 5 of the Commonwealth Constitution require an inquiry on the record as to whether an alien appearing pro se understands and wishes to waive his or her right to counsel in a deportation proceeding. *Office of the Attorney General v. Honrado*, 1996 MP 15 ¶20

Failure of an administrative judge to obtain a waiver at deportation hearings requires vacation of a

deportation order even without a showing of prejudice. *Office of the Attorney General v. Honrado*, 1996 MP 15 ¶22

—Admission to Legal Profession

See **ATTORNEY AND CLIENT - Admission to Practice - Constitutional Questions**

—Attorney Disciplinary Proceedings

See **ATTORNEY AND CLIENT - Disciplinary Actions - Constitutional Questions**

—Civil Commitment

CTC 1988. Due process in connection with the involuntary civil commitment of persons requires that the person sought to be committed receive at minimum the following procedural safeguards: (a) adequate prior notice; (b) prior hearing before a neutral judicial officer; (c) the right to effective assistance of counsel; (d) the right to be present at the hearing; (e) the right to cross-examine witnesses and to offer evidence; (f) adherence to the rules of evidence applicable in criminal cases; (g) the right to assert the privilege against self-incrimination; (h) proof beyond a reasonable doubt; (i) a consideration of less restrictive alternatives; (j) a record of the proceedings and written findings of fact; (k) appellate review; and (1) periodic examination of the basis for confinement. *In re the Matter Duncan*, 3 CR 383.

CTC 1988. Where civil commitment statute is construed as requiring sufficient notice to the person sought to be committed so that reasonable opportunity to prepare will be afforded, statute does not violate due process guarantees. 3 CMC §2512. *In re the Matter Duncan*, 3 CR 383.

CTC 1988. The right to effective assistance of counsel is a well-established element of due process in civil commitment proceedings and an individual sought to be involuntarily committed must be informed of his right to counsel, counsel must be appointed if the individual cannot afford counsel, and that counsel must be made available far enough in advance of the hearing to provide adequate opportunity for preparation. *In re the Matter Duncan*, 3 CR 383.

CTC 1988. In the context of civil commitment hearings, the term "hearing" in commitment statute means a constitutionally sufficient hearing complete with the right to effective counsel and includes the right of the person sought to be committed to be present unless the individual's behavior at the hearing makes it impossible to conduct the hearing in a reasonable manner. 3 CMC §§92512,2513. *In re the Matter Duncan*, 3 CR 383

CTC 1988. Any constitutionally sufficient hearing mandates that the court adhere to the rules of evidence. *In re the Matter Duncan*, 3 CR 383.

CTC 1988. In the context of civil commitment, the privilege against self-incrimination means that the state may not commit an individual on the basis of statements to examining psychiatrists in the absence of a showing that the statements were made voluntarily after the individual was informed of and understood the purpose of the examination and that he was not obliged to speak. Psychiatrists may talk to patient for purpose of treatment. *In re the Matter Duncan*, 3 CR 383.

CTC 1988. A constitutionally sufficient hearing, as required by statute, includes the right to assert the privilege against self incrimination. 3 CMC $251 1 et seq. *In re the Matter Duncan*, 3 CR 383.

CTC 1988. The state cannot involuntarily commit a person solely upon a finding that he or she is mentally ill or insane. *In re the Matter Duncan*, 3 CR 383.

CTC 1988. To involuntarily commit a person for mental illness, due process considerations mandate that the proof show either (1) dangerousness to self or (2) dangerousness to others. *In re the Matter Duncan*, 3 CR 383.

CTC 1988. In order to insure a constitutionally sufficient hearing in all civil commitment cases, the court shall make written findings of fact pursuant to all civil commitment orders. *In re the Matter Duncan*, 3 CR 383.

CTC 1988. Commitment for periods longer than 30 days necessitate periodic redeterminations as to the committed individual's condition. *In re the Matter Duncan*, 3 CR 383.

CTC 1988. Constitutionality of statute for involuntary commitment of mentally ill persons upheld, where court construed statute to require adherence to constitutional standards. 3 CMC §2511 et seq. *In re the Matter Duncan*, 3 CR 383

—Confrontation, Right of

See **CRIMINAL PROCEDURE - Confrontation, Right of**

—Criminal Prosecution

See generally **CRIMINAL PROCEDURE**

—Deprivation Without Compensation

See **REAL PROPERTY - Taking Without Compensation**

—Determination of Ownership

See **DEEDS AND CONVEYANCES - Determination of Ownership - Notice, Lack of**

—Election Contests

See **ELECTIONS - Contests - Initiation**

—Evidence, Withholding of

See **CRIMINAL PROCEDURE - Discovery - Prosecution's Duty to Disclose Evidence**

—Generally

A citizen's interest in personal liberty is perhaps the most fundamental interest protected by the Constitution of the United States. Consequently, when one's liberty is at stake, the United States Supreme Court holds that the need for the assistance of counsel is beyond question in criminal proceedings. U.S. Const. amend. XIV, § 1. *Pac. Fin. Corp. v. Muna*, 2008 MP 21 ¶ 13 (2008).

A defendant has a constitutional right to a reliable and clear-cut determination of the voluntariness of the confession. Voluntariness hearings are designed to safeguard the right of an individual, entirely apart from his guilt or innocence, not to be compelled to condemn himself by his own utterances. Voluntariness hearings ensure that both the underlying factual issues and the voluntariness of the defendant's confession are fairly determined. If the trial judge finds the confession involuntary, it may be suppressed. *Commonwealth v. Mettao*, 2008 MP 7 ¶ 10 (2008).

The fruit of the poisonous tree doctrine requires courts to suppress evidence as the tainted "fruit" of unlawful governmental conduct. The United States Supreme Court held that the exclusionary rule applies not only to the illegally obtained evidence itself, but also to other incriminating evidence derived from the primary evidence, including evidence that is the indirect product or fruit of unlawful police conduct. The core rationale consistently advanced for extending the exclusionary rule to evidence that is the fruit of unlawful police conduct has been that this admittedly drastic and socially costly course is needed to deter police from violations of constitutional and statutory protections. *Commonwealth v. Mettao*, 2008 MP 7 ¶ 28 (2008).

The "fruit of the poisonous tree" doctrine is not without exceptions. One such exception is the inevitable discovery rule, which allows for the admission of tainted evidence when the prosecution can show by a preponderance of the evidence that its discovery by lawful means was inevitable. The purpose of the inevitable discovery rule is to block setting aside convictions that would have been obtained without police misconduct. *Commonwealth v. Mettao*, 2008 MP 7 ¶ 29 (2008).

Under the Due Process Clauses of the United States and Commonwealth Constitutions, a trial court must ensure that a defendant's guilty plea is entered knowingly, voluntarily, and intelligently. A voluntary and intelligent plea is necessary because a defendant waives a number of constitutional rights when pleading guilty. In order for a guilty plea to be voluntary and intelligent, the defendant must be aware of the range of allowable punishment that will result from the plea. Trial courts are obligated to advise defendants of the consequences of their pleas. *Commonwealth v. Jindawong*, 2008 MP 3 ¶ 6 (2008).

Constitutional guarantees governing revocation of supervised release are identical to those applicable to revocation of parole or probation. *Commonwealth v. Daikichy*, 2007 MP 27 ¶ 6 (2007).

Under the United States Constitution, a probationer is entitled to certain procedural safeguards in a probation revocation proceeding, including written notice of the alleged probation violations, but the due process accorded in a revocation proceeding is flexible, informal, and does not require the full panoply of procedural protections of a criminal trial. We hold that when a probationer is accused of violating any term of probation, he is entitled to reasonable notice of the alleged violation. That is, when a revocation petition alleges the commission of a new crime and the offense being charged is not evident from the condition of probation being violated, a defendant is entitled to receive notice of the specific statute he is charged with violating. *Commonwealth v. Daikichy*, 2007 MP 27 ¶ 7 (2007).

Under the Sixth Amendment to the United States Constitution, a defendant has the right to procure the attendance of witnesses to have compulsory process for obtaining witnesses in his favor. A defendant also has the right to fundamental fairness embodied in the due process clause of the Fifth Amendment to the United States Constitution. *Commonwealth v. Shoiter,* 2007 MP 20 ¶ 17

A defendant's constitutional rights are not violated by the denial of a witness unless the potential witness provides relevant and material testimony for the defense. *Commonwealth v. Shoiter,* 2007 MP 20 ¶ 18

Double jeopardy and collateral estoppel are related yet analytically distinct, and it is important to note the distinction between the two. Double jeopardy prohibits the reprosecution of the same offense while collateral estoppel deals with the relitigation of the same factual issue. *Commonwealth v. Crisostomo,* 2007 MP 7 ¶ 13

The CNMI double jeopardy clause is patterned after the Double Jeopardy Clause of the U.S. Constitution. The Double Jeopardy Clause of the United States Constitution applies to the Commonwealth. In our analysis of cases involving double jeopardy issues, we resort to federal case law which interprets the U.S. Constitution's Double Jeopardy Clause to ensure that our interpretation of the Commonwealth Constitution's double jeopardy provision provides at least the same protection granted defendants under the federal Double Jeopardy Clause. *Commonwealth v. Crisostomo,* 2007 MP 7 ¶ 13

The triers of fact in a Commonwealth dual trial (jury and judge) are not bound to each other in that the bench trial does not have to mirror the jury's decision. *Commonwealth v. Crisostomo,* 2007 MP 7 ¶ 14

The United States Supreme Court held that collateral estoppel is provided under the Fifth Amendment's prohibition against double jeopardy. *Commonwealth v. Crisostomo,* 2007 MP 7 ¶ 14

The traditional concern of the collateral estoppel doctrine is not with the outcome of a decisional race between different triers, but with the need to protect a party from the rigors of twice litigating the same issue. *Commonwealth v. Crisostomo,* 2007 MP 7 ¶ 16

The CNMI double jeopardy clause is patterned after the double jeopardy clause of the United States Constitution, which is applicable to the Commonwealth. We thus resort to federal case law which interprets the United States Constitution's double jeopardy clause to ensure that our interpretation of the CNMI Constitution's double jeopardy clause provides at least the same protection granted defendants under the federal double jeopardy clause. *Commonwealth v. Milliondaga,* 2007 MP 6 ¶ 4

The federal double jeopardy clause is construed to protect a person against: (1) a second prosecution for the same offense after acquittal; (2) a second prosecution for the same offense after conviction; and (3) multiple punishments for the same offense. *Commonwealth v. Milliondaga,* 2007 MP 6 ¶ 5

Where the probate court failed to recognize and exercise its jurisdiction over an entire land compensation award, the court abrogated its duties under probate rules, which in turn was a denial of due process. *Malite v. Tudela,* 2007 MP 3 ¶ 25

The probate court's refusal to permit heirs to be heard on the reasonableness of attorneys' fees amounted to a denial of the heirs' due process rights. *Malite v. Tudela,* 2007 MP 3 ¶ 31

One of the most basic requirements of procedural due process is the right to be heard before one is deprived of life, liberty, or property. *Malite v. Tudela,* 2007 MP 3 ¶ 32

Standing in a probate matter is a necessary prerequisite to enjoying due process rights in a probate proceeding. *Malite v. Tudela,* 2007 MP 3 ¶ 32

Although the Probate Law and Procedure found in Division 2 of Title 8 and the Rules of Probate Procedure do not specifically require a hearing or notice to heirs or interested parties prior to the entry of such an order, it is axiomatic that the heirs or interested parties must be notified of the motion seeking the order and given an opportunity to be heard. *Malite v. Tudela,* 2007 MP 3 ¶ 36

To show that the constitutional right to a fair trial was violated, a defendant must show either actual or presumed prejudice. Prejudice may be presumed if the record demonstrates that the community where the trial was held was saturated with prejudicial and inflammatory media publicity. Actual prejudice must be demonstrated by showing that jurors exhibited actual partiality or hostility that could not be laid aside. *Guerrero v. Tinian Dynasty Hotel,* 2006 MP 26 ¶ 14

The Sixth Amendment deals exclusively with criminal prosecutions and therefore is not implicated in a personal injury claim. However, a fair trial is clearly required in civil as well as criminal proceedings, and one touchstone of a fair trial is an impartial trier of fact. *Guerrero v. Tinian Dynasty Hotel,* 2006 MP 26 ¶ 16

Federal courts have found an impartial jury requirement in civil cases to be implicit in the Fifth Amendment's due process protections and in the Seventh Amendment's right to trial by jury in civil cases. *Guerrero v. Tinian Dynasty Hotel,* 2006 MP 26 ¶ 17

In determining what comprises an impartial jury, we look to cases addressing the question under federal law. In this vein, Sixth Amendment analysis is helpful. *Guerrero v. Tinian Dynasty Hotel,* 2006 MP 26 ¶ 18

The Sixth Amendment requires that a defendant be tried by a jury which represents a fair cross-section of the community. *Guerrero v. Tinian Dynasty Hotel,* 2006 MP 26 ¶ 19

To establish a prima facie violation of the right to a fair cross-section, a defendant must show: (1) that the group alleged to be excluded is a distinctive group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this under representation is due to systematic exclusion of the group in the jury-selection process. *Guerrero v. Tinian Dynasty Hotel,* 2006 MP 26 ¶ 19

A violation of the fair cross-section requirement cannot be premised upon proof of under-representation in a single jury. While juries must be drawn from a source fairly representative of the community, the composition of each jury need not mirror that of the community. Unless there is a showing that the fair cross-section requirement of the Sixth Amendment was violated, a mere failure to follow technical requirements of a state law prescribing methods to be used in jury selection does not result in a constitutional violation. *Guerrero v. Tinian Dynasty Hotel,* 2006 MP 26 ¶ 19

A jury is not required under the Seventh Amendment for equitable claims which are restitutionary in nature. *Matsunaga v. Matsunaga,* 2006 MP 25 ¶ 46

48 U.S.C. § 1801 (authorizing the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America) provides that the Sixth Amendment to the United States Constitution applies in the Commonwealth. *Commonwealth v. Perez,* 2006 MP 24 ¶ 11

The Sixth Amendment affords defendants the assistance of counsel. The right to counsel is the right to the effective assistance of counsel, and the right to effective assistance of counsel includes the right to expert testimony if the testimony is the gravamen of the defense. *Commonwealth v. Perez,* 2006 MP 24 ¶ 11

Under the due process clause of the Fourteenth Amendment, in a prosecution against an indigent defendant the state must take steps to assure that the defendant has a fair opportunity to present his defense. *Commonwealth v. Perez,* 2006 MP 24 ¶ 12
Due process requires that an indigent defendant be provided with effective assistance of counsel. Effective assistance of counsel includes furnishing the indigent defendant's counsel with all the basic tools of an adequate defense. *Commonwealth v. Perez,* 2006 MP 24 ¶ 12

A state-funded psychiatric expert is a basic tool for a defendant's case. The right to a psychiatric expert has been expanded to private investigators, mitigation experts, and other types of experts. *Commonwealth v. Perez,* 2006 MP 24 ¶ 12

In determining whether to appoint an expert, courts have sought to balance the defendant's rights against those of the taxpayers. *Commonwealth v. Perez,* 2006 MP 24 ¶ 12

The United States Supreme Court has not specifically stated what threshold showing must be made by the indigent defendant with regard to the need for an expert, but the Court refused to require the state to pay for certain experts when the indigent defendant offered little more than undeveloped assertions that the requested assistance would be beneficial. *Commonwealth v. Perez,* 2006 MP 24 ¶ 13

For the court to grant an indigent defendant the services of an expert at the expense of the state, he must establish a reasonable probability that: (1) an expert would be of assistance to the defense; and (2) the denial of expert assistance would result in a fundamentally unfair trial. *Commonwealth v. Perez,* 2006 MP 24 ¶ 14

An affidavit supporting the request for a government-funded expert stating that there were "legal issues as to whether the alleged striking was unlawful in the context of special education instruction and whether the alleged striking was reasonable corporal punishment" generally will not qualify under this court's rule. In this rare instance, however, it does because of the different standards of behavior required of the defendant. *Commonwealth v. Perez*, 2006 MP 24 ¶ 15

Many courts have held that due process does not require the government to provide expert assistance to an indigent defendant in the absence of a particularized showing of need. *Commonwealth v. Perez*, 2006 MP 24 ¶ 24

The trial court need not honor any and all requests by indigent defendants in a fishing expedition with the remote hope of uncovering some justification for reasonable doubt. To ensure a hearing, a defendant should precisely explain how the expert testimony would aid her defense and how, exactly, she would be harmed by the denial of the request. Finally, she should request a hearing on the matter. *Commonwealth v. Perez*, 2006 MP 24 ¶ 25

To argue a violation of due process for purposes of Rule 60(b)(4), there must be a demonstration that the trial court acted in a manner inconsistent with due process of law. *Tenorio Enterprises, Inc. v. Uddin*, 2006 MP 22 ¶ 16

Article I § 5 of the CNMI Constitution provides due process protection in the Commonwealth much like the Fourteenth Amendment of the United States. *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶ 32

To satisfy due process requirements in criminal matters, a guilty plea must be voluntary and intelligent. *Commonwealth v. Chen*, 2006 MP 14 ¶ 7

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Sullivan v. Tarope*, 2006 MP 11 ¶ 28

Pursuant to the Fourteenth Amendment of the U.S. Constitution, any judgment purporting to bind a defendant over whom the court had not acquired in personam jurisdiction is void within the State as well as without. *Sullivan v. Tarope*, 2006 MP 11 ¶ 29

A claim of insufficiency of the evidence raises a federal due process question, but where a conviction is supported by sufficient evidence, due process is satisfied. *Commonwealth v. Jong Hun Lee*, 2005 MP 19 ¶ 20

There was no violation of a due process right under the U.S. and N.M.I. Constitutions by the trial court, where the trial court made no substantive finding which deprived any party of any property right. *In re Fleming*, 2005 MP 13 ¶ 9

The confrontation clause of the Sixth Amendment to the United States Constitution, as made applicable to the states by the Fourteenth Amendment, is violated where the out-of-court hearsay statement by a codefendant, implicating the defendant, is admitted into evidence without the declarant being available at trial for full and effective cross-examination by the defendant. A major reason underlying the constitutional confrontation rule is to give a defendant charged with a crime an opportunity to cross-examine the witnesses against him. U.S. Const. amend. VI; U.S. Const. amend. XIV. *Commonwealth v. Attao*, 2005 MP 8 ¶ 22

Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also the severity of the penalty that a State may impose. To the extent an award is grossly excessive, it furthers no legitimate purpose and constitutes an arbitrary deprivation of property. *Santos v. STS Enters., Inc*., 2005 MP 4 ¶ 28

The United States Supreme Court has not established a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable ratio specific to punitive damages awards. Instead, it focused on a general concern for the reasonableness of the award. *Santos v. STS Enters., Inc*., 2005 MP 4 ¶ 33

Because courts lack the power of eminent domain, the Court is incapable of "taking" property as that term is defined in constitutional law. *In re Estate of Roberto*, 2004 MP 7 ¶ 7

To constitute a violation of a defendant's right to due process under the Fourteenth Amendment to the United States Constitution, prosecutorial misconduct must be of sufficient significance to result in the denial of the defendant's right to a fair trial. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 104

In order to prevail on a claim that numerous improper remarks and comments during closing argument so infected the trial with unfairness as to make the resulting conviction a denial of due process, a defendant would have to show that the errors were deliberate and especially egregious or combined with a true pattern of misconduct. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 106

The immediate constitutional obligation of the State and its representatives upon discovery of a letter in a defendant's cell, which indicated the strong possibility that the witnesses in the case agreed to testify falsely against a co-defendant in order to extract the writer of the letter from the center of blame, was to collect potentially exculpatory evidence, to prevent fraud upon the court, and to elicit the truth by promptly investigating the letter and interrogating the State's witnesses about the letter. *Commonwealth v. Reyes*, 2001 MP 14 ¶ 8

The use of an uninvestigated letter provided by the prosecution, by a co-defendant at a joint trial was a fatal due process error committed by the prosecution, which fatally contaminated everything that followed. *Commonwealth v. Reyes*, 2001 MP 14 ¶ 10

Due process requires the rights to counsel, to adequate notice and to a statement of reasons at a hearing to determine whether a juvenile is to be tried as an adult. *In re J.J.C.*, 2000 MP 8 ¶ 14

Four basic safeguards must be present during a waiver hearing in order to satisfy the requirements of due process. A hearing must be held on the question of waiver. The juvenile is entitled to be represented by counsel at such hearing. The juvenile's attorney must be given access to the juvenile's social records on request. And, the juvenile is entitled to a statement of reasons in support of the waiver order. *In re J.J.C.*, 2000 MP 8 ¶ 15

Where the juvenile court held a hearing to determine whether a juvenile criminal defendant should be certified to be tried as an adult, the juvenile was represented by counsel at the hearing, who had access to the juvenile's social records, and the juvenile court stated its reasons for waiving jurisdiction on the record, which included the nature of the crime committed, the juvenile's age and appearance and his independent lifestyle, then the minimum requirements of due process and fair treatment were met. *In re J.J.C.*, 2000 MP 8 ¶ 16

In the Ninth Circuit, a two-prong test is applied to determine if pre-indictment delay has violated a defendant's due process rights. First, the defendant must show that the delay caused him to suffer actual, non-speculative prejudice. A showing of actual prejudice is a prerequisite to the second prong even being considered. Second, the defendant must demonstrate that the delay, when balanced against the prosecution's reasons for it, offends those fundamental conceptions of justice which lie at the base of our civil and political institutions. *In re J.J.C.*, 2000 MP 8 ¶ 22

While pre-indictment delay may result in the violation of a juvenile defendant's due process rights, a post-indictment delay of five months by the Government before seeking certification results in no such due process violation. *In re J.J.C.*, 2000 MP 8 ¶ 23

Due process provision of NMI Constitution affords the same protection as Due Process Clause of U.S. Constitution. N.M.I. Const. art. I, § 5; U.S. Const. Fourteenth Amendment. *Office of the Attorney General v. Rivera*, 3 N.M.I. 436 (1993).

The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution prohibits a state from depriving a person of life, liberty or property without due process of law. *Commonwealth v. Bergonia*, 3 N.M.I. 22 (1992).

Fourteenth Amendment to the U.S. Constitution has been made applicable to the Commonwealth pursuant to Covenant § 501(a). *In re "C.T.M.,"* 1 N.M.I. 410 (1990).

Due Process Clause of the Fourteenth Amendment to the U.S. Constitution prohibits a state from depriving any person of life, liberty or property without due process of law. *In re "C.T.M.,"* 1 N.M.I. 410 (1990).

DC App. Div. 1987. The fourteenth amendment is applicable to the Northern Mariana Islands. Covenant, §501(a); Joint Resolution of March 24, 1976, PubL. No. 94-241, Stat. 263. *Wabol v. Muna*, 2 CR 957.

DC App. Div. 1984. In reviewing legislation under the due process clause, the court will not second-guess policy choices or sit as a super-legislature to weigh the wisdom of legislation but rather the court's review is at an end when it finds that the policy choices are supported by a reasonable basis on which the legislature actually relied. *Sirilan v. Castro*, 1 CR 1082.

DC App. Div. 1983. The guarantee against the deprivation of life or liberty without due process of law is one of the fundamental constitutional rights which inherently apply in unincorporated territories. U.S. Const., Amend. XIV. *CNMI v. Atalig*, 1 CR 552, *rev'd*, 723 F.2d 682 (9th Cir. 1984).

DC NMI 1986. The due process clause has essentially two components, one "procedural" and one "substantive". *Pangelinan v. Castro*, 2 CR 429, *aff'd*, sub norn. *DeMesa v. Castro*, 844 F.2d 642 (9th Cir. 1988).

DC NMI 1985. When addressing claims of unconstitutional deprivations of property or liberty interests, federal courts follow a two-step analysis: (1) does the claimant possess a constitutionally protected interest (2) of which he or she was deprived in a manner not comporting with due process? U.S. Const., Amend. XIV. *Fleming v. Department of Public Safety*, 2 CR 308, *aff'd* in part and *rev'd* in part, 837 F. 2d 401 (9th Cir. 1988).

DC NMI 1985. The federal courts have consistently recognized that the freedom to pursue a desired vocation is commanding of a measure of constitutional protection. *Fleming v. Department of Public Safety*, 2 CR 308, *aff'd* in part and *rev'd* in part, 837 F.2d 401 (9th Cir. 1988).

DC NMI 1985. The guarantee of due process has two components, one "procedural" and the other "substantive". The procedural component provides that when a person is deprived of a liberty or property interest, he or she is entitled to notice and a hearing. The substantive element protects persons from government action which is arbitrary or capricious. U.S. Const., Amend. XIV. *Fleming v. Department of Public Safety*, 2 CR 308, *aff'd* in part and *rev'd* in part, 837 F.2d 401 (9th Cir. 1988).

DC NMI 1985. Constitutional due process guarantees that no person will be arbitrarily deprived by the government of his liberty to engage in any occupation. U.S. Const., Amend. XIV. *Fleming v. Department of Public Safety*, 2 CR 308, *aff'd* in part and *rev'd* in part, 837 F.2d 401 (9th Cir. 1988).

DC NMI 1985. A party has no vested right in a particular cause of action or in a specific remedy. *Gower v. CNMI*, 2 CR 413.

DC NMI 1984. A successful assertion of a due process claim under the federal civil rights statute requires a showing that the government deprived plaintiff of a constitutionally protected liberty or property interest without notice and an opportunity to be heard. 42 U.S.C. §1983. *Hill v. CNMI*, 1 CR 905.

DC NMI 1984. To trigger due process protection when a decision not to rehire a government employee is accompanied by a public charge, the allegation must seriously damage the employee's standing in the community or impose a stigma or other disability foreclosing his or her freedom to take advantage of other employment opportunity. *Hill v. CNMI*, 1 CR 905.

DC NMI 1984. To trigger due process protection when a decision not to rehire a government employee is accompanied by a public charge, the charge must be so serious that it belittles his worth and dignity as an individual and, as a consequence, is likely to have severe repercussions outside of professional life. U.S. Const., Amend. XIV. *Hill v. CNMI*, 1 CR 905.

DC NMI 1984. Chief Administrative Officer's statement to the press in connection with the veto of plaintiffs contract that plaintiffs "handling of labor cases in general had been poor," was insufficient to implicate constitutional interests. U.S. Const., Amend. XIV. *Hill v. CNMI*, 1 CR 905.

DC NMI 1984. When a termination or a decision not to rehire a government employee is accompanied by public charges which affects one's reputation or standing in the community so as to foreclose the employee from taking advantage of available job opportunities, due process interests are implicated which require that a person be given notice and an opportunity to clear his or her name. U.S. Const., Amend. XIV. *Hill v. CNMI*, 1 CR 905.

DC NMI 1983. The Fifth and Fourteenth Amendment Due Process Clauses are analytically co-extensive. U.S. Const., Amend. v, XIV. *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989)

—Homestead Rights, Succession to

See **HOMESTEADS - Marital Homesteads - Survivorship Rights, Spousal**

—Illegitimate Children

See **FAMILY LAW - Children Born Out of Wedlock - Constitutional Questions**

—Immigration Matters

Controlling immigration is a compelling state interest. For reasons including the population and size disparity between the CNMI and the rest of the U.S. and preservation of the CNMI's unique Chamorro and Carolinian ethnic and cultural heritage, the CNMI is permitted to exercise plenary authority over its own immigration. *Commonwealth v. Minto*, 2011 MP 14 ¶ 24 (2011).

DC App. Div. 1984. Commonwealth legislation regarding immigration matters is subject to the same review to which other legislation would be subject under substantive due process standards; that is, the law will be scrutinized to ensure that it is not unreasonable, arbitrary or capricious, and that the means selected have a real and substantial relation to the object sought to be attained. *Sirilan v. Castro*, 1 CR 1082.

DC App. Div. 1984. Legislative rationales relating to the repeal of permanent residency law that the continued acceptance of foreign nationals as permanent residents was politically undesirable and economically and socially unsound as it would burden public services, overly tax financial resources, and restrict opportunities for further development and advancement of the local people were reasonable and supported the legislative action taken and thus repealing statute did not violate due process. *Sirilan v. Castro*, 1 CR 1082.

—Interests Protected

CTC 1986. Loss of reputation alone is neither liberty nor property for Constitutional purpose and is not actionable. 42 U.S.C.§1983; U.S. Const., Amend. XIV. *Employment Consultants, Inc. v. O'Connor*, 2 CR 535.

—Judiciary, Impartial

See **JUDGES - Disqualification - Constitutional Questions**

—Jurisdiction

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 Court (Connell)*, 2001 MP 1 ¶22

The due process requirement, that maintenance of a lawsuit within the Commonwealth may not offend traditional notions of fair play and substantial justice, is met if a defendant has fair warning that a particular activity may subject a person to the jurisdiction of a sovereign. *Bank of Saipan v. Superior Court (Connell)*, 2001 MP 1 ¶25

The fair warning prong of the due process requirements for personal jurisdiction means that the defendant has purposefully directed her activities at residents of the forum and the litigation results from alleged injuries that arise out of or relate to those activities. *Bank of Saipan v. Superior Court (Connell)*, 2001 MP 1 ¶25

The foreseeability that is critical to the due process analysis is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there. *Bank of Saipan v. Superior Court (Connell)*, 2001 MP 1 ¶25

In a due process analysis, the relationship between the defendant and the forum must be such that it is reasonable to require the corporation to defend the particular suit which is brought there. *Bank of Saipan v. Superior Court (Connell)*, 2001 MP 1 ¶25

The Commonwealth generally has a manifest interest in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors. Moreover, where an individual purposefully derives benefit from her interstate activities, it may well be unfair to allow her to escape having to account in other states for consequences that arise proximately from such activities; the Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed. And because modern transportation and communication have made it much less burdensome for a party sued to defend herself in a State where she engages in economic activity, it usually will not be unfair to subject her to the burdens of litigating in another forum for disputes relating to such activity. *Bank of Saipan v. Superior Court (Connell)*, 2001 MP 1 ¶27

Any inconvenience to defendant is not so great as to constitute a deprivation of due process where for example, her firm maintains offices and attorneys in the forum, the firm is already relying on mainland counsel and local counsel to handle appearances, and defendant's presence at pre-trial proceedings is highly unlikely given that she is represented. Where defendant's presence at trial need not be continuous, and air travel between defendant's home forum and the Northern Marianas is frequent, defendant's

presence in the courtroom might disrupt her schedule, but it could hardly severely hinder her ability to maintain her law practice in her home forum when technological advances have made the burden of defending in a foreign forum far less onerous. *Bank of Saipan v. Superior Court (Connell)*, 2001 MP 1 ¶35

Modern communications and transportation have made it much less burdensome for a party sued to defend herself in a state where she engages in economic activity. *Bank of Saipan v. Superior Court (Connell)*, 2001 MP 1 ¶35

Where no other jurisdiction is as involved, or as convenient, or has a greater interest in this litigation than the C.N.M.I., judicial economy favors completing all of the proceedings in one location and the answerability of lawyers in local jurisdictions is furthered by continuing with the proceedings in the C.N.M.I.. The extension of personal jurisdiction under these circumstances is reasonable and does not offend traditional notions of fair play and substantial justice. *Bank of Saipan v. Superior Court (Connell)*, 2001 MP 1 ¶40

—Jury, Communication With

See **CRIMINAL PROCEDURE - Juries: Misconduct - Communication, Ex Parte**

—Jury Trial

See **JURIES - Right to Jury Trial**

—Juvenile Delinquency Proceedings

See **MINORS - Juvenile Delinquency Proceedings - Constitutional Questions**

—Liberty Interests

DC NMI 1985. One's protected liberty interest may be infringed by an employer's dismissal of, or refusal to rehire, an employee in such a manner so as to stigmatize or otherwise burden the individual so that he is not able to take advantage of other employment opportunities. U.S. Const., Amend. XIV. *Fleming v. Department of Public Safety*, 2 CR 308, *aff'd* in part and *rev'd* in part, 837 F.2d 401 (9th Cir. 1988).

DC NMI 1984. A person's liberty interest in the employment context is an independently protected interest, separate from one's property right to continued employment. *Hill v. CNMI*, 1 CR 905.

DC NMI 1984. Charges of incompetence alone do not rise to constitutional infringement of liberty interests. U.S. Const., Amend. XIV. *Hill v. CNMI*, 1 CR 905.

—Lineups

CSC 1989. The admission of evidence of a showup without more does not violate due process but rather, it is the likelihood of misidentification which violates a defendant's right to due process. *CNMI v. Ngiratebl*, 3 CR 820.

——Particular Cases

DC App. Div. 1986. The deportation of parents who are out of status is not a violation of due process and/or equal protection rights of their children. *Attorney General v. Ligaya*, 2 CR 926.

DC NMI 1985. Where Director of Public Safety in reviewing 30 applications for the police academy subjected plaintiff alone to drug enforcement agency check, and where Director refused to admit plaintiff after recommendation by review board upon grounds which he knew to be false, plaintiff was subject to intentional discrimination in violation of the equal protection clause. U.S. Const., Amend. XIV. *Fleming v. Department of Public Safety*, 2 CR 308, *aff'd* in part and *rev'd* in part, 837 F.2d 401 (9th Cir. 1988).

DC NMI 1985. Where Director of Public Safety refused to admit plaintiff to police academy based on suspected narcotics activity after plaintiff had been cleared of such activity by federal drug agency, such action was arbitrary and capricious and denied plaintiff his rights to due process. U.S. Const., Amend. XIV. *Fleming v. Department of Public Safety*, 2 CR 308, *aff'd* in part and *rev'd* in part, 837 F.2d 401 (9th Cir. 1988).

DC NMI 1985. Action of Chief of Immigration's denial of certificates of identity to permanent residents based on Chiefs erroneous conclusion that permanent residents are incapable of forming domiciliary intent constituted arbitrary and capricious action in violation of the due process clause where High Court had held one year earlier that such persons could be lawfully domiciled in Mariana Islands, and where Chief acted contrary to advice of two attorney generals. U.S. Const., Amend. XIV. *Pangelinan v. Castro*, 2 CR 429.

DC NMI 1983. Where the defendant agencies with authority over airport operations not only failed to

afford the plaintiff the mandatory judicial proceeding in which to contest the seizure as required by law but also failed to afford the plaintiff any reasonable notice or opportunity for an administrative hearing before initiating the seizure of plaintiffs aircraft, the conduct falls below any acceptable standard of due process and, as such, liability must attach to the conduct of the defendants under the Civil Rights Act. 42 U.S.C. §1983. *Island Aviation, Inc. v. Mariana Islands Airport Authority*, 1 CR 633.

CTC 1988. It was not a violation of due process for agency members to render a decision on adverse action against employee without attending the hearings because statute sanctions such a procedure. 1 CMC §9110. *In re San Nicolas*, 3 CR 540.

CTC 1987. Failure of the prosecution to allege or to prove that the offense a defendant is being charged with is a subsequent offense does not violate defendant's procedural due process rights, i.e. to be put on notice as to whether he is being charged as a repeat offender, subject to the harsher minimum penalty, because such allegation is not material to his guilt or innocence on the underlying DUI offense. *CNMI v. Hiroichi*, 2 CR 1080.

CTC 1986. To comport with due process requirements, notice must apprise the party being notified of the pendency of an action against the party and to allow the party to prepare for the hearing and afford the opportunity to present objections to the specified pending action. U.S. Const., Amend. XIV. *Employment Consultants, Inc. v. O'Connor*, 2 CR 535.

CTC 1986. Action of deputy attorney general effectively revoking plaintiffs business license after giving business college ten days to respond to concerns raised regarding the propriety of its operation did not afford business college adequate notice and opportunity to be heard and violates principles of due process. U.S. Const., Amend. XIV. *Employment Consultants, Inc. v. O'Connor*, 2 CR 535.

—Notice

Criminal defendants must be put on notice of the charges levied against them. Notice serves two primary purposes: (1) it enables the defendant to adequately prepare his defense, and (2) it enables him to plead double jeopardy against a second prosecution. Charging documents, therefore, are tested by whether they "apprise the defendant of what evidence he must be prepared to meet. *Commonwealth v. Mettao*, 2008 MP 7 ¶ 32 (2008).

A probationer is entitled to written notice of alleged probation violations. The notice must be effective, but is not required to cite a specific statutory section violated. The notice needed only to ensure that he understood the nature of the alleged violation. *Commonwealth v. Daikichy*, 2007 MP 27 ¶ 16 (2007).

When a probationer is accused of violating any term of probation, he or she is entitled to reasonable notice of the alleged violation. *Commonwealth v. Daikichy*, 2007 MP 27 ¶ 18 (2007).

A mere lack of notice does not result in a due process violation. One claiming lack of notice must show that notice was due and the reason why notice was due. A claim of lack of notice must be examined from the circumstances of each case to determine whether lack of notice justifies setting aside the action taken. *Santos v. Santos*, 3 N.M.I. 39 (1992).

—Penal Statutes

See **CRIMINAL LAW - Penal Statutes - Constitutional Questions**

—Persons Protected

DC App. Div. 1983. Where there is no valid contract, there was no protectible property interest under the civil rights statute 42 U.S.C. §1983. *Saipan Secretarial Employment Services, Inc. v. CNMI*, 3 CR 168.

DC App. Div. 1983. The Government's retention of an application fee under the repealed Casino Gambling Act does not violate principles of due process by depriving the applicant of property without due process where the Government gave the applicant what it paid for: an assessment and disposition of its application. Public Law 1-14. *Marianas General Corporation v. Government CNMI*, 1 CR 408.

DC App. Div. 1983. To have a constitutionally protected property interest in a benefit, one must have a legitimate claim of entitlement to it and a legitimate claim is one which is something more than a unilateral expectation of the benefit. *Marianas General Corporation v. Government CNMI*, 1 CR 408.

DC App. Div. 1983. A person who has never been given a gaming license clearly receives no property interest and has at most, a constitutionally unprotected unilateral expectation. *Marianas General Corporation v. Government CNMI*, 1 CR 408.

DC NMI 1986. When addressing a due process challenge to government action a court must decide whether the plaintiff possessed a constitutionally protected property interest and if so, whether the plaintiff was deprived of that interest without due process of law. U.S. Const., Amend. XIV. *Pangelinan v. Castro*, 2 CR 429.

DC NMI 1986. Property interests are protected by the United States Constitution but are created and defined by state law. U.S. Const., Amend. XIV. *Pangelinan v. Castro*, 2 CR 429.

DC NMI 1986. Where plaintiff residents were determined by the Board of Elections to be domiciled in the Commonwealth and where the plaintiffs met the other requirements for issuance of certificates of identity, they had a constitutionally protected interest in the certificates which could not be taken without due process of law. *Pangelinan v. Castro*, 2 CR 429.

DC NMI 1984. Whether the plaintiff had a valid claim of entitlement sufficient to rise to a protectible property interest under the constitution depends on the existing rules and the understanding with which he entered into the contract. *Hill v. CNMI*, 1 CR 905.

DC NMI 1984. The guarantees of due process, notice and an opportunity to be heard, only attach if the plaintiff can show the deprivation of a constitutionally protected property interest; plaintiff must demonstrate a "legitimate claim of entitlement" to the contract and not merely a "unilateral expectation" of it. U.S. Const., Amend. XIV. *Hill v. CNMI*, 1 CR 990.

DC NMI 1984. Where plaintiff's contract was never finalized, he cannot argue that he had anything more than a mere expectation of a contract and thus there exists no constitutionally protected property interest. U.S. Const. Amend. XIV. *Hill v. CNMI*, 1 CR 990.

DC NMI 1982. To have a due process property interest in a government benefit one must have a legitimate claim of entitlement to it, which is something more than either an abstract need for the benefit or a unilateral expectation of it. *Bauer v. McCoy*, 1 CR 248.

DC NMI 1982. Neither statute authorizing payment of employee's family educational expenses nor implementing regulation mandate the payment of either full educational expenses or a specific minimum allowance and therefore plaintiffs claim to those levels of benefits is a unilateral expectation and not a constitutionally protected property interest. *Bauer v. McCoy*, 1 CR 248.

—Post Deprivation Remedies

DC NMI 1987. The due process clause is not violated by negligent deprivation of property where an adequate state post-deprivation remedy exists. *Attao v. Palacios*, 2 CR 1086.

DC NMI 1987. Where a post-deprivation remedy exists for the enforcement of contractural rights, even where the defendant-employer is the Commonwealth government or persons or agencies representative thereof, due process is not violated. *Attao v. Palacios*, 2 CR 1086

—Probate Proceedings

See **PROBATE - Notice**

—Procedural Due Process

No principle of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge are among the constitutional rights of every accused. *Commonwealth v. Pua*, 2009 MP 21 ¶ 35 (2009).

Procedural due process does not encompass the right to present all desired evidence. *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶23

An interim suspension followed by a post-suspension hearing satisfies the requirements of due process. *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶39

An attorney facing disbarment for practicing law while suspended is not necessarily entitled to a hearing if the issues have been fully briefed, rather, the opportunity to brief the issue fully satisfies due process requirements, especially in a case where the judge has witnessed the offenses. Procedural due process does not encompass the right to present all desired evidence. *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶49

—Requirements

DC NMI 1983. The fourteenth amendment forbids the denial of an individual's constitutional rights absent reasonable notice and an opportunity to be heard. U.S. Const., Amend XIV. *Island Aviation, Inc. v. Mariana Islands Airport Authority*, 1 CR 633.

DC NMI 1981. Governor's removal of an appointee of government board from office without notice and an opportunity to be heard is a violation of due process. *Izuka v. Carnacho*, 1 CR 210.

—Right To Counsel

CTC 1988. The right to effective counsel necessarily includes the right to cross-examine witnesses and to offer evidence. *In re the Matter Duncan*, 3 CR 383.

—Sanctions

See **ATTORNEY AND CLIENT - Sanctions - Procedure**

—Substantive Due Process

DC NMI 1986. The substantive arm of due process doctrine mandates that government action not be arbitrary or capricious. *Pangelinan v. Castro*, 2 CR 429.

DC NMI 1986. For an agency's wrongful action to be cognizable under the substantive branch of due process, federal courts have often required that the action be egregious, invidious, represent a gross abuse of power, or be otherwise similarly objectionable. U.S. Const., Amend. XIV. *Pangelinan v. Castro*, 2 CR 429.

—Taking Without Compensation

See **REAL PROPERTY - Taking Without Compensation**

—Termination of Parent-Child Relationship

See **FAMILY LAW - Parent-Child Relationship - Termination**

Eleventh Amendment

—Generally

DC NMI 1985. Article III of the United States Constitution extends the federal judicial power to cases where States are defendants; the Eleventh Amendment, not Article III, protects the States against such action. U.S. Const., Art. III. *Fleming v. Department of Public Safety*, 2 CR 308, aff'd in part and rev'd in part 837 F.2d 401 (9th Cir. 1988).

DC NMI 1985. The Eleventh Amendment deprives federal courts of jurisdiction over States as unconsenting defendants. U.S. Const., Amend. 11. *Fleming v. Department of Public Safety*, 2 CR 308, aff'd in part and rev'd in part 837 F.2d 401 (9th Cir. 1988).

DC NMI 1985. The Covenant expressly rejects the proposition that the Eleventh Amendment to the United States Constitution is applicable within the Commonwealth. U.S. Const., Amend. 11. *Fleming v. Department of Public Safety*, 2 CR 308, *aff'd* in part and *rev'd* in part 837 F.2d 401 (9th Cir. 1988).

DC NMI 1985. The Eleventh Amendment embodies principles of sovereignty so far as that concept relates to the States and to the federal system created by the Constitution; however, Eleventh Amendment immunity and sovereign immunity remain separate independent doctrines. U.S. Const, Amend. 11. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 34, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1985. The protection afforded by the Eleventh Amendment is available only to states. U.S. Const., Amend. 11. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 34, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1985. The terms of the Eleventh Amendment are of no force and effect in the Commonwealth. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 34, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1984. Eleventh Amendment immunity and sovereign immunity are separate and distinct concepts. The Eleventh Amendment shields state governments from intrusion by the federal government via the federal judiciary, whereas the doctrine of sovereign immunity prohibits both courts and plaintiffs from interfering in governmental affairs. U.S. Const., Amend. 11. *Kumagai v. CNMI*, 1 CR 942.

DC NMI 1984. A state's waiver of its immunity in its own courts is not interpreted to include a waiver of its Eleventh Amendment immunity. U.S. Const., Amend. 11. *Kumagai v. CNMI*, 1 CR 942.

DC NMI 1983. The Eleventh Amendment to the United States Constitution has no application in the CNMI. Covenant, §501. *Island Aviation, Inc. v. Mariana Islands Airport Authority*, 1 CR 633.

CTC 1986. The significance of the Eleventh Amendment lies in its affirmation that the fundamental principle of sovereign immunity limits the grant of judicial authority in Article III of the U.S. Constitution. U.S. Const., Amend. 11. *Employment Consultants, Inc. v. O'Connor*, 2 CR 535

—Trust Territory

DC NMI 1985. Even should the Trust Territory possess immunity in its own courts attributable to some degree of sovereignty, such immunity does not extend into federal court by way of the Eleventh Amendment. U.S. Const., Amend. 11. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 34, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989)

Equal Protection

—Admission to Professions

See generally **ADMINISTRATIVE LAW - Licensing - Constitutional Questions**; **Admission to Legal Profession**, see **ATTORNEY AND CLIENT - Admission to Practice - Constitutional Questions**

—Alienage

DC. App. Div. 1987. NMI Constitutional provision which defines an alien corporation, survives Fourteenth Amendment scrutiny. NMI Const., Art. XII. *Wabol v. Muna*, 2 CR 963.

DC App. Div. 1984. The protections of the Fourteenth Amendment are not limited to citizens, but act as guardians of all persons with a state's jurisdiction, including aliens. U.S. Const., Amend. XIV. *Sirilan v. Castro*, 1 CR 1082.

DC App. Div. 1984. Strict scrutiny is required when aliens as a class are treated differently from citizens solely because of alienage; it does not apply when classifications are made among aliens. *Sirilan v. Castro*, 1 CR 1082.

DC App. Div. 1984. Aliens are a discrete and insular minority for the purpose of equal protection review. *Sirilan v. Castro*, 1 CR 1082.

DC NMI 1986. Where a state classifies on the basis of alienage, strict judicial review is the rule, other standards of review the exception. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1986. Where a core governmental function is involved, the Court will examine a state classification based on alienage only to ensure that it is rationally related to the state's legitimate objective. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1986. The right to govern is a right uniquely reserved to citizens. States may accordingly retain distinctions between citizens and aliens where it is "fundamental to the definition and government of a State". *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1986. Unlike the strict review of state action based on alienage, courts will examine for sufficient justification federal classifications which do not touch on aliens as aliens. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 88 1 F.2d 647 (9th Cir. 1989).

DC NMI 1986. Courts will not readily defer to governmental justifictions where alienage is used as a pretext for race or national origin discrimination. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989)

—Application

CTC 1985. The equal protection clause is universal in its application to all persons within the territorial jurisdiction. U.S. Const., Amend. XIV. *Wabol v. Muna*, 2 CR 231, *rev'd* in part, 2 CR 963

CTC 1985. The fourteenth amendment of the U.S. Constitution is a restriction on the Commonwealth Government but does not extend to authority exercised by the government of the United States. U.S. Const., Amend. XIV. *Wabol v. Muna*, 2 CR 231, *rev'd* in part, 2 CR 963.

—Burden of Proof

DC NMI 1985. Upon the presentation of a prima facie case of disparate treatment the burden shifts to the government to dispel the inference of intentional discrimination. U.S. Const., Amend. XIV. *Fleming*

v. Department of Public Safety, 2 CR 308, *aff'd* in part and *rev'd* in part, 837 F.2d 401 (9th Cir. 1988).

DC NMI 1985. Mere protestations of lack of discriminatory intent and affirmations of good faith will not suffice to rebut the prima facie case. A defendant must introduce evidence to support its explanations. U.S. Const., Amend. XIV. *Fleming v. Department of Public Safety*, 2 CR 308, *aff'd* in part and *rev'd* in part, 837 F.2d 401 (9th Cir. 1988).

—Classifications

CTC 1985. If the classification rests on grounds wholly irrelevant to the achievement of any legitimate governmental objective, it will not pass constitutional muster. U.S. Const., Amend. XIV. *Wabol v. Muna*, 2 CR 231, *rev'd* in part, 2 CR 963.

—Discriminatory Intent

DC NMI 1986. Purpose and intent must be determined from the cumulative impact of the evidence. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1986. The historical background of the challenged action may be useful in determining discriminatory intent particularly if it reveals a series of official actions taken for invidious purposes. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989)

—Disproportionate Impact

DC NMI 1986. Under disproportionate impact analysis, the burden rests with the challenger to show that the government action was taken to some extent "because of" the adverse impact and not just "in spite" of it. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1986. Disproportionate impact is by no means irrelevant to the question of discriminatory intent; actions having foreseeable and anticipated disparate impact are relevant evidence to prove the ultimate fact, forbidden purpose. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1986. In situations where the disproportionate impact is as inevitable as the burdens placed on Micronesians under the Trust Territory's tripartite wage scales, the Supreme Court has recognized that a strong inference that the adverse effects were desired can reasonably be drawn. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 88 1 F.2d 647 (9th Cir. 1989).

—Domicile

CTC 1983. Provision of permanent residency law that states that those persons who before the effective date of the Commonwealth Constitution were present in the Commonwealth through a work or other temporary permit are not domiciled in the Northern Mariana Islands violates the equal protection guarantees of the Commonwealth Constitution and the Trust Territory Code. N.M.I. Public Law 5-19, §6(c)(6); C.N.M.I. Const., Art. I, §6; 1 T.T.C. §7. *Pablo v. Northern Marianas Board of Elections*, 1 CR 381.

—Employment

CTC 1989. Restrictions on the availability of opportunities related to employment are to be examined upon an equal protection challenge pursuant to rational basis standard. U.S. Const., Amend. XIV. *In the Matter of the Appeal of Camacho*, 3 CR 615.

—Fundamental Rights

The right to vote is a fundamental political right protected by the Equal Protection Clause of the United States Constitution. *Charfauros v. Board of Elections*, 1998 MP 16 ¶33

States have a compelling state interest in regulating reasonable qualifications to vote. The privilege to vote in a state is within the jurisdiction of the state itself, to be exercised as the state may direct, and upon such terms as to it may deem proper, provided, no discrimination is made between individuals, in violation of the federal Constitution. *Charfauros v. Board of Elections*, 1998 MP 16 ¶34

The right to vote in a Commonwealth election is a fundamental right of citizenship protected by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and by Article I, § 6 of the Commonwealth Constitution. Restrictions placed on the right to vote must meet close constitutional scrutiny. *Charfauros v. Board of Elections*, 1998 MP 16 ¶40

If a procedure used to disqualify or otherwise deny the voting franchise to citizens discriminates against certain groups of voters, the procedure is subject to strict scrutiny to determine if it was necessary to protect a compelling government interest. *Charfauros v. Board of Elections*, 1998 MP 16 ¶45

The "right" to pursue a profession is not "fundamental" in equal protection analysis under the U.S. Constitution. *In re Blankenship*, 3 N.M.I. 209 (1992).

DC App. Div. 1984. Government action which impinges on a fundamental right explicity or implicity secured by the Constitution is presumptively unconstitutional and must be carefully and meticulously scrutinized. *Sirilan v. Castro*, 1 CR 1082.

DC App. Div. 1984. The right of an alien to live and work in the Commonwealth without restriction, even one who posseses permanent resident status, is not the type of fundamental right that would subject classification touching on it to strict judicial scrutiny. *Sirilan v. Castro*, 1 CR 1082.

DC App. Div. 1983. A law which impinges upon a fundamental right explicitly or implicitly secured by the United States Constitution is presumptively unconstitutional. *CNMI v. Atalig*, 1 CR 552, *rev'd*, 723 F.2d 682 (9th Cir. 1984).

CTC 1985. The privilege of acquiring and enjoying property or a long term interest therein is a basic right. *Wabol v. Muna*, 2 CR 231, *rev'd* in part, 2 CR 963.

—Generally

The Equal Protection Clause of the Commonwealth Constitution, Article I, section 6, is taken directly from section 1 of the Fourteenth Amendment to the United States Constitution. Article I, section 6 commands that no person shall be denied the equal protection of the laws. It is essentially a direction that all persons similarly situated should be treated alike. *Commonwealth v. Minto*, 2011 MP 14 ¶ 26 (2011).

Traditional equal protection analysis under the United States Constitution scrutinizes laws which (a) affect a suspect class, or (b) violate a fundamental right. Suspect classes are groupings based on factors such as race or national origin, while marriage is protected as a fundamental right. *Commonwealth v. Minto*, 2011 MP 14 ¶ 26 (2011).

The Equal Protection Clause requires state legislatures to be apportioned based on population. *In re Pangelinan*, 2008 MP 12 ¶ 25 (2008).

Minor deviations from mathematical equality among state legislative districts are insufficient to make out a *prima facie* case of invidious discrimination under the Fourteenth Amendment so as to require justification by the State. As a general matter an apportionment plan with a maximum population deviation under 10% falls within this category of minor deviations. *In re Pangelinan*, 2008 MP 12 ¶ 27 (2008).

Where justification is required, the operative question is whether the legislature's plan may reasonably be said to advance a rational state policy and, if so whether the population disparities among the districts that have resulted from the pursuit of this plan exceed constitutional limits. *In re Pangelinan*, 2008 MP 12 ¶ 28 (2008).

Avoidable deviations may be justified by legitimate, nondiscriminatory state interests, so long as the state demonstrates the deviation is required to secure its proffered objective. Any number of consistently applied legislative policies might justify some variance, including, for instance, making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives. The degree of justifiable variation depends on the size of the deviations, the importance of the State's interests, the consistency with which a plan as a whole reflects those interests, and the availability of alternatives that might substantially vindicate those interests yet approximate population equality more closely. *In re Pangelinan*, 2008 MP 12 ¶ 31 (2008).

States have leeway to determine the population upon which their legislatures are apportioned. However, whether states may exclude any class of persons when crafting congressional districts remains uncertain. *In re Pangelinan*, 2008 MP 12 ¶ 32 (2008).

Although voting is undoubtedly an important part of political access, it is not the only one. An individual's ability to present grievances to their elected representative is also protected, regardless of citizenship. *In re Pangelinan*, 2008 MP 12 ¶ 38 (2008).

The one person, one vote principle to state legislatures applies to the N.M.I. House of Representatives only to the extent the Equal

Protection Clause controls N.M.I. legislative apportionment. In determining whether the Equal Protection Clause applies, we look first to the Covenant. This approach is necessary with any claim of federal preemption, as the applicability of federal directives to the Commonwealth cannot be taken for granted. *In re Pangelinan,* 2008 MP 12 ¶ 45 (2008).

The lower court's use of PSS regulations in a criminal law analysis gives the appearance of a heightened legal standard for teachers, which presents an equal protection problem. *Commonwealth v. Perez,* 2006 MP 24 ¶ 21

Under an equal protection analysis, the issue is whether a defendant was treated differently than others similarly situated. *Commonwealth v. Jong Hun Lee,* 2005 MP 19 ¶ 23

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

A trial court may not make sentencing determinations based on a defendant's race, alienage, nationality, ethnicity, or place of origin, and even the appearance that a defendant's nationality or alienage played a role in the sentence imposed is unacceptable. *Commonwealth v. Jong Hun Lee,* 2005 MP 19 ¶ 24

A judge's passing reference to a defendant's nationality is not improper, however, if there is a sufficient risk that a reasonable observer might infer bias from the sentencing remarks, then those remarks do not satisfy the appearance of justice. When a judge attempts to send a message to a country or a particular racial group regarding drug crimes by penalizing a person with citizenship in a known drug-producing country, the court improperly bases its sentence on a defendant's national origin. *Commonwealth v. Jong Hun Lee,* 2005 MP 19 ¶ 24

Where the trial court specifically refers to the defendant's nationality, and strongly implied that the people of country of the defendant's citizenship do not take the crime of bribery seriously, this is not merely a passing reference to the defendant's nationality. A reasonable observer might infer that nationals of the country referred to by the judge were being singled out and might believe that this sentence reflected the defendant's nationality. In these circumstances, even where the trial judge is not personally biased, there is an appearance of bias inherent in the sentencing order such that it cannot stand. *Commonwealth v. Jong Hun Lee,* 2005 MP 19 ¶ 25

Suspect classes are groupings based on factors such as race or national origin demand a strict scrutiny analysis under equal protection claims. *Office of the Attorney Gen. v. Estel,* 2004 MP 20 ¶18

The Equal Protection clause protects persons who are similarly situated, but are treated differently. To make a valid equal protection challenge, there must be a showing that the statute treats members of a certain group differently from other persons based on membership in that group. *Office of the Attorney Gen. v. Estel,* 2004 MP 20 ¶ 19

Controlling immigration is an important governmental interest over which the Commonwealth Legislature exercises plenary power pursuant to section 503 of the Covenant. The Legislature's decision to require aliens to maintain a valid immigration status is directly and substantially related to a compelling governmental interest. *Office of the Attorney Gen. v. Estel,* 2004 MP 20 ¶ 20

Controlling immigration and labor is a compelling state interest that transcends good faith compliance with the statute. *Office of the Attorney Gen. v. Estel,* 2004 MP 20 ¶ 21

A violation of a party's equal protection rights exists when the government imposes a requirement on the party that is irrational and arbitrary, especially if the party is treated differently than others similarly situated. *Commonwealth v. Yi Xiou Zhen,* 2004 MP 4 ¶ 28

Traditional equal protection analysis under the U.S. Constitution involves scrutiny of laws affecting a suspect class or violating a fundamental right. *In re Blankenship,* 3 N.M.I. 209 (1992).

DC App. Div. 1983. The Equal Protection Clause of the Constitution of the Northern Mariana Islands is to be given the same meaning and interpretation as the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. C.N.M.I. Const., Art. II §2. *Sablan v. NMI Board of Elections,* 1 CR 741.

DC NMI 1986. Wage classifications which discriminate against "Trust Territory citizens"

inherently discriminate on national origin and for that reason will be strictly reviewed. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1986. Official action can transcend the bounds of equal protection in two ways. It can be "facially discriminatory" in that it "explicitly classifies or distinguishes among persons by reference to criteria - such as race, sex, religion or ancestry - which have been improper bases for differentiation. Or, an action which is facially neutral may nonetheless produce results which demonstrate a disproportionate impact on a class of persons identifiable by similar traits or characteristics. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1986. Not all classifications, overt or covert, violate principles of equal protection; rather, it is only those which cannot be explained in terms of "noninvidious purposes." *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1986. Under more traditional doctrine, the central prohibition of the. equal protection clause is directed against the government's deliberate use of race as a criterion of selection. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1986. The rule that a law or other government action which classifies on national origin requires an extraordinary justification applies as well to a classification that is ostensibly neutral but is an obvious pretext for discrimination. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1986. Equal protection demands at a minimum that a government must apply its laws in a rational and nonarbitrary way and the focus of equal protection analysis is on the differential treatment afforded similar persons in like circumstances. *Pangelinan v. Castro*, 2 CR 429

DC NMI 1986. The constitutional mandate of equal protection extends to discriminatory executive or administrative conduct as well as to discriminatory legislation. U.S. Const., Amend. XIV. *Pangelinan v. Castro*, 2 CR 429.

DC NMI 1986. Where the Chief of Immigration intentionally and purposefully refused to issue the plaintiff Certificates of Identity based on a legal conclusion rejected by the High Court as well by legal advisors, such flagrant disregard of prevailing legal theories by a lay person sufficiently demonstrates invidious discrimination against an identifiable class of persons and proves an unequal application of the laws. *Pangelinan v. Castro*, 2 CR 429.

DC NMI 1985. Equal protection demands at a minimum that a government apply its laws in a rational and non-arbitrary way. U.S. Const., Amend. XIV. *Fleming v. Department of Public Safety*, 2 CR 308, *aff'd* in part and *rev'd* in part, 837 F.2d 401 (9th Cir. 1988).

DC NMI 1985. The constitutional mandate of equal protection extends to discriminatory executive or administrative conduct as well as to discriminatory legislation. U.S. Const., Amend. XIV. *Fleming v. Department of Public Safety*, 2 CR 308, aff'd in part and rev'd in part, 837 F.2d 401 (9th Cir. 1988).

DC NMI 1985. Even an isolated event may contravene the equal protection clause if different action is taken against persons similarly situated without showing any rational basis for the disparate treatment. U.S. Const., Amend. XIV. *Fleming v. Department of Public Safety*, 2 CR 308, *aff'd* in part and *rev'd* in part, 837 F.2d 401 (9th Cir. 1988).

DC NMI 1985. Where Director of Public Safety in reviewing 30 applications for the police academy subjected plaintiff alone to drug enforcement agency check, and where Director refused to admit plaintiff after recommendation by review board upon grounds which he knew to be false, plaintiff was subject to intentional discrimination in violation of the equal protection clause. U.S. Const., Amend. XIV. *Fleming v. Department of Public Safety*, 2 CR 308, *aff'd* in part and *rev'd* in part, 837 F.2d 401 (9th Cir. 1988).

DC NMI 1985. Commonwealth statute limiting tort recovery against Commonwealth to $100,000 does not violate equal protection principles because the limit is the result of a rational process which sought to balance the needs of tort victims with the financial resources of the Commonwealth. 7 CMC §§2201-2207. *Gower v. CNMI*, 2 CR 174.

CTC 1989. Refusal to include retirees within the scope of the term "employee" as used in Constitutional amendment, whose purpose was to entice early retirement of government employees by offering those eligible to retire an additional 5 year

service credit, does not offend the equal protection provisions of the Constitution. U.S. Const., Amend. XIV; NMI Const., Art III, §20. *In the Matter of the Appeal of Camacho*, 3 CR 615.

CTC 1985. The equal protection clause guarantees that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances in their lives, liberty and property. U.S. Const., Amend. XIV. *Wabol v. Muna*, 2 CR 231, rev'd in part, 2 CR 963.

CTC 1985. The equal protection clause provides a basis for challenging legislative or state constitutional classifications that treat one group of persons as inferior or superior to others, and for contending that general rules are being applied in an arbitrary or discriminatory way. U.S. Const., Amend. XIV. *Wabol v. Muna*, 2 CR 231, *rev'd* in part, 2 CR 963.

CTC 1985. Purposeful discrimination is necessary to create a violation of the equal protection clause. U.S. Const., Amend. XIV. *Wabol v. Muna*, 2 CR 231, *rev'd* in part, 2 CR 963.

CTC 1985. The equal protection clause of the Fourteenth Amendment does not prevent the states (Commonwealth) from making reasonable classifications among persons within the jurisdiction of the entity. U.S. Const., Amend. XIV. *Wabol v. Muna*, 2 CR 231, *rev'd* in part, 2 CR 963.

CTC 1985. A statute is presumed to be constitutional and the party asserting that a statute is unconstitutional has the burden of establishing that the legislature acted in an arbitrary or irrational way and the act is invalid beyond reasonable doubt. *Flowers v. Hong Kong Saipan Hotels & Investment, Ltd.*, 2 CR 100.

—Governmental Interests

DC NMI 1989. There is no bright line test to determine what is an important governmental interest; it is one that falls within a continuum of interests ranging from very important interests, like protecting the welfare of the citizenary, to interests of minimal importance, like regulating sex between consenting adults. U.S. Const., Amend. XIV; NMI Const., Art. I, §6. *Kin v. CNMI*, 3 CR 608.

DC NMI 1989. Controlling and regulating nonresident workers is an important governmental interest and advancing the participation of local workers in the management aspects of industry on the island is also an important governmental interest. U.S. Const., Amend. XIV; NMI Const., Art I §6. *Kin v. CNMI*, 3 CR 608.

DC App. Div. 1984. Alleged compelling governmental interests don not require the court to adopt a narrow standard of review in cases challenging implementation of law repealing permanent residency law. *Sirilan v. Castro*, 1 CR 1082.

—Governmental Justifications

DC App. Div. 1984. Although ease of interpretation and enforcement is certainly an admirable quality of a statute, it cannot serve as the sole support of a discriminatory classification. *Sirilan v. Castro*, 1 CR 1082.

DC NMI 1986. The Trust Territory government's justifications for the tripartite wage scale, which compensated employees at a wage according to their citizenship, are not sufficient to rebut an intent to discriminate against Micronesians, and therefore they violate the guaranty of the equal protection of the laws. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

—Illegitimate Children

CTC 1981. Disinheritance of the illegitimate daughter of the decedent from intestate succession violates equal protection of the laws. *In Re Estate of Refugia*, 1 CR 219.

—Immigration Matters

DC NMI 1989. Commonwealth legislation dealing with immigration matters is subject to an intermediate scrutiny analysis when challenge on constitutional grounds. U.S. Const., Amend. XIV; NMI Const., Art §6. *Kin v. CNMI*, 3 CR 608.

—Intent

DC NMI 1986. A facially neutral statute or regulation which disproportionately disadvantages a suspect or less than suspect class of persons or which infringes upon a fundamental right or important interest will not, standing alone, be found violate the equal protection clause. Plaintiff must also prove that the disproportionate effect is the result of racially discriminatory purpose or intent. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1986. Under intentional discrimination analysis the plaintiff need not demonstrate that an unlawful intent was the sole purpose of the action; rather, it must be shown to have been a substantial or motivating factor. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1986. The intent to discriminate does not necessarily mean an intent to harm; even a well meaning intention to adopt and retain procedures that have a segregative effect are violative of equal protection. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1986. The history of the Trust Territory tripartite pay scales, which included the failure of the United States administration to cany out its own pledges, the refusal to adopt alternative pay plans with less discriminatory impact, and the implementation of a grossly disproportionate wage schedule which afforded preferential treatment to United States citizens, made out a prima facie case of intentional discrimination. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1986. The presumption of intentional discrimination becomes proof unless the defendants affirmatively establish that their action or inaction was a consistent and resolute application of racially neutral policies. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1986. Once a prima facie case of intentional discrimination is made out by the plaintiffs, the burden shifts to the defendant to rebut the presumption of unconstitutional action by showing that permissible racially neutral selection criteria and procedures have produced the monochromatic result. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989)

—Intermediate Scrutiny

DC NMI 1989. To pass constitutional muster under intermediate scrutiny the challenged law must have been enacted to achieve an important governmental interest and the means employed must have a substantial relation to the stated purpose of the law. U.S. Const., Amend. XIV; NMI Const., Art. I §6. *Kin v. CNMI*, 3 CR 608.

DC App. Div. 1984. Where government action impinged on non-citizen plaintiffs significant and constitutionally protectable interest in the freedom from being torn from their chosen communities, their work, families and friends, immediate scrutiny review would attach and the classification must serve important governmental objectives and be substantially related to the achievement of those objectives. *Sirilan v. Castro*, 1 CR 1082.

DC App. Div. 1984. Intermediate scrutiny analysis involves five factors: (1) the importance of the governmental objective; (2) whether the classification is substantially related to the achievement of the governmental interest; (3) the justification for the classification must be currently articulated; (4) the asserted justification must actually have provided the basis on which legislation was supported and must not have been supplied afterwards or as a mere pretext for an unlawful purpose; and (5) whether the legislation allows rebuttal in individual cases to show that application of the classification will not achieve the stated objectives. *Sirilan v. Castro*, 1 CR 1082

—Land Alienation Restriction

See **LAND ALIENATION RESTRICTION (N.M.I. Const. art. XII) - Constitutional Challenge - Equal Protection**. See also **various topics within CONSTITUTION (NMI) - Land Alienation**.

DC App. Div. 1987. Whether congressional approval of §805 (restricting the alienation of NMI land) of the Covenant violates the equal protection clause of the fifth amendment of the Covenant, which discriminates based on alienage, is tested by whether the special treatment can be rationally tied to Congress' unique obligation vis-a-vis the Northern Mariana Islands. U.S. Const., Amend. 5. *Wabol v. Muna*, 2 CR 963.

DC App. Div. 1987. Given the history of occupation by foreigners of the NMI, as well as the scarcity of land and the cultural traditions of the people, Covenant and constitutional provisions which restrict the ownership of land to persons of Northern Marianas descent are rationally related to the unique obligation which the United States Congress owes to the people of the NMI, and therefore, these provisions survive scrutiny under the fifth amendment. U.S. Const., Amend. 5; NMI Const., Art. XII. *Wabol v. Muna*, 2 CR 963.

—Generally

DC App. Div. 1984. A state may afford greater protections to persons within its jurisdiction than does the federal government. *Sirilan v. Castro*, 1082 CR 1.

DC App. Div. 1983. The Constitution is "a living document" which accommodates political and social evolution, in changing conditions and even in different places. *CNMI v. Atalig*, 1 CR 552, *rev'd*, 723 F.2d 682 (9th Cir. 1984).

—Nonresident Workers Act

Because employers of nonresident workers are not a suspect classification and employment of nonresident workers is not a fundamental right, the Nonresident Workers Act is not subject to a strict scrutiny analysis under the equal protection clauses of the Fourteenth Amendment of the U.S. Constitution and Article I, § 6 of the Commonwealth Constitution. The liquidated damages provision of the Nonresident Workers Act, which does not include the Wage and Hour Act's requirement of a showing of willfulness, bears a rational relationship to a legitimate public purpose and is constitutional. *Limon v. Camacho*, 1996 MP 18 ¶35

—Particular Cases

The equal protection provision of the Commonwealth Constitution embodies a general rule that States must treat like cases alike but may treat unlike cases accordingly. *Commonwealth v. Lin*, 2010 MP 2 ¶ 19 (2010).

Voters' rights to Equal Protection were violated where, under procedure used, hearings to determine whether challenged registered voters were eligible to vote were held after the election for some challenged voters and before the election for others. While the interest of the Commonwealth government and Board of Elections in restricting access to the ballot to only those persons who met bona fide residency requirement was a compelling one, the means employed were not sufficiently or narrowly tailored to outweigh plaintiffs' interests in voting. Considerations that should have been weighed in procedure included: (1) short time frame between when challenges were filed and the election; (2) ability of voters to file and be heard upon appropriate appeal of determination of ineligibility; and (3) the avoidance of a chilling effect on the right to vote on the part of persons challenged. *Charfauros v. Board of Elections*, 1998 MP 16 ¶48

DC App. Div. 1984. Law that repealed permanent resident statute where the immediacy of the cut-off in real effect conditioned one's application status on April 23, 1981 on a myriad of factors did not survive intermediate equal protection scrutiny given evidence that: (1) the certification program of the Saipan Mayor's office was replete with delay and at one point was halted altogether; (2) the failure to timely issuethe certificate may well have prevented the obtaining of the desired status in some cases; (3) in other cases, potential applicants were unable to timely retrieve a host of documents required under the regulations which were only available in the prospective applicants' native country; and (4) the dissemination of misinformation by government officials in some cases resulted in the failure to file applications. *Sirilan v. Castro*, 1 CR 1082.

DC NMI 1989. Law that required immediate relatives of non-resident workers to depart from the Commonwealth if their sponsor earns less than $20,000 had no relation to the control and regulation of non-resident alien workers as it controls and regulates their immediate relatives and this is not what the law was intended to do; nor does the law fulfill its second articulated purpose, to facilitate local participation in the management of local businesses. Therefore, the law must be struck under the equal protection clauses of both the United States and Commonwealth Constitutions. U.S. Const., Amend. XIV; NMI Const., Art I, §6. *Kin v. CNMI*, 3 CR 608.

DC NMI 1986. The Trust Territory employee compensation scales, set on the basis of citizenship, are not necessary to meet compelling governmental interests and violate principles of equal protection. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

—Reapportionment

DC App. Div. 1983. A fundamental principle of equal protection is that each person's vote be given equal weight in the election of representatives, i.e., "one person, one vote", and this requires that election districts be of nearly equal population, such that no person's vote is given less weight. CNMI Const., Art I, §2. *Sablan v. NMI Board of Elections*, 1 CR 741.

DC App. Div. 1983. Court would not strike down law providing for district elections, although there are variances from equal populations among the districts, and place in its stead an at-large system where people of the NMI considered an at-large system and chose

district representation instead, and where at-large system has come into disrepute due to its glaring faults, and where there is no evidence of invidious discrimination or bad faith in the design of the law. *Sablan v. NMI Board of Elections*, 1 CR 741.

DC App. Div. 1983. Some deviations from population equality may be consistent with the demand of the equal protection clause where necessary to pursue other legitimate objectives such as maintaining the integrity of political subdivisions and providing for compact and contiguous districts. CNMI Const., Art. I, §2. *Sablan v. NMI Board of Elections*, 1 CR 741.

DC App. Div. 1983. Legislature's interest in preserving the cultural traditions of Saipan by preserving to the greatest extent possible the political subdivisions and in protecting the interests of the minority Carolinian population provides adequate justification for statistical deviations from "one person one vote" rule. C.N.M.I. Const., Art. I §2. *Sablan v. NMI Board of Elections*, 1 CR 741.

DC App. Div. 1983. Taken in conjunction with the constitutionally mandated constraints: (1) that the number of representatives shall not exceed twenty; (2) that the districts be compact and contiguous; and given the inherent limitations imposed by the separation of the islands and the distribution of population in the Commonwealth, the variances of public law enacting reapportionment scheme were well within a constitutionally permissible level and did not violate the equal protection requirement of "one person, one vote". C.N.M.I. Const., Art. I, §2; Public Law 3 -78 [l C.M.C. §§1501-1503]. *Sablan v. NMI Board of Elections*, 1 CR 741.

—Retirement Benefits

See **RETIREMENT AND PENSIONS - Benefits - Constitutional Questions**

—Strict Scrutiny

DC NMI 1986. A law that seeks a goal that is not race-related will nonetheless be subject to strict scrutiny if it is based on racial or like characteristics. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 88 1 F.2d 647 (9th Cir. 1989).

—Suspect Classes

There is no demonstration of disparate treatment when a plaintiff has properly been provided a bench trial, having been assessed a fine of less than $2,000, because this is the same treatment other individuals assessed such a penalty would receive. *Commonwealth v. Yi Xiou Zhen*, 2004 MP 4 ¶ 29

In equal protection analysis under the U.S. Constitution, suspect classes are groupings based on factors such as race or national origin, not the educational institution which a person chooses to attend. *In re Blankenship*, 3 N.M.I. 209 (1992).

DC NMI 1986. A classification which is based on race, national origin or other such class is itself "immediately suspect" and the subject classification will survive only upon the government's demonstration that the categories drawn are necessary to meet an overriding state interest. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F2.d 647 (9th Cir. 1989).

DC NMI 1986. In order to justify the use of a suspect classification, a government must show that is purpose or interest is both constitutionally permissible and substantial, and that its use of the classification is necessary to the accomplishment of its purpose or the safeguarding of its interest. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1986. In order to determine whether the Trust Territory's tripartite wage scales pass constitutional scrutiny, it is necessary to determine whether: (1) the employment of "foreign" personnel was compelling as a goal; and (2) it was a necessary means to the goal of economic advancement; and (3) the wage scales were necessary to each of these goal. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1986. In reviewing a classification which touches on an individual's race or ethnic background, the person challenging the classification is entitled to a judicial determination that the classification is precisely tailored to serve a compelling governmental interest. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1986. The class of Micronesians is a class defined by ancestry or ethnic origin and as such is a "suspect class deserving of heightened judicial scrutiny. *Temengil v. Trust Territory of the Pacific*

Islands, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989)

—Trust Territory Code

DC NMI 1986. At a minimum, the equal protection clause of the Trust Territory Code prohibits conduct which violates principles of equal protection embodied in the United States Constitution. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989)

Free Association, Right to

—Particular Cases

Record was insufficient to support claim that plaintiffs' First Amendment rights to free association were violated by the actions of the Board of Elections in determining eligibility to vote before the election for voters challenged by the Democratic Party and after the election for others where complaint did not allege that all the people challenged by the Democratic Party were Republican Party members. *Charfauros v. Board of Elections*, 1998 MP 16 ¶81

Freedom of Speech and Press

—Discovery of Journalist's Sources

CTC 1988. Courts faced with requests for discovery of materials used in the preparation of journalistic reports must be aware of the possibility that the unlimited or unthinking allowance of each request will impinge upon First Amendment rights. U.S. Const., Amend. I. *Mafnas v. Matsunaga*, 3 CR 441.

CTC 1988. The compulsory disclosure of a journalist's confidential sources of information may entail an abridgement of press freedom by imposing some limitation upon the availability of news. U.S. Const., Amend. I. *Mafnas v. Matsunaga*, 3 CR 441.

CTC 1988. In any case in which a party is seeking discovery or testimony from a non-party journalist and in order to establish a basis for a claim of First Amendment privilege to avoid such a request, the journalist must make a minimal prima facie showing that responding to discovery or testimonial requests will impinge on First Amendment interests including: (1) the need to preserve the confidentiality of sources; and (2) the possible adverse effects disclosure may have on the reporter's ability to gather news. U.S. Const., Amend. I. *Mafnas v. Matsunaga*, 3 CR 441.

CTC 1988. Upon a showing that responding to discovery will impinge upon First Amendment interests of a non-party journalist, the burden then shifts to the party seeking discovery to demonstrate the efforts made to obtain the information elsewhere and the extent to which the information is relevant. U.S. Const., Amend. I. *Mafnas v. Matsunaga*, 3 CR 441.

CTC 1988. In order to compel discovery from a non-party journalist who has made a prima facie showing that complying with such discovery will encroach upon his or her First Amendment rights the party seeking discovery must show that: (1) the party seeking information has independently attempted to obtain the information elsewhere and has been unsuccessful; (2) the information sought goes to the heart of the matter; (3) the information is of certain relevance; and (4) the type of controversy warrants disclosure. U.S. Const., Amend. I. *Mafnas v. Matsunaga*, 3 CR 441.

CTC 1988. In considering a request for discovery from a non-party journalist who has made a prima facie showing that complying will encroach upon First Amendment rights, the court must engage in a balancing analysis that considers both the constitutional interest of a free press and the obligation of all citizens to give relevant testimony and the court will look to the facts on a case-by-case basis in the course of weighing the need for the testimony in question against the claims of the newsman that the public's right to know will be impaired. U.S. Const., Amend. I. Mafnas v. Matsunaga, 3 CR 441.

CTC 1988. In cases not involving attempts to force the disclosure of confidential sources or information, a non-party journalist from whom discovery is sought must at least articulate some reason why such discovery would interfere with or have adverse effects upon that journalist's future ability to gather news. U.S. Const., Amend. I. *Mafnas v. Matsunaga*, 3 CR 441.

CTC 1988. Where there was no question of confidentiality and the interview between a reporter and the defendant resulted in an article published for all to read, the reporter failed to make a prima facie showing of privilege sufficient to entitle her to protection from plaintiff's discovery request on First Amendment grounds. U.S. Const., Amend. I. *Mafnas v. Matsunaga*, 3 CR 441.

—Generally

CTC 1988. The First Amendment occupies a preferred position in the Bill of Rights and any infringement of the First Amendment must be held to a minimum and be no more extensive than the case necessitates. U.S. Const., Amend. I. *Mafnas v. Matsunaga*, 3 CR 441.

CTC 1988. The First Amendment does not invalidate every incidental burdening of the press. U.S. Const., Amend. I. *Mafnas v. Matsunaga*, 3 CR 441.

Fundamental Rights

—Generally

The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men and is a fundamental right protected by the Fourteenth Amendment. Because the right to marry is a fundamental right, any interference by the government with the right to marry is subject to strict scrutiny analysis, and must be narrowly tailored to serve a compelling state interest. *Commonwealth v. Minto*, 2011 MP 14 ¶ 23 (2011).

In defamation actions, Courts must first look to local written law, which includes our case law adopting and/or adapting Restatement provisions. To the extent local written law is lacking, the Restatement fills the gaps. However, since this process of amalgamating local law and Restatement principles increases the potential for intrusion into protected First Amendment areas, special care must be taken when adopting new law. Any modifications must be consistent with *New York Times v. Sullivan* and its progeny. *Tan v. Younis,* 2007 MP 11 ¶ 31

Appellate courts have an obligation to independently examine the record and ensure against forbidden intrusions into the field of free expression. In our independent examination of this summary judgment motion, we apply a clear and convincing evidence standard involving the issue of actual malice. In this examination, the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor. *Tan v. Younis,* 2007 MP 11 ¶ 32

The First Amendment, made applicable in the Commonwealth by section 501(a) of the Covenant, includes among its protected rights that of free expression. Similar protections are found at Article I, Section 2 of the Commonwealth Constitution, which prohibits any law abridging the freedom of speech, or of the press. With respect to defamation, the provisions of Amendment I to the U.S. Constitution are similar to the provisions of section 2, article I of the NMI Constitution. This is due to the fact that Section 2, Article 1 is drawn from the First Amendment to the United States Constitution which is made applicable to the states by the Fourteenth Amendment, which in turn is made applicable in the Northern Mariana Islands by section 501 of the Covenant. *Tan v. Younis,* 2007 MP 11 ¶ 33

The First Amendment protection does not extend to all types of expression; however, political speech is exactly that type of expression granted the highest protection. *Tan v. Younis,* 2007 MP 11 ¶ 34

Defamation cases involving public officials must be considered against a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. *Tan v. Younis,* 2007 MP 11 ¶ 35

So strong is the Constitutional protection of free expression that it even contemplates and protects a degree of abuse. Erroneous statement is inevitable in free debate, and it must be protected if the freedoms of expression are to have the breathing space that they need to survive. Indeed, some degree of abuse is inseparable from the proper use of every thing; and in no instance is this more true than in that of the press. *Tan v. Younis,* 2007 MP 11 ¶ 36

To allow plaintiffs to survive even summary judgment without any evidence in record tending to show the existence of actual malice chills fundamental rights of speech and press. *Tan v. Younis*, 2007 MP 11 ¶ 60

Interpretation and Construction

—Contract Clause

Article I, Section 10, Clause 1 of the United States Constitution, commonly referred to as the "contracts clause," holds that "no state shall enter into any . . . Law impairing the Obligation of Contracts. Despite this rigid language, the prohibition is not an absolute one and is not to be read with literal exactness like a mathematical formula. The contract clause does not require a State to adhere to a contract that surrenders an essential attribute of its sovereignty. *Tano Group, Inc. v. Dep't of Publ. Works, et al.*, 2009 MP 18 ¶ 60 (2009).

As a preliminary matter, a court must determine whether a contract exists and whether there has been an impairment of the contract. The central inquiry though is whether the impairment is substantial. In determining whether an impairment is substantial, a court should consider: (1) whether the parties objectively relied on the abridged term or if the abridged term substantially induced the parties to enter into the contract; (2) whether the statute abolished the contract or "merely modified" it; and (3) whether the abridged right was the "central undertaking" or "primary consideration" of the parties. If a statute substantially impairs a state's own financial obligations, the impairment may be constitutional if it is reasonable and necessary to serve an important public purpose. In these cases of substantial impairment to a state's financial obligations, "complete deference to legislative assessment of reasonableness and necessity [are] not appropriate because the State's self-interest is at stake. *Tano Group, Inc. v. Dep't of Publ. Works, et al.*, 2009 MP 18 ¶ 60 (2009).

In determining whether a substantial impairment occurred, the Supreme Court must first consider whether the parties objectively relied on the abridged term or if the abridged term substantially induced the parties to enter into the contract. *Tano Group, Inc. v. Dep't of Publ. Works, et al.*, 2009 MP 18 ¶ 61 (2009).

The Contract Clause of the U.S. Constitution as applied through Section 501 of the Covenant, while it prohibits interference in private contracts, must also accommodate the State's inherent police power to guard its citizens. The threshold inquiry is whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. *Matsunaga v. Matsunaga*, 2006 MP 25 ¶ 21

The court will examine the severity of the impairment so that it can direct the appropriate amount of scrutiny toward the law in question. *Matsunaga v. Matsunaga*, 2006 MP 25 ¶ 22

The statute restricting attorneys in Article XII cases to a 20% contingency fee or an amount equal to $700.00 per hour is reasonable. *Matsunaga v. Matsunaga*, 2006 MP 25 ¶ 22

In evaluating a statute restricting contract rights, the court must consider whether the subject industry has been regulated in the past. *Matsunaga v. Matsunaga*, 2006 MP 25 ¶ 23

The practice of law requires a license and is regulated by the state. Attorneys' contingency fees have been regularly limited by state statutes and common law. *Matsunaga v. Matsunaga*, 2006 MP 25 ¶ 23

Title 2 CMC §4942 does not operate to substantially impair contractual relationships between attorneys and clients in Article XII cases. *Matsunaga v. Matsunaga*, 2006 MP 25 ¶ 24

A statute which contains a substantial impairment is constitutional if the State has a significant and legitimate public purpose in enacting the statute. Remedying a social or economic problem is a legitimate public purpose. *Matsunaga v. Matsunaga*, 2006 MP 25 ¶ 24

If a legitimate public purpose is identified, then the last inquiry is whether the adjustment of the rights and responsibilities of the contracting parties is appropriate in relation to the public purpose which justifies the adoption of the legislation. *Matsunaga v. Matsunaga*, 2006 MP 25 ¶ 25

— Extradition

The Extradition Clause of the U.S. Constitution requires states to extradite persons found within their borders who stand charged with a crime in another state or territory. The purpose of the Extradition Clause, as noted by the U.S. Supreme Court, is to enable each state to bring offenders to trial as swiftly as possible in the state where the alleged offense was committed. The Extradition Clause precludes a state from becoming a sanctuary for out-of-state fugitives, thereby preventing the balkanization of the administration of criminal justice among the several states. *Commonwealth v. Miura*, 2010 MP 12 ¶ 9 (2010).

— Generally

One person, one vote requires voting power be equally distributed throughout the constituent population. The U.S. Supreme Court found one person, one vote applicable to both state apportionment and congressional districting plans, but its applicability in each instance derives from different constitutional sources. These different constitutional sources resulted in analogous but distinct requirements when implementing one person, one vote in each context. Supreme Court precedent makes clear that population deviations that are permissible across state election districts are only permissible across congressional districts if justified by a legitimate state interest. Although it is unclear in either instance which persons, if any, may be excluded from the "population" upon which apportionment decisions are based, the standard is

likely lower for state election districts than for congressional districts. *In re Pangelinan,* 2008 MP 12 ¶ 17 (2008).

The N.M.I. Equal Protection Clause is analogous to the federal Equal Protection Clause and will generally be given the same interpretation. However, the N.M.I. Equal Protection Clause, like all provisions of the N.M.I. Constitution, is subservient to the Covenant. It must be interpreted in accordance with Covenant requirements; it may not contravene them. Where Covenant language renders federal authority inapplicable, no N.M.I. Constitutional provision may resurrect it. *In re Pangelinan,* 2008 MP 12 ¶ 100 (2008).

Congress's authority to administer territories under the Territorial Clause is broader than its authority over states. *In re Pangelinan,* 2008 MP 12 ¶ 53 (2008).

Although Congress's legislative authority over territories is broad, it is not unlimited and the degree to which it is limited depends upon the relation of the particular territory to the United States. If a territory is incorporated into the United States – meaning the territory is destined for statehood from the time of acquisition – constitutional protections apply in full. By contrast, if a territory is not on path to becoming a state, and is thus unincorporated, Congress's Territorial Clause powers are subject to such constitutional restrictions as are applicable to the situation. *In re Pangelinan,* 2008 MP 12 ¶ 58 (2008).

Limiting congress's legislative prerogative only by such restrictions applicable to the situation is an intentionally flexible standard designed to permit congress leeway in considering the territory's unique history and culture. However, this flexibility does not permit congress to encumber fundamental constitutional rights of persons living in unincorporated territories. The Territorial Clause must at times give way to competing constitutional provisions, namely those express prohibitions on Congress preventing it from passing *ex post facto* laws, bills of attainder, etc. But also, even in cases where there is no direct command of the Constitution which applies, there may nevertheless be restrictions of so fundamental a nature that they cannot be transgressed. *In re Pangelinan,* 2008 MP 12 ¶ 59 (2008).

Certain procedural rights may be considered fundamental; for example, personal rights declared in the Constitution such as the guarantee that no person could be deprived of life, liberty, or property without due process of law. *In re Pangelinan,* 2008 MP 12 ¶ 61 (2008).

The Covenant is co-equal with applicable U.S. Constitutional provisions. Constitutional provisions are applicable in the Commonwealth in one of two ways, either because they are specifically made applicable through Section 501(a) or because they are fundamental and beyond the authority of Congress to impugn. *In re Pangelinan,* 2008 MP 12 ¶ 63 (2008).

If an alleged constitutional right is found to be fundamental for purposes of the Insular Cases, Congress may not abridge that right despite its broad Territorial Clause powers. *In re Pangelinan,* 2008 MP 12 ¶ 64 (2008).

Whereas the Due Process Clause incorporates to the states certain limitations on federal power in favor of fundamental rights, the Insular Cases were concerned with limitations on Congress's power to govern United States territories under Article IV, Section 3, Clause 2 of the United States Constitution. *In re Pangelinan,* 2008 MP 12 ¶ 67 (2008).

The standard for finding the delicate balance between local diversity and constitutional command, at least when the case involves a claimed substantive right, is whether the claimed right is one which would be impractical or anomalous in the N.M.I. *In re Pangelinan,* 2008 MP 12 ¶ 71 (2008).

A second test is whether a Congressional act encroaches upon one of those fundamental limitations in favor of personal rights which are the basis of all free government; a right fundamental in the international sense. *In re Pangelinan,* 2008 MP 12 ¶ 73 (2008).

Only fundamental rights apply of their own force in the N.M.I. because it is not an incorporated territory; one person, one vote is not a fundamental right because numerous free governments, including the United States, have a bicameral legislature in which one house is not apportioned based on population; therefore, one person, one vote does not apply of its own force in the N.M.I. and Congress acted within its authority in authorizing the N.M.I. Senate's departure from the one person, one vote standard. *In re Pangelinan,* 2008 MP 12 ¶ 74 (2008).

An alleged constitutional right applies in the N.M.I. if the Covenant expressly makes it applicable or if the right is fundamental for purposes of the Insular Cases. *In re Pangelinan,* 2008 MP 12 ¶ 75 (2008).

Just as the one person, one vote principle applies differently to congressional and state elections, so too does its application to N.M.I. elections differ. *In re Pangelinan,* 2008 MP 12 ¶ 96 (2008).

One person, one vote, as applied to the states in *Reynolds*, is not a [fundamental] right upon which all free government is based. *In re Pangelinan,* 2008 MP 12 ¶ 98 (2008).

The Sixth Amendment of the United States Constitution states that in all criminal prosecutions, the accused shall enjoy the right to have the Assistance of Counsel for his defense. However, assistance of counsel does not have to be perfect or free from error. Rather, the right to counsel is the right to the *effective* assistance of counsel. Conversely, ineffective assistance of counsel occurs when a trial counsel's performance falls below that of a reasonably competent attorney. *Commonwealth v. Shimabukuro,* 2008 MP 10 ¶ 9 (2008).

The purpose of the Sixth Amendment right to counsel is to ensure a fair trial. Based on this purpose, the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. *Commonwealth v. Shimabukuro,* 2008 MP 10 ¶ 10 (2008).

In determining whether a criminal defendant has been deprived of effective assistance of counsel, the Court adopted a two-pronged test. First, the defendant must "show that the counsel's *performance* was deficient. Second, the defendant must show that the deficient performance *prejudiced* the defense. *Commonwealth v. Shimabukuro,* 2008 MP 10 ¶ 11 (2008).

Under the first prong, or the "performance prong," a defendant must show that the defense counsel's performance fell below an objective standard of reasonableness." In determining whether a defense counsel's advice is reasonable, a court must determine whether it is "within the range of competence demanded of attorneys in criminal cases." *Id.* (quoting *McMann,* 397 U.S. at 770-71). Furthermore, the reasonableness of counsel's conduct must be assessed according to "the facts of the particular case, viewed as of the time of counsel's conduct. *Commonwealth v. Shimabukuro,* 2008 MP 10 ¶ 11 (2008).

Under the second prong, or the "prejudice prong," the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Therefore, the defendant must show with reasonable probability that the attorney's error caused the defendant to lose the case. *Commonwealth v. Shimabukuro,* 2008 MP 10 ¶ 11 (2008).

For claims arising out of the plea process, *Strickland's* prejudice prong is slightly modified. In determining whether an attorney's conduct in negotiating a plea agreement amounts to ineffective assistance, the defendant satisfies the prejudice prong by showing that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Therefore, after pleading guilty, a defendant must show that the counsel's error was the sole reason the defendant waived the trial and pled guilty. *Commonwealth v. Shimabukuro,* 2008 MP 10 ¶ 12 (2008).

Under the Due Process Clauses of the United States and Commonwealth Constitutions, a trial judge must apprise criminal defendants of the direct consequences of their guilty pleas, but need not inform them of the collateral consequences of their pleas. Direct consequences have a definite, immediate and largely automatic effect on the range of the defendant's punishment. Conversely, collateral consequences are not automatic, but are contingent on action taken by an individual or individuals other than the sentencing court. Deportation is a collateral consequence of a criminal conviction based on two crucial determinations. First, the decision to initiate deportation proceedings against an alien defendant in the Commonwealth is not left to the sentencing court, but to the Attorney General's Office. Second, deportation is a civil matter, wholly separate from a criminal proceeding. A trial judge need not inform criminal defendants of the potential immigration consequences of their guilty pleas. *Commonwealth v. Shimabukuro,* 2008 MP 10 ¶ 15 2008).

Deportation is a collateral consequence of a guilty plea in the Commonwealth. We therefore join with the majority of jurisdictions and hold that defense counsel has no duty to inform defendants of the collateral consequences of their guilty pleas. As such, failure to advise a defendant of a collateral penalty is not objectively unreasonable under *Strickland's* performance prong and therefore does not amount to ineffective assistance of counsel. *Commonwealth v. Shimabukuro,* 2008 MP 10 ¶ 16 (2008).

Judicial Review

The Supreme Court will only consider constitutional issues if necessary. *Marianas Eye Institute v. Moses*, 2011 MP 1 ¶ 19 (2011).

—Legislation

While courts have the power to invalidate illegal or unconstitutional laws, they cannot remedy the evil of inaction by forcing the legislature to act. If the Legislature has not passed a law, but instead chooses to not act at all, the Supreme Court lacks the constitutional authority to remedy such a situation. *Marine Revitalization Corp., et al. v. DLNR*, 2010 MP 18 ¶ 35 (2010).

DC App. Div. 1983. The judiciary has the final responsibility to adjudicate claims that a coordinate branch has exceeded its constitutional power and therefore the judiciary may be required to interpret the Constitution in a manner at variance with the construction given the document by another branch. *CNMI v. Atalig*, 1 CR 552, *rev'd*, 733 F.2d 1341 (9th Cir. 1984).

CTC 1985. The Appellate Division of the District Court has jurisdiction to decide the constitutionality of Commonwealth laws and, accordingly, has the power of judicial review and to test the validity of a statute. 1 CMC 3301; 48 U.S. C. §1694b. *Amog v. Keatley*, 2 CR 155, *aff'd*, 2 CR 751.

CTC 1985. Constitutional principle of separation of powers limits the remedial methods that can be employed by the courts to review legislative action, and courts may decide only whether a given legislative enactment is valid or not; they may not substitute their independent judgment for that of the responsible legislative body as to what the law should be. *Amog v. Keatley*, 2 CR 155, *aff'd*, 2 CR 751.

CTC 1984. Courts will not make a ruling on a matter of constitutional law where the matter can be disposed of on non-constitutional grounds. *Marianas Public Land Trust v. Marianas Public Land Corporation*, 1 CR 974.

CTC 1983. Although it is within the power of the legislature to enact declaratory statutes and interpretative statutes, it is the function, indeed the obligation, of the judicial branch, not the legislative, to interpret or declare what the Constitution means. Public Law 3-101. [2 C.M.C. §4116(b)]. *Romisher v. Marianas Public Land Corporation*, 1 CR 898.

—Regulations

See **ADMINISTRATIVE LAW - Regulations - Constitutional Questions**

—Statutes

See **STATUTES - Constitutional Questions**

Jury Trial, Right to

See also **JURIES - Right to Jury Trial**

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*, 2004 MP 4 ¶ 27

Justiciability

—Case or Controversy

DC App. Div, 1986. Suit by Public Land Trust to recover escrow money for rent paid by the United States to Commonwealth for Tinian lands was justiciable where the United States accepted the risk that the Commonwealth would not be able to deliver title when it released the funds into the joint account. *Marianas Public Land Trust v. Government NMI*, 2 CR 870, rev'd, 838, F.2d 341 (9th Cir. 1988).

DC App. Div. 1983. Cases or controversies arising under the Covenant are justiciable in federal court. Covenant §903. *CNMI v. Atalig*, 1 CR 552, *rev'd*, 723 F.2d 682 (9th Cir. 1984).

DC NMI 1988. The case or controversy requirement of the United States Constitution deprives federal courts of jurisdiction to hear moot cases. U.S. Const., Art. III. *Hillblom v. United States of America*, 3 CR 502.

DC NMI 1988. Case became moot when interim events deprived the court of the ability to redress a party's purported injury. U.S. Const., Art. III. *Hillblom v. United States of America*, 3 CR 502.

DC NMI 1988. Where plaintiffs did not allege either that they were voters or that they had made efforts to purchase land and that their efforts had been stymied by the provisions of the Covenant or the Constitution of the Commonwealth of the Northern Mariana Islands, allegations which are necessary for an actual case or controversy, the lack of these jurisdictional prerequisites is sufficient to dismiss this suit. U.S.

Const., Art. III. *Hillblom v. United States of America*, 3 CR 294.

DC NMI 1986. That the Commonwealth Attorney General agrees with the legal arguments advanced by plaintiffs regarding the Constitutional Convention's lack of authority to amend the Schedule on Transitional Matters does not demonstrate the absence of a justiciable case or controversy. U.S. Const., Art. III. *Taguchi v. Government NMI*, 2 CR 518.

DC NMI 1982. The case or controversy components of the ripeness doctrine requires that plaintiff be threatened with immediate injury which the requested relief would redress; an unconsummated injury which is certain to occur satisfies the requirement. *Bauer v. McCoy*, 1 CR 248.

DC NMI 1982. Claim for reimbursement for educational expenses is ripe for adjudication where alleged injury has already occurred and plaintiff also faces immediate but unconsummated threatened injury. *Bauer v. McCoy*, 1 CR 248.

DC NMI 1980. The constitutional requirement of a "case or controversy" fully applies to an action for declaratory relief. U.S. Const., Art. III, §2. *Marianas Fisheries, Inc. v. Kreps*, 1 CR 106.

DC NMI 1980. Where plaintiffs prayed for a judgment declaring that the Fisheries Conservation and Management Act of 1976 is not applicable to the Commonwealth of the Northern Mariana Islands or its surrounding waters, and for an order enjoining the defendant from enforcing any provisions of the Act, a Presidential Proclamation suspending the Fisheries Conservation and Management Act until the termination of the Trusteeship mooted the causes of action. U.S. Const., Art. III, §2; Pres. Proc. 4726. *Marianas Fisheries, Inc. v. Kreps*, 1 CR 106.

DC NMI 1980. A case is moot when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome. *Marianas Fisheries, Inc. v. Kreps*, 1 CR 106.

DC NMI 1980. When events have permanently destroyed any possibility of repetition of the challenged law or conduct or when the chance of repetition is remote and speculative, the case is moot. *Marianas Fisheries, Inc. v. Kreps*, 1 CR 106.

DC NMI 1980. Plaintiffs' fears that Presidential Proclamation could cease to have effect at some indeterminate future date are not enough to bring action within exception to mootness doctrine. *Marianas Fisheries, Inc. v. Kreps*, 1 CR 106.

CTC 1989. Courts will not decide cases on the basis of assumed or hypothetical facts. *Duty Free Shoppers Ltd. v. Sablan*, 3 CR 623.

CTC 1984. Court would not determine issue where a real case or controversy was not presented. *Marianas Public Land Trust v. Marianas Public Land Corporation*, 1 CR 974.

—Mootness

CTC 1988. In general a case becomes moot when the parties lack a legally cognizable interest in the outcome. *In re the Matter Duncan*, 3 CR 383.

CTC 1988. The party contending that a case is moot must bear the heavy burden of demonstrating facts underlying that contention. *In re the Matter Duncan*, 3 CR 383.

CTC 1988. Controversies which are capable of repetition, yet evading review are an exception to the general rule of mootness. *In re the Matter Duncan*, 3 CR 383.

CTC 1988. The exception to the general rule of mootness requires the combination of two elements: 1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and 2) there was a reasonable expectation that the same complaining party would be subject to the same action again. *In re the Matter Duncan*, 3 CR 383.

CTC 1988. Where, although term of petitioner's involuntary commitment had ended, there was a reasonable expectation that the petitioner would face short period of commitment again based on his illness, too short to fully litigate the issue, case fell into exception of mootness requirement. *In re the Matter Duncan*, 3 CR 383

—Political Questions

DC App. Div. 1984. Factors that caused federal courts to treat immigration challenges as quasi-political do not apply with equal force in the Comonwealth. *Sirilan v. Castro*, 1 CR 1082.

DC App. Div. 1984. The political nature of legislation that repealed permanent residency law does not mandate a standard of review which is more deferential to governmental interests than would be

the test used to review other pieces of legislation. *Sirilan v. Castro*, 1 CR 1082.

DC NMI 1988. Where: (1) complaint's characterization of the United States' position, even if supported by facts, provided no legal basis for jurisdiction in the federal court; (2) vague allegations that the U.S. Congress continues to pass laws which improperly affect the Covenant, without the naming of even a single law in support of the complaint, bordered on the frivolous; and (3) plaintiffs' apparent objection to the final form of the Covenant was a political question, not a legal one, lawsuit would be dismissed. *Hillblom v. United States of America*, 3 CR 502.

DC NMI 1988. Where goal of plaintiffs complaint was determination of the parameters of the United States sovereignty in the Commonwealth and would require court to ignore the time-honored strictures of an actual case on controversy, complaint presented a nonjusticiable political question. *Hillblom v. United States of America*, 3 CR 294.

DC NMI 1986. At issue in political question cases is not an absence of subject matter jurisdiction but justiciability, which refers to a discretional deference to avoid deciding certain controversies. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 687 (9th Cir. 1989).

DC NMI 1986. An action challenging the Trust Territory government's employee compensation plan on the ground of equal protection does not present a political question. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 598, *rev'd* in part and *aff'd* in part, 881 F.2d 687 (9th Cir. 1989).

DC NMI 1980. The exercise of discretion in the area of executive veto power over appropriations is not reviewable by the judiciary since the governor's and Legislature's actions, as permitted by the Constitution, are political in the generic sense. *Atalig v. Camacho*, 1 CR 93, *rev'd*, sub nom. *Taisacan v. Camacho*, 660 F.2d 41 1 (9th Cir. 1981).

DC NMI 1980. The rule that a federal court will not decide "political questions" is a jurisdictional principle closely related to the "case or controversy" requirement. *Bradshaw v. Camacho*, 1 CR 31.

DC NMI 1980. A court should avoid determining cases in which one of the following formulations is inextricable: (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; or (2) a lack of judicially discoverable and manageable standards for resolving it; or (3) the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or (4) the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or (5) an unusual need for unquestioning adherence to a political decision already made; or (6) the potential for embarassment from multifarious pronouncements by various departments on one question. *Bradshaw v. Camacho*, 1 CR 31.

DC NMI 1980. The court must presume, once the plaintiff has asserted subject matter jurisdiction, that the case does not present a political question unless it falls within one of the six categories defining a political question. *Bradshaw v. Camacho*, 1 CR 31.

DC NMI 1980. Whether the executive's constitutionally delegated line item veto authority, when used to veto an appropriation for the Office of the Public Auditor, is limited by the Commonwealth Constitution mandating that the executive appoint a Public Auditor is a non-justiciable political question. NMI Const., Art. III, §12. *Bradshaw v. Camacho*, 1 CR 31.

—Ripeness

DC NMI 1988. Where proposed U.S. law on drilling was merely a proposed law and if bill were enacted and if the CNMI Legislature still felt that the United States has infringed upon its law-making powers then the Commonwealth must decide if it can, under appropriate judicial standards, bring legal action to preserve what it perceives as its rights, but until such time as it becomes law, a challenge to that bill is not ripe, and provides no standing. U.S. Const., Art. III. *Hillblom v. United States of America*, 3 CR 502.

DC NMI 1982. A ripe dispute is one which has matured sufficiently for judicial resolution. *Bauer v. McCoy*, 1 CR 248.

DC NMI 1982. When the issues raised are purely legal ones, a challenge to a regulation that has not yet been applied is ripe for adjudication. *Bauer v. McCoy*, 1 CR 248.

CTC 1989. For the court to consider defendant's claim of illegality based on Article XII of the Constitution, there must be a justiciable controversy regarding plaintiffs lien on defendant's reversionary interest and without a justiciable controversy, the

court is without jurisdiction to entertain the motion. NMI Const., Art XII. Du*ty Free Shoppers Ltd. v. Sablan*, 3 CR 623.

CTC 1984. Court would not address controversy not ripe for decision. *Marianas Public Land Trust v. Marianas Public Land Corporation*, 1 CR 974.

Political Subdivision

CTC 1987. An instrumentality of a government, which is created by the government, cannot assert constitutional rights in relation to the government that has created it. *MPLT v. CNMI*, 3 CR 120.

Presumptions

See **ADMINISTRATIVE LAW - Regulations - Constitutional Questions** and **STATUTES - Constitutional Questions - Generally**

Reapportionment

DC App. Div. 1983. The "publication" of the census referred to in the Commonwealth Constitution occurs when an official counting of the people, showing the population figures broken down into usable data (census enumeration districts here), have been officially released to the public, or been made available for the use of the general assembly. C.N.M.I. Const., Art. II, §4. *Sablan v. NMI Board of Elections*, 2 CR 741.

DC App. Div. 1983. The Legislature acted well within the constitutionally mandated 120-day period in enacting reapportionment scheme on September 22,1983, where June 20, 1983, was the earliest the Legislature could be held to have received the results of a decennial census. C.N.M.I. Const., Art. II, §4; Public Law 3-78 [l C.M.C. §§1501- 1503]. *Sablan v. NMI Board of Elections*, 1 CR 741.

Remain Silent, Right to

Fifth amendment doctrine recognizes a general prohibition against prosecutorial comments about a defendant's post-arrest silence. U.S. Const. amend. V. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 76

To inform a person that he has the right to remain silent and then allow an unfavorable inference to be drawn from such silence at trial would be fundamentally unfair and a deprivation of due process. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 77

Representation of Counsel

CTC 1987. The failure to comply with requirements of the court rule allowing representation by a legal intern constitutes a prima facie showing of lack of counsel and, therefore, is a denial of the defendant's constitutional right to counsel. C.Tr.C.R. Legal Intern 3. *CNMI v. Hiriochi*, 3 CR 24.

Retroactive Statute

CTC 1985. Statute that retroactively removed the limits for wrongful death actions does not violate the constitutional prohibition against enactment of bills of attainder, ex post facto laws, and laws impairing the obligation of contracts. 7 CMC §2101 et seq.; NMI Const., Art. 1 §1. *Flowers v. Hong Kong Saipan Hotels & Investment, Ltd.*, 2 CR 100.

Right of Confrontation

See **CRIMINAL PROCEDURE - Confrontation, Right of**

Qualified Immunity

When defense of qualified immunity is asserted, the first step for the court is to determine whether a constitutional violation has occurred. After that has been determined, the court should assess whether the right in question was clearly established and whether a reasonable official would have known that his or her acts violated the right in question. *Charfauros v. Board of Elections*, 1998 MP 16 ¶43

Qualified immunity generally shields government officials performing discretionary functions from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Charfauros v. Board of Elections*, 1998 MP 16 ¶49

Government officers and officials have a duty not only to know the law in the area in which they work, but to take reasonable steps to ascertain whether their actions are lawful, and not simply rely on their own idea of what the law might be. Avery, Rudovsky and Blum, Police Misconduct: Law and Litigation, 3d Ed. § 3:9 at page 3-30.4. *Charfauros v. Board of Elections*, 1998 MP 16 ¶56

Search and Seizure

—Adminstrative Searches

DC App. Div. 1987. Although generally a search of private property without proper consent is unreasonable absent a valid search warrant, administrative searches are excepted from this general rule, including agricultural quarantine inspections. *CNMI v. Atalig*, 2 CR 1006.

DC App. Div. 1987. Where inspection of defendant's packages was conducted pursuant to an emergency quarantine order issued 78 days earlier, the purpose of the quarantine was to prevent fruit flies on Rota from entering Saipan, and the order was issued by the Director of the Department of Natural Resources, who had the duty to protect the Commonwealth's agriculture and the authority to promulgate regulations to achieve that end, the warrantless search of defendant's boxes did not offend the mandates of the constitutional prohibition against unreasonable searches and seizures. *CNMI v. Atalig*, 2 CR 1006.

DC App. Div. 1987. Consent is not a requirement for an agricultural quarantine inspection. *CNMI v. Atalig*, 2 CR 1006.

DC App. Div. 1987. Agricultural inspections are proper whether conducted in the place of the quarantine or in a place of entry outside the area of the quarantine. *CNMI v. Atalig*, 2 CR 1006

—Arrests

DC NMI 1989. The Fourth Amendment protects individuals against arrests made without probable cause to believe that a person is committing or has committed a crime. U.S. Const., Amend. IV. *USA v. Cuyson*, 3 CR 712.

DC NMI 1989. An arrest is a seizure characterized by a highly intrusive or lengthy search or detention. U.S. Const., Amend. IV. *USA v. Cuyson*, 3 CR 712.

DC NMI 1989. The Fourth Amendment provides protection against law enforcement activities involving seizures of persons, including brief detentions short of traditional arrests. U.S. Const., Amend. IV; NMI Const. Art. I, §3. *USA v. Cuyson*, 3 CR 712.

DC NMI 1989. A seizure occurs when a police officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen and once a seizure occurs, it continues throughout the time the person is in custody. U.S. Const., Amend. IV. *USA v. Cuyson*, 3 CR 712.

DC NMI 1989. The Fourth Amendment requires that seizures of persons be based on founded suspicion or probable cause. U.S. Const., Amend. IV. *USA v. Cuyson*, 3 CR 712.

DC NMI 1989. The determination of whether an arrest has been made, for Fourth Amendment purposes, does not depend on whether police officers announce that they are placing a person under arrest; rather, the determination of precisely when the arrest occurs depends on the facts of the particular case. U.S. Const., Amend. IV. *USA v. Cuyson*, 3 CR 712.

DC NMI 1989. The key to making a determination as to whether an arrest has been made is whether a reasonable person would believe under the circumstances that he is not free to leave. U.S. Const., Amend. IV. *USA v. Cuyson*, 3 CR 712.

DC NMI 1989. A reasonable person can understand from the circumstances surrounding inquiries made by law enforcement officials that he is no longer free to move about without the officials' consent and is arrested, despite being told by the officials that he is not under arrest. U.S . Const., Amend. IV. *USA v. Cuyson*, 3 CR 712.

DC NMI 1989. A person's alienage may play a role in determining whether the person believes he is not free to leave, but under arrest. U.S. Const., Amend. IV. *USA v. Cuyson*, 3 CR 712.

DC NMI 1989. Stops of persons travelling in automobiles are seizures within the meaning of the Fourth Amendment. U.S. Const., Amend. IV. *USA v. Cuyson*, 3 CR 712.

DC NMI 1989. Circumstances that might indicate a seizure, even where the person did not attempt to leave, include: (1) use of language or tone of voice indicating that compliance with an officer's request might be compelled; (2) the presence of several officers, physical escort by officers to areas closed to the public, placement in a small room, and constant presence of at least one officer, even during trips to use the restroom or to the telephone; (3) impairment of person's mobility, a request that the person follow an officer or that the person otherwise alter his destination, schedule, or location, lengthy questions, an atmosphere dominated by law enforcement personnel; and (4) detention of a person and his suitcase where it is apparent that law enforcement officials would not have permitted the person to leave or remove his suitcase during an investigation. U.S. Const., Amend. IV. *USA v. Cuyson*, 3 CR 712.

DC NMI 1989. The defendant's arrest occurred when he was required to go to the police station, where from that point onward, his movement was arrested and he was not at liberty to leave because: (1) the detainees were confronted by two policemen; (2) as a result of the confrontation, policemen told the detainees that they were invited to the police station; (3) defendant and his companions, believing that they were not free to reject the invitation, altered their destination by turning away from the airport and driving in the opposite direction, towards the police station. U.S. Const., Amend. IV. *USA v. Cuyson*, 3 CR 712.

DC NMI 1989. The actions of the police subsequent to initial encounter with defendant showed that an arrest took place long before police officers opened the suitcase and informed defendant that he was under arrest because the police officers: (1) maintained continual surveillance of the detainees' movements from the point of the initial encounter on the road throughout the trip to the police station, following directly behind their vehicle, and preventing the detainees from altering their course to the station; (2) directed the detainees' movements in the police stationparking lot; (3) escorted defendant into an area of the police station closed to the public; (4) led defendant to various rooms inside the station, and subjected him to constant police surveillance; (5) questioned defendant in an atmosphere dominated by policemen; (6) contacted a witness to identify defendant and failed to advise defendant he would be subject to an identification procedure; (7) monitored defendant's telephone conversations; (8) regulated defendant's bathroom privileges; (9) detained defendant's luggage; (10) examined and copied defendant's airline ticket and passport; (11) used language and tone of voice indicating that defendant's compliance with their requests might be compelled; (12) urged defendant to sign a consent form authorizing a search of his luggage; and (13) advised defendant that they would obtain a warrant if he refused to open his suitcase. U.S. Const., Amend. IV. *USA v. Cuyson*, 3 CR 712.

DC NMI 1989. Whether the police officers believed defendant was free to leave at any time before he opened his suitcase is irrelevant because defendant reasonably did not think he was at liberty and that he was under arrest. U.S. Const., Amend. IV. *USA v. Cuyson*, 3 CR 712.

CSC 1989. Whether an arrest has occurred depends on all the surrounding circumstances, including the extent to which liberty of movement is curtailed and the type of force or authority employed. U.S. Const., Amend. IV. *CNMI v. Crisostimo*, 3 CR 946.

CSC 1989. The proper focus when determining coerciveness or restraint sufficient to constitute an arrest is not on the subjective belief of the arresting officer, but on the perspective of the person seized; the ultimate question is whether, in view of all the circumstances, a reasonable person would believe themself to be under arrest. U.S. Const., Amend. IV. *CNMI v. Crisostimo*, 3 CR 946.

CSC 1989. The detention of defendant at gunpoint was an arrest which required probable cause where: (1) defendant was confronted by several police officers, all of whom were carrying weapons drawn and ready to fire; (2) the restriction of defendant's liberty was complete upon his being ordered into the garage of a residence; (3) a reasonably innocent person in the circumstances presented here would not have felt free to leave after a brief questioning; and (4) the officer testified that at no time after defendant was confronted was he free to leave. U.S. Const., Amend. IV. *CNMI v. Crisostimo*, 3 CR 946.

CSC 1989. When defendant was arrested when officers encircled him, the Fourth Amendment requirements of probable cause attached at that point. U.S. Const., Amend. IV. *CNMI v. Crisostimo*, 3 CR 946.

CSC 1989. Where other than mere proximity to the owner of a residence and his residence, the government can identify no probable cause which would lead a prudent person to believe that defendant had committed or was committing a criminal offense, defendant's constitutional rights were intruded upon by his arrest. U.S. Const., Amend. IV. *CNMI v. Crisostimo*, 3 CR 946.

—Exclusionary Rule

DC NMI 1989. Where defendant was being illegally detained when he purportedly consented to the search of his suitcase, the consent was tainted by the illegality and was therefore ineffective to justify the search, and the suitcase and its contents must be suppressed. U.S. Const., Amend IV. *USA v. Cuyson*, 3 CR 712.

CSC 1989. Where an illegal warrantless search was conducted and the tainted evidence obtained in that search was presented to a magistrate in, an effort to obtain a search warrant and the search warrant was issued on the basis of this tainted evidence the

exclusionary rule applies. U.S. Const., Amend. IV. *CNMI v. Crisostimo*, 3 CR 946.

—Generally

The overriding function of the Fourth Amendment is to protect personal privacy and dignity against unwarranted intrusion by the State. This mandates a protection against unwarranted intrusion by the State. The United States Supreme Court has explained that "a 'search' occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. Whereas a 'seizure' of property occurs when there is some meaningful interference with an individual's possessory interest in that property. *Commonwealth v. Pua*, 2009 MP 21 ¶ 20 (2009).

DC NMI 1989. The Fourth Amendment guarantees the right of persons and their belongings to be secure against unreasonable searches and seizures and prohibits the issuance of warrants except upon probable cause. U.S. Const. Amend. IV; NMI Const. Art. 1, §3. *USA v. Cuyson*, 3 CR 712.

CSC 1989. A visitor retains a legitimate expectation of privacy in belongings when he or she enters the premises to be searched. U.S. Const., Amend. IV. *CNMI v. Crisostimo*, 3 CR 946.

CTC 1988. The overriding function of the Fourth Amendment is to protect personal privacy and dignity against unwarranted intrusion by the State and this mandates a protection against those intrusions not justified in the circumstances nor made in a proper manner. U.S. Const., Amend. IV. *CNMI v. Taitano*, 3 CR 604.

—Investigation Stops

DC App. Div. 1987. Investigative stops by law enforcement officers do not offend the Fourth Amendment if the officer has a reasonable and articulable suspicion that the person seized is engaged in criminal activity. U.S. Const., Amend. IV. *CNMI v. Maliti*, 3 CR 190.

DC App. Div. 1987. Where there was no evidence in the record that police officers had any reason to believe that car parked on shoulder of road was involved in accident, injury to a person or damage to property, the officers could not have had a reasonable and articulable suspicion that the defendant, the operator of a car, was engaged in a violation of vehicle code requiring that operator stop vehicle and render assistance. Accordingly, defendant's statement that he was the driver of the car, made when police stopped him walking from the car, should have been suppressed as evidence obtained pursuant to a seizure which violated the Fourth Amendment. U.S. Const., Amend IV. *CNMI v. Maliti*, 3 CR 190.

CSC 1989. A Terry stop involves no more than a brief stop, interrogation and, under proper circumstances, a brief check for weapons; beyond such a brief and narrowly circumscribed intrusion, an arrest occurs, for which probable cause is required. U.S. Const., Amend. IV. *CNMI v. Crisostimo*, 3 CR 946.

CSC 1989. Where defendant was effectively arrested prior to the search of his bag, it was not a "Terry stop" situation. U.S. Const., Amend. IV. *CNMI v. Crisostimo*, 3 CR 946.

—Probable Cause

To lawfully seize an item under the plain view exception to the warrant requirement, the officer must have probable cause to believe that the item in question is evidence of a crime or contraband. Probable cause exists when the facts and circumstances within an officer's knowledge and of which he had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that the object is evidence of a crime. *Commonwealth v. Pua*, 2009 MP 21 ¶ 21 (2009).

CSC 1989. Probable cause exists when, at the time of arrest, the agents knew reasonably trustworthy information sufficient to warrant a prudent person in believing that the accused has committed or was committing a crime. U.S. Const., Amend. IV. *CNMI v. Crisostimo*, 3 CR 946.

CSC 1989. Where police officers possessed a valid search warrant for a residence, but the search warrant was completely devoid of any indication that defendant was involved in any criminal activity, defendant's mere presence on the premises, without more, cannot support his arrest under these circumstances. U.S. Const., Amend. IV. *CNMI v. Crisostimo*, 3 CR 946.

CSC 1989. Where the standard for the seizure of a person is probable cause, that seizure must be supported by probable cause particularized with respect to that person. U.S. Const., Amend. IV. *CNMI v. Crisostimo*, 3 CR 946.

CSC 1989. Where there was no evidence that defendant's vehicle contained contraband, mere

suspicion that it did does not give rise to the level of probable cause. U.S. Const., Amend. IV. *CNMI v. Crisostimo*, 3 CR 946.

CTC 1988. Probable cause to stop the defendant's vehicle exists when the facts and circumstances within the officer's knowledge are sufficient to warrant a reasonable prudent person in believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense. *CNMI v. Chariton*, 3 CR 511.

CTC 1988. Probable cause exists if a reasonably prudent person would have concluded that there was a fair probability that the suspect had committed a crime. *CNMI v. Chariton*, 3 CR 511.

CTC 1988. Where police officer testified that he had observed defendant driving approximately 45 miles per hour in a 25 mile per hour speed zone, police officer had sufficient probable cause to believe that defendant violated the law and to stop the defendant's vehicle. *CNMI v. Chariton*, 3 CR 511.

—Tissue Samples

CTC 1988. In order for a search to be made involving intrusions beyond the body's surface there must be a clear indication that the evidence sought will be found as the fourth amendment forbids any such intrusion on the mere chance that desired evidence might be obtained. U.S. Const., Amend. IV. *CNMI v. Taitano*, 3 CR 604.

CTC 1988. On the government's motion to take hair, tissue and saliva samples from a defendant, the court must engage in a balancing test in order to determine whether the government's request for tissue samples is a valid request respecting defendant's constitutional rights. The trial judge must balance whatever probative value the evidence may have in the case against the defendant's constitutionally protected expectation of privacy and dignity. U.S. Const., Amend. IV. *CNMI v. Taitano*, 3 CR 604.

CTC 1988. On the government's motion to take hair, tissue and saliva samples from a defendant, a proper showing of probative value and medical justification for blood and saliva testing can be made through a preliminary hearing which successfully establishes probable cause to believe that defendant committed the crimes with which he is charged. U.S. Const., Amend. IV. *CNMI v. Taitano*, 3 CR 604.

CTC 1988. Upon the establishment of probable cause that defendant committed the crime, the government does not violate his constitutional rights by obtaining a warrant to compel defendant to supply hair, saliva and blood samples. U.S. Const., Amend. IV. *CNMI v. Taitano*, 3 CR 604.

CTC 1988. Where no preliminary hearing has been held regarding probable cause to believe defendant committed the crimes he has been charged with, the government's motion for a search of defendant's body to include the taking of hair, blood and saliva samples is premature. U.S. Const., Amend. IV. *CNMI v. Taitano*, 3 CR 604.

CTC 1988. Any affidavit in support of a search warrant to compel the extraction of blood, hair and saliva samples from a defendant must provide the magistrate with probable cause to believe that the evidence requested to be seized would be probative in the prosecution of the case. U.S. Const., Amend. IV. *CNMI v. Taitano*, 3 CR 604.

—Warrants

One of the exceptions to the Fourth Amendment's warrant requirement allows warrantless seizures under the "plain view" doctrine. The plain view doctrine allows police officers to seize an item without a warrant if: (1) they are lawfully in a position from which they view an object; (2) its incriminating character is immediately apparent; and (3) the officers have a lawful right of access to the object. It is best understood not as an independent exception to the Fourth Amendment's warrant clause, but simply as an extension of whatever the prior justification for an officer's access to an object may be. *Commonwealth v. Pua*, 2009 MP 21 ¶ 21 (2009).

The Fourth Amendment's requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible. The scope of the search extends to the entire area in which the object of the search may be found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search. Furthermore, the particularity requirement ensures that as to what is to be taken, nothing is left to the discretion of the officer executing the warrant. The general rule is that searches and seizures conducted outside the judicial process – that is, without a warrant – are per se unreasonable under the Fourth Amendment – subject only to a few specifically established and well delineated exceptions. *Commonwealth v. Pua*, 2009 MP 21 ¶ 20 (2009).

The Commonwealth Constitution states that "the right of the people to be secure in their persons, house, papers and belongings against unreasonable search and seizure shall not be violated." NMI Const., art I, § 3. It further provides that "no warrants shall issue except upon probable cause supported by Oath or affirmation and particularly describing the place to be searched and the persons or things to be seized." *Commonwealth v. Pua*, 2009 MP 21 ¶ 19 (2009).

CSC 1989. Containers such as purses, shoulder bags, backpacks and suitcases are so closely associated with one's person that a search of them must be supported by a warrant which satisfies the particularity requirement, or by one of the exceptions to the warrant requirements. U.S. Const., Amend. IV. *CNMI v. Crisostimo*, 3 CR 946.

CSC 1989. Visitors who are located within the physical boundaries of premises described in a search warrant and who have chosen to protect their legitimate expectations of privacy by carrying containers which are personal to them such as purses, handbags, book bags or shoulder bags cannot have these items searched unless probable cause of exigent circumstances exist. U.S. Const., Amend. IV. *CNMI v. Crisostimo*, 3 CR 946.

CSC 1989. Although the police could detain defendant for a reasonable time while a "proper" search is conducted, they could not search his bag because that bag was not part of the premises described in the warrant and any danger that defendant would take a weapon from the bag was alleviated when the police officer took possession of the bag. U.S. Const., Amend. IV. *CNMI v. Crisostimo*, 3 CR 946.

CSC 1989. The mere inclusion of tainted evidence in an affidavit does not, by itself, taint the warrant or evidence seized pursuant to the warrant; the court reviewing the affidavit should excise the tainted evidence and determine whether the remaining untainted evidence would provide a neutral magistrate with probable cause to issue a warrant. U.S. Const., Amend. IV. *CNMI v. Crisostimo*, 3 CR 946.

CTC 1988. The exceptions to the warrant requirement include consent, exigent circumstances, hot pursuit, stop and frisk, and searches incident to a lawful arrest. U.S. Const., Amend. IV. *CNMI v. Pangelinan*, 3 CR 357.

CTC 1988. All searches without a valid warrant are unreasonable unless shown to be within any of the exceptions to the rule that a search must rest upon a valid warrant, and the burden is on the Government to show that the search comes within an exception. U.S. Const., Amend. IV. *CNMI v. Pangelinan*, 3 CR 357.

CTC 1988. The fourth amendment to the U.S. Constitution prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest, absent exigent circumstances. U.S. Const., Amend. IV. *CNMI v. Pangelinan*, 3 CR 357.

CTC 1988. Where none of the exceptions for a warrantless arrest of the defendant for a routine felony arrest at his hotel room were present, the arrest violated the defendant's fourth amendment rights and evidence deemed "fruits of the poisonous tree" should be suppressed. U.S. Const., Amend. IV. *CNMI v. Pangelinan*, 3 CR 357.

Self Incrimination

See also **CRIMINAL PROCEDURE - Search and Seizure**

—Custodial Interrogation

CSC 1989. Custodial interrogation consists of questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. U.S. Const., Amend. V. *CNMI v. Crisostimo*, 3 CR 946.

—Generally

CSC 1989. The Fifth Amendment privilege against self-incrimination protects the individual from being compelled to provide evidence against himself. U.S. Const., Amend. V. *CNMI v. Crisostimo*, 3 CR 946.

CSC 1989. In determining whether an individual is in custody for Miran& purposes, the totality of the circumstances must be considered and the Miranda principles are applicable where a suspect is not free to leave. U.S. Const., Amend. V. *CNMI v. Crisostimo*, 3 CR 946.

CSC 1989. Custodial interrogation refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating

response from the suspect. U.S. Const., Amend. V. *CNMI v. Crisostimo*, 3 CR 946.

CSC 1989. In police officer's questions, "What is this?" (referring to the contents of defendant's bag) and "Is there anything you would like to tell me about the car?", were express questions which sought to elicit responses from defendant. U.S. Const., Amend. V. *CNMI v. Crisostimo*, 3 CR 946.

CTC 1988. The privilege against self-incrimination is to be accorded liberal construction. U.S. Const., Amend V. *Mafnas v. Matsunaga*, 3 CR 441.

—Miranda Warnings

CSC 1989. Statement made by a police officer that the defendant would have to wait until another police officer arrived to identify him cannot be construed as interrogation because the statement was not a question but, rather, a statement of fact that defendant would have to wait until the police officer arrived at the station. U.S. Const., Amend. V. *CNMI v. Ngiratebl*, 3 CR 820.

CTC 1988. Evidence which is not "testimonial" or "communicative" is not protected by the Fifth Amendment and Miranda warnings need not be given prior to the taking of such evidence. U.S. Const., Amend. V. *CNMI v. Chariton*, 3 CR 511.

CTC 1988. A roadside field sobriety test, conducted without prior Miranda warnings, does not contravene the requirements of the Fifth Amendment's privilege against self incrimination because: (1) such a test does not require the subject to divulge any knowledge he might have and (2) the fact that the subject's guilt may be inferred from the results of a field sobriety test goes to the probity of the testing method, not to its character as a supposed confession surrogate. U.S. Const., Amend. V. *CNMI v. Chariton*, 3 CR 511.

—Purpose

CTC 1988. The manifest purpose of Fifth Amendment provisions against self-incrimination is to prohibit compelling testimony of a self-incriminating kind from a part or a witness. U.S. Const., Amend. V. *Mafnas v. Matsunaga*, 3 CR 441.

—Suppression of Statements

CSC 1989. Statements obtained through custodial interrogation after an illegal arrest should be excluded unless intervening events break the causal connection between the illegal arrest and the statements so that the statements are sufficiently an act of free will to purge the primary taint. U.S. Const., Amend. V. *CNMI v. Crisostimo*, 3 CR 946.

CSC 1989. Where no events intervened between defendant's arrest and the statements made by him in response to police officer's questions which would purge the taint resulting from the failure to inform defendant of his constitutional rights, defendant's answers to these questions must be suppressed. U.S. Const., Amend. V. *CNMI v. Crisostimo*, 3 CR 946.

Separation of Powers

—Generally

The Supreme Court would overstep its constitutional authority if it ordered the Legislature to appropriate funds for a certain purpose, or if the Court redirected funds already appropriated for a specific purpose towards the payment of a judgment. The Court would similarly overstep its authority if it ordered an executive official, through a writ of mandamus or similar procedural mechanism, to transfer funds to pay a judgment in the absence of legislative approval. *Marine Revitalization Corp., et al. v. DLNR*, 2010 MP 18 ¶ 36 (2010).

The separation of powers principle operates in a broad manner to confine legislative powers to the legislature, executive powers to the executive, and those powers which are judicial in character to the judiciary. Simply stated, the doctrine forbids one branch of government from exercising the powers properly belonging to another branch. *Marine Revitalization Corp., et al. v. DLNR*, 2010 MP 18 ¶ 12 (2010).

The CNMI legislature amended Article IV of the Commonwealth Constitution to establish the judiciary as a constitutional entity, co-equal with, and independent of the executive and legislative branches of government. Nothing in the amendment purports to limit the jurisdiction of the Supreme Court. Indeed, Article IV, section 1, as amended, provides that "[t]he judicial power of the Commonwealth shall be vested in a judiciary." *Kabir v. Barcinas*, 2009 MP 19 ¶ 16 (2009).

Article IV, section 3 of the Commonwealth Constitution, as amended, describes the jurisdiction of the Supreme Court and mirrors 1 CMC § 3102 in all material aspects, with the additional provision that

"*[t]he supreme court shall have all inherent powers*, including the power to issue all writs necessary to the complete exercise of its duties and jurisdiction under this constitution and the laws of the Commonwealth." NMI Const. art. IV, § 3 (emphasis added). Furthermore, section 3 of House Legislative Initiative 10-3 contained the following continuity of judicial matters provision: "Upon the effective date of Article IV, as amended, . . . all laws, regulations, and rules affecting the judiciary shall continue to exist and operate as if established pursuant to this Article IV, and shall, unless clearly inconsistent, be read to be consistent with Article IV, as amended." Thus, the Supreme Court's jurisdiction, as provided in 1 CMC § 3102, remains undisturbed. *Kabir v. Barcinas*, 2009 MP 19 ¶ 16 (2009).

If any category of persons is to be excluded for purposes of legislative apportionment, the Court is not the proper body to pioneer it. *In re Pangelinan*, 2007 MP 14 ¶ 12

In the absence of express authority to the contrary, participation in the 2010 United States Census is a question best left to the political process, and thus the Court is without authority to require it. *In re Pangelinan*, 2007 MP 14 ¶ 15

Unless a State is involved as a contracting party, courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure. *Matsunaga v. Matsunaga*, 2006 MP 25 ¶ 25

It is undisputed that the executive branch has the power and responsibility to bring criminal prosecutions in whichever manner it sees fit. *Commonwealth v. Superior Court (Ada)*, 2004 MP 14 ¶ 11

The function of the legislature is to create law, but it has no constitutional authority to modify or enact statutes that overrule court rules of procedure, because the creation of court procedure is purely a judicial function and as such, the procedural rules of a court take precedence over statutes, to the extent that there is any inconsistency. *Reyes v. Reyes*, 2004 MP 1 ¶ 99

The setting and enforcement of time periods for judges and justices in the CNMI to decide cases is an area of authority exclusively reposed in the judicial branch of government. However, this Court declines to promulgate a procedural rule to limit the time frame within which it may issue a decision at this time. *Reyes v. Reyes*, 2004 MP 1 ¶ 101

A legislature may validate by subsequent act anything it might have authorized previously or may make immaterial anything it might have omitted in the original act. This power, however, is not absolute: a legislature may not pass a statute which prescribes a rule of decision in a pending case unless the legislation itself amends the substantive law underlying the case. The constitutional principle of separation of powers is violated where the legislature has impermissibly directed certain findings in pending litigation, without changing any underlying law or where the legislature enacts a statute that is unconstitutional. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 56

The political question doctrine is a policy of judicial abstention wherein the judiciary declines to adjudicate a case, so as not to violate the separation of powers by interfering with a coequal branch of government. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 40

The separation of powers concept came into being to safeguard the independence of each branch of the government and protect it from domination and interference by the others. *Nakatsukasa v. Superior Court*, 1999 MP 25 ¶ 1

The separation of powers concept came into being to safeguard the independence of each branch of the government and protect it from domination and interference by others. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

DC NMI 1987. The judicial branch, although co-equal to the legislative branch, avoids encroachment upon the Legislature and shuns interfering with the lawful exercise of discretion of that branch. Where the legislature is vested with the discretionary authority to compel witness testimony to aid in legislation, the Court will not interfere with the Legislature's exercise of subpoena power within the context of the case, for it is not the province of the Court to compel the legislature to act wisely, only constitutionally. *Millard v. Fifth NMI Legislature House of Representative*, 2 CR 1142.

CTC 1985. Statute which retroactively removed the limits upon recovery in wrongful death actions is not a violation of the separation of powers doctrine although the legislature may intend it to affect pending litigation. 7 CMC 52101 et seq. *Flowers v. Hong Kong Saipan Hotels & Investment, Ltd.*, 2 CR 100.

DC App. Div. 1987. Because alien corporation was an alien corporation from the outset of land

transaction, the land lease made by it for term over forty years was void ab initio, and original owners had standing to sue by virtue of their interest in protecting their land. *Wabol v. Muna*, 2 CR 963.

CTC 1985. Persons who allege that they are owners of property in question, they are entitled to rental from the property, have standing to challenge contract as a violation of NMI Constitutional restriction on alienation of land. *Wabol v. Muna*, 2 CR 231, *rev'd* in part, 2 CR 963.

CTC 1985. The essential element of the standing requirement is that the plaintiff show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant. *Wabol v. Muna*, 2 CR 231, *rev'd* in part, 2 CR 963.

—Immigration and Deportation

NMI Supreme Court's deference to the Commonwealth Legislature in substantive immigration matters does not override Court's duty to uphold constitutional procedural safeguards in deportation proceedings. *Office of the Attorney General v. Honrado*, 1996 MP 15 ¶19

——Particular Cases

Section 509 of Executive Order No. 94-3 (June 24, 1994), which provided that the governor may appoint all officials at or above the level of division director and that such appointees would be exempt from the civil service system, was an unconstitutional exercise of executive power. *Sonoda v. Cabrera*, 1997 MP 5 ¶4, 4

—Judiciary, Role of

See **COURTS - Justiciability - Political Questions** and **STATUTES - Constitutional Questions - Separation of Powers**

—Presumption that Law is Constitutional

It is a longstanding doctrine that an act passed by the legislature and signed into law by the governor is presumed to be constitutional. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 58

Sixth Amendment

See **COVENANT - U.S. Law, Applicability of - Constitution: Particular Provisions**

Statutes

See also **STATUTES - Constitutional Questions - Generally**

—Construction

If a law conflicts with a provision of the Commonwealth Constitution, that provision must fall. *Dep't of Publ. Lands v. Commonwealth*, 2010 MP 14 ¶ 29 (2010).

It is well-settled in U.S. jurisprudence that neither the governor nor the legislature may take the function of a constitutionally created entity and transfer that function to another governmental entity. *Dep't of Publ. Lands v. Commonwealth*, 2010 MP 14 ¶ 29 (2010).

A penal statute is unconstitutional and violates due process guarantees if its terms are vague. Sentencing provisions may be unconstitutionally vague if they do not state with sufficient clarity the consequences of violating the criminal statute in question. *Commonwealth v. Lin*, 2010 MP 2 ¶ 14 (2010).

The mere misinterpretation of a statute does not necessarily make the statute unconstitutionally vague. *Commonwealth v. Lin*, 2010 MP 2 ¶ 15 (2010).

DC NMI 1983. 42 U.S.C. §1983 is not a source of substantive rights but instead provides a remedy for the violation of constitutional rights. 42 U.S.C. §1983. *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1983. 42 U.S.C. §1983 is remedial legislation designed to preserve human rights and therefore must be liberally and beneficially construed. 42.U.S.C. §1983. *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

—Standing to Challenge

See **PARTIES - Standing - Constitutional Questions**

Supremacy

Under the Supremacy Clause of the United States Constitution, a court, in enforcing federal law, may order state officials to take actions despite

contravening state laws. *Marine Revitalization Corp., et al. v. DLNR*, 2010 MP 18 ¶ 18 (2010).

DC App. Div. 1987. Congress cannot pass any law which violates the United States Constitution. *Wabol v. Muna*, 2 CR 963.

DC App. Div. 1983. The Covenant cannot ovemde the U.S. Constitution. *CNMI v. Atalig*, 1 CR 552, *rev'd*, 723 F.2d 682 (9th Cir; 1984).

DC App. Div. 1983. United States treaties and laws must comply with the Constitution. *CNMI v. Atalig*, 1 CR 552, *rev'd*, 723 F.2d 682 (9th Cir. 1984).

DC Ap. Div. 1983. Because of the Constitution's supremacy over all other laws, no Act of Congress may authorize a constitutional violation. *CNMI v. Atalig*, 1 CR 552, *rev'd*, 723 F.2d 682 (9th Cir. 1984)

Territories

DC App. Div. 1983. The United States Constitution applies fully in incorporated territories, but only fundamental constitutional rights apply of their own force in unincorporated territories. *CNMI v. Atalig*, 1 CR 552, rev'd, 723 F.2d 682 (9th Cir. 1984).

DC App. Div. 1983. The same constitutional definition of the term "fundamental rights" applies to states and territories. *CNMI v. Atalig*, 1 CR 552, *rev'd*, 723 F.2d 682 (9th Cir. 1984).

CONSUMER PROTECTION

Attorney's Fees

See **Remedies - Attorney's Fees**, this topic.

Applications, Particular

—Construction Contractors

——Particular Cases

In executing U.S. Farmers Home Administration construction contract, contractor expressly represented that he would perform his work in accordance with specified minimum property standards. Record revealed that contractor failed to conform with certain provisions in standards. Accordingly, contractor (who did not question potential applicability of Commonwealth Consumer Protection Act, 4 CMC § 5101 et seq.) violated 4 CMC § 5105(g) by "[r]epresenting that . . . services are of a particular standard, quality or grade . . . if they are of another." *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

—Gambling

——Particular Cases

In action for collection of poker machine winnings, claim that machine operator violated consumer protection statute prohibiting act or practice unfair or deceptive to the consumer failed because one allegation supporting claim raised question of fact not determined by trial court and other allegations were not supported by record. 4 CMC § 5105. *Agulto v. Northern Marianas Inv. Group, Ltd.*, 4 N.M.I. 7 (1993).

—Generally

——Particular Cases

A party's mention of a deceased's outstanding debt and the ability of the deceased to rest in peace to a relative carries the implication of moral and legal obligations and is likely to cause misunderstanding in any similarly situated consumer's mind, and thus would constitute a violation of the Consumer Protection Act, 4 CMC §§ 5101, et seq. 4 CMC §§ 5101, et seq. *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 25

Generally

The intent of the Consumer Protection Act, 4 CMC §§ 5101, et seq., is to protect consumers. 4 CMC §§ 5101, et seq. *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 24

In determining whether a party violated the Consumer Protection Act, 4 CMC §§ 5101, et seq., the operative question is not whether the party actually deceived another, but whether the party acted in a way that was unfair or would likely cause confusion to a hypothetical person. 4 CMC §§ 5101, et seq. *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 24

It is not error for the trial court to use the Federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, et seq., for interpretive purposes, applying its analysis to the damages provision of the C.N.M.I. Consumer Protection Act, 4 CMC §§ 5101, et seq., set forth at 4 CMC § 5112(a). 15 U.S.C. §§ 1692, et seq.; 4 CMC §§ 5101, et seq.,; 4 CMC § 5112(a). *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 28

Jurisdiction

The N.M.I. Supreme Court has jurisdiction, pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, and pursuant to 1 CMC § 3102(a), over the appeal of a judgment awarding damages and attorney fees for unfair and deceptive practices in violation of the C.N.M.I. Consumer Protection Act. N.M.I. Const. art. IV, § 3; 1 CMC § 3102(a). *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 1

Operation and Effect

—Generally

Whether Commonwealth Consumer Protection Act has been violated based on particular actions is a legal question, reviewable de novo. 4 CMC § 5101 et seq. *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

Prohibited Acts

A violation of the Consumer Protection Act, 4 CMC § 5105, consists of: (1) an unlawful act or practice, (2) in the conduct of trade or commerce. *Hiponia, et al. v. Crown Royal Ins. Corp.*, 2010 MP 8 ¶ 22 (2010).

DC NMI 1984. The Consumer Protection Act was not intended to prohibit only acts which constitute deception or are intended to fool the customer. 33 T.T.C. §353. [4 CMC §5101 et seq.]. *Nakazato v. Microl Corporation, Inc.*, 1 CR 887.

DC NMI 1984. The Consumer Protection Act is broadly worded and is meant to be construed liberally to provide protection of all kinds to the consumer. 33 T.T.C. §353. [4 C.M.C. §5101 et seq.]. *Nakazato v. Microl Corporation, Inc.*, 1 CR 887.

Remedies

—Attorney's Fees

The Consumer Protection Act authorizes an award of reasonable fees to a prevailing plaintiff. In evaluating the reasonableness of attorney fees, the court considers the time and labor required, the novelty and difficulty of the questions involved, and the skill required to properly perform the legal service. *Hiponia, et al. v. Crown Royal Ins. Corp.*, 2010 MP 8 ¶ 68 (2010).

Reasonableness of award of attorney's fees under Commonwealth Consumer Protection Act is reviewed under abuse of discretion standard. 4 CMC § 5101 et seq. *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

—Construction

See **Applications, Particular - Construction Contractors**, this topic.

—Particular Cases

In addition to an award of actual damages under the Consumer Protection Act, the court shall award liquidated damages in an amount equal to the actual damages in cases of willful violations. If the trier of fact finds that a willful violation occurred, then the statute mandates an award of liquidated damages. *Hiponia, et al. v. Crown Royal Ins. Corp.*, 2010 MP 8 ¶ 30 (2010).

The use of the word "shall" is mandatory and has the effect of creating a duty, absent any legislative intent to the contrary. *Hiponia, et al. v. Crown Royal Ins. Corp.*, 2010 MP 8 ¶ 30 (2010).

The purpose of the Consumer Protection Act, and 4 CMC § 5112 in particular, is to protect the public from unscrupulous business practices. Therefore, a trial judge has the authority to sua sponte award liquidated damages in furtherance of the statute's purpose of discouraging unfair and deceptive business practices. *Hiponia, et al. v. Crown Royal Ins. Corp.*, 2010 MP 8 ¶ 30 (2010).

Since Commonwealth Consumer Protection Act, 4 CMC § 5101 et seq., was violated in action based on defective workmanship in construction of house, and Act provides that trial court shall award costs and reasonable attorney's fees if plaintiff prevails in claim based on Act, trial court appropriately awarded attorney's fees. 4 CMC § 5112(a). *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

—Repossessions

DC NMI 1984. Where bank as lien holder of vehicle quotes net payoff amount to dealer and accepts payment in that amount, and car dealer relies on figure and resells car to third party, bank's subsequent repossession from third party violates Consumer Protection Act. 33 T.T.C. §353. [4 CMC §5101 et

seq.]. *Nakazato v. Microl Corporation, Inc.*, 1 CR 887

Standard of Proof

In the C.N.M.I., the preponderance of the evidence standard of proof shall be used for cases in which a claimant seeks to prove a violation of the Consumer Protection Act, 4 CMC §§ 5101 et seq. 4 CMC §§ 5101 et seq. *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 22

A person need only show that it was more probable than not that a party's conduct in trade or commerce created a likelihood of confusion or misunderstanding or was unfair or deceptive to a hypothetical consumer in order to prove a violation of the Consumer Protection Act, 4 CMC §§ 5101, et seq. 4 CMC §§ 5101, et seq. *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 24

Standing

— Generally

The plain meaning of 4 CMC § 5112 allows any aggrieved individual, and not just those in privity of contract or in a commercial relationship with the defendant, to have standing under the statute. *Hiponia, et al. v. Crown Royal Ins. Corp.*, 2010 MP 8 ¶ 28 (2010).

CONTRACTS

Actions

Where an indemnity agreement indemnifies against liability as well as against loss, the indemnitee does not have to wait until loss occurs, but may sue on the agreement as soon as liability is incurred. *Century Ins. Co., Ltd. v. TAC Int'l Constructors, Inc*., 2006 MP 10 ¶ 16

Where an indemnitee has a claim for liability, it may act before loss is actually incurred. This does not mean, however, that the indemnitee must file suit at the time the liability is incurred. It simply means that the party does not need to wait until the loss occurs—it may file immediately when the liability incurs. The covenants of indemnity for liability and for loss are separate and the cause of action for the liability claim may be asserted even though the loss has not yet occurred. *Century Ins. Co., Ltd. v. TAC Int'l Constructors, Inc*., 2006 MP 10 ¶ 16

In an agreement that indemnifies against both loss and liability, the covenants are separate and distinct and the statute of limitation accrues to each covenant separately. While a party may initiate a cause of action once the liability incurs, they are not required to do so. A cause of action may be filed based upon indemnity against liability, loss, or both. *Century Ins. Co., Ltd. v. TAC Int'l Constructors, Inc*., 2006 MP 10 ¶ 20

A cause of action on an agreement indemnifying against loss does not arise until the indemnitee has actually incurred loss. *Century Ins. Co., Ltd. v. TAC Int'l Constructors, Inc*., 2006 MP 10 ¶ 22

A secondary obligor's cause of action against a principal obligor to enforce the principal obligor's duty to reimburse or the secondary obligor's right of restitution accrues at the later of: the date of performance of the underlying obligation; and the date of the secondary obligor's performance of the secondary obligation. *Century Ins. Co., Ltd. v. TAC Int'l Constructors, Inc*., 2006 MP 10 ¶ 22

The cause of action for an agreement indemnifying against loss accrues when settlement is paid, as that is the time of performance of the underlying obligation. The action for indemnification will not be time-barred if initiated within the applicable statute of limitations of six years from the date the action accrues. *Century Ins. Co., Ltd. v. TAC Int'l Constructors, Inc*., 2006 MP 10 ¶ 22

Agreements which indemnify against both liability and loss consist of two separate covenants. The statute of limitations runs at different times for each covenant. The statute of limitations will not bar a cause of action for indemnification against loss where the action was initiated within six years of when the loss was incurred through the payment of a settlement. *Century Ins. Co., Ltd. v. TAC Int'l Constructors, Inc*., 2006 MP 10 ¶ 24

—Damages

See **DAMAGES - Contract**

—Jurisdiction

The N.M.I. Supreme Court has jurisdiction pursuant to Article IV, Section 3 of the N.M.I. Constitution over the appeal from a trial court's denial of a preliminary injunction. N.M.I. Const. art. IV, § 3. *Pacific Am. Title Ins. & Escrow (C.N.M.I.), Inc. v. Anderson*, 1999 MP 15 ¶ 1

NMI Supreme Court had jurisdiction over appeal in contract enforcement action pursuant to general jurisdictional statute. 1 CMC § 3102(a). *United Enters., Inc. v. King*, 4 N.M.I. 304 (1995).

Aleatory Contracts

—Applications, Particular

Gambling contracts are a type of aleatory contract. *Agulto v. Northern Marianas Inv. Group, Ltd.*, 4 N.M.I. 7 (1993).

—Generally

An aleatory contract is one where a promise is conditioned upon the occurrence of a fortuitous event. *Agulto v. Northern Marianas Inv. Group, Ltd.*, 4 N.M.I. 7 (1993).

—Particular Cases

Party who agreed to play poker machine for chance to win money, and who risked losing money, and operator of machine, who agreed to pay party for points registered on functioning machine, made mutual agreements constituting valid gambling contract, based upon aleatory promises. *Agulto v. Northern Marianas Inv. Group, Ltd*., 4 N.M.I. 7 (1993).

Arbitration Provisions

Arbitration in other jurisdictions is largely governed by statute and the Commonwealth has no comparable statutory scheme. *Bank of Saipan v. Superior Ct. (Attorneys' Liab. Assurance Soc'y, Inc.)*, 2001 MP 5 ¶ 35

While an insured may be compelled to arbitrate disputes with its insurer pursuant to an arbitration provision contained in the insurance policy, the arbitration provision cannot be enforced against a third party to the contract who seeks to claim under it. The law of the C.N.M.I. does not recognize mandatory arbitration agreements as binding on third parties where the contract provision is neither fair nor reasonable and is void against Commonwealth public policy. *Bank of Saipan v. Superior Ct. (Attorneys' Liab. Assurance Soc'y, Inc.)*, 2001 MP 5 ¶ 35

Assignment

—Assignee, Rights of

The lessor may enforce the assumed leasehold promises against the assignee on a theory that the lessor is a third party beneficiary of the agreement between the lessee/assignor and the assignee. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 37 (2011).

Although a judicial sale is an involuntary transfer of the leasehold interest, courts treat this as an assignment. The subsequent purchaser at the judicial sale takes as a "naked" assignee of the leasehold interest. The purchaser takes as an assignee because the judicial sale extinguishes the original lessee's reversionary interest in the premises. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 39 (2011).

Assumption of contractual lease provisions must be explicit. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 42 (2011).

An express promise in a lease is termed a real covenant which "runs with the land" when it "touches and concerns" the leasehold interest. The obligation to perform a real covenant passes by operation of law when property subject to the real covenant is transferred via an assignment. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 43 (2011).

When a lessee on the original lease assigns his or her leasehold interest to a third party, the assignee becomes liable to perform the real covenants contained in the lease. All other express promises in the lease are termed personal covenants, which are collateral and personal obligations between the lessor and the lessee that do not run with the land. The distinction between real and personal covenants is critical, because personal covenants do not bind an assignee when the lessor and assignee are only in privity of estate. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 43 (2011).

An assignee of an optionee may enforce vested contract rights. *Aldan-Pierce v. Mafnas*, 2 N.M.I. 122 (1991), rev'd, 31 F.3d 756 (9th Cir. 1994), cert. denied, 513 U.S. 1116, 115 S. Ct. 913, 130 L. Ed. 2d 794 (1995).

—Generally

While questions regarding the reasonableness of a landlord's refusal to consent to the assignment of a lease are generally left to the trier of fact, courts may decide if a landlord behaves unreasonably as a matter of law when consent to a lease transfer is withheld for subjective, personal concerns, and not for objectively reasonable commercial grounds. *KTT Corp. v. Tomokane*, 2003 MP 17 ¶ 8

There is no legal requirement that a tenant specifically ask for written consent (as opposed to any other kind of consent) to a lease transfer when it has already made explicitly clear that any effort to secure the landlord's consent is in vain. *KTT Corp. v. Tomokane*, 2003 MP 17 ¶ 12

An assignment is the transfer of a right by the owner to another person. Restatement (Second) of Contracts § 316 cmt. c (1979). *Cushnie v. Arriola*, 2000 MP 7 ¶ 21

An assignment of a right is a manifestation of the assignor's intention to transfer that right by virtue of which the assignor's right to performance by the obligor is extinguished in whole or in part and the assignee acquires a right to such performance. Restatement (Second) of Contracts § 317(1) (1979). *Cushnie v. Arriola*, 2000 MP 7 ¶ 21

Where appellant did assign his interest in a property to the bank, the type of interest he once held is irrelevant to the determination of appellee's contractual obligations to him. Regardless of appellant's interest, his assignment of his interest obligated appellee to transfer the proceeds of the sale to the bank and not to appellant. Further, the bank was not precluded from accepting payment from appellee. Based on these facts, the trial court did not err in determining that no genuine issues of material fact existed and thereby granting summary judgment. *Cushnie v. Arriola*, 2000 MP 7 ¶ 23

DC NMI 1981. There is no required form or language in which an assignment must be made; the pivotal factual issue is whether the assignor manifested an intent to presently transfer to the assignee all control, interest, and rights concerning the subject matter. *Mariana Islands Airport Authority v. The Ralph M. Parsons Company*, 1 CR 181.

Breach

Breach of a contract occurs upon the nonperformance of a contractual duty of immediate performance. *Manglona v. Commonwealth*, 2005 MP 15 ¶ 15

Where a tenant fails to make rent payments after receiving notice of its default, and where it abandons the premises, when the lease provides each of these events is a breach of the lease, these acts constitute nonperformance of the tenants' contractual duties required by the lease. *Manglona v. Commonwealth*, 2005 MP 15 ¶ 17

If the nonperformance of a contractual duty is justifiable, then there is no breach. *Manglona v. Commonwealth*, 2005 MP 15 ¶ 18

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

If a landlord fails to perform a valid promise contained in the lease to do something on the leased property, and as a consequence thereof, the tenant is deprived of a significant inducement to the making of the lease, and if the landlord does not perform his promise within a reasonable period of time after being requested to do so, the tenant may, inter alia, terminate the lease. Restatement (Second) of Property: Landlord and Tenant § 7.1 (1977). *Manglona v. Commonwealth*, 2005 MP 15 ¶ 20

A principal covenant on the part of a landlord, which is implied, if not expressed, is that his tenant shall have the quiet enjoyment and possession of the premises. The covenant of quiet possession in a lease is breached when an actual or constructive eviction occurs. *Manglona v. Commonwealth*, 2005 MP 15 ¶ 30

Constructive eviction occurs through intentional conduct by the landlord which renders the lease unavailing to the tenant or deprives him of the beneficial enjoyment of the leased property, causing him to vacate the premises. Generally, the interference by the landlord must render the premises unfit or unsuitable for occupancy in whole or in substantial part for the purposes for which they were leased. *Manglona v. Commonwealth*, 2005 MP 15 ¶ 30

There is a breach of the landlord's obligations if, after a tenant's entry and without the fault of the tenant, a change in the condition of the leased property caused by the landlord's conduct or failure to fulfill an obligation to repair, makes the leased property unsuitable for the use contemplated by the parties and the landlord does not correct the situation within a reasonable time after being requested by the tenant to do so. *Manglona v. Commonwealth*, 2005 MP 15 ¶ 31

The failure of the landlord to fulfill the obligation to repair, thereby making the leased property unsuitable,

is also sometimes referred to as constructive eviction. In the event of such breach, the tenant may, inter alia, terminate the lease. Restatement (Second) of Property: Landlord and Tenant § 5.4(1) (1977). *Manglona v. Commonwealth*, 2005 MP 15 ¶ 31

A lessor has a duty to mitigate his damages when faced with the lessee's abandonment of the leased premises because a lease is both a conveyance of an estate and a contract. *Manglona v. Commonwealth*, 2005 MP 15 ¶ 34

Restatement (Second) of Contracts § 354(1) (1981) allows for prejudgment interest on the amount due less all deductions to which the party in breach is entitled. Deduction in mitigation of damages is one such deduction to which the breaching party is entitled. *Manglona v. Commonwealth*, 2005 MP 15 ¶ 45

A breach of contract causing only speculative harm or threat of future harm is generally not sufficient to create an actionable claim for damages. *Falcon v. McCue*, 2005 MP 7 ¶ 33

—Damages

See **DAMAGES - Contract**

—Generally

Once a party materially breaches a contract, that party cannot insist on the second party's performance of the same contract. *Triple J Saipan Inc. v. Agulto*, 2002 MP 11 ¶ 9

The material breach of an entire contract by one party justifies termination by the nonbreaching party. *Triple J Saipan Inc. v. Agulto*, 2002 MP 11 ¶ 9

DC NMI 1981. A breach of contract is a non-performance of any contractual duty of immediate performance. *Bradshaw v. Camacho*, 1 CR 165.

—Settlement Agreement

A breach of a settlement agreement is breach of a contract. *Century Ins. Co., Ltd. v. Guerrero Bros., Inc., et al.*, 2010 MP 13 ¶ 10 (2010).

Actual damages must flow from the breach of a settlement agreement in order for a court to fashion a remedy. *Century Ins. Co., Ltd. v. Guerrero Bros., Inc., et al.*, 2010 MP 13 ¶ 11 (2010).

Pursuant to the Restatement (Second) of Contracts, in order for a party to receive damages for a breach of contract the party must suffer some harm. *Century Ins. Co., Ltd. v. Guerrero Bros., Inc., et al.*, 2010 MP 13 ¶ 12 (2010).

The breach of a settlement agreement will be remedied if harm flows from the breach, or stated differently, the breach of a settlement agreement without a showing of harm will not entitle the non-breaching party to enforcement of the agreement. *Century Ins. Co., Ltd. v. Guerrero Bros., Inc., et al.*, 2010 MP 13 ¶ 16 (2010).

Breach of a settlement agreement is breach of a contract. *Rosario v. Camacho*, 2001 MP 3 ¶ 96

— Specific Performance

Pursuant to Restatement (Second) of Contracts § 357(1), subject to the rules stated in §§ 359-69, specific performance of a contract duty will be granted in the discretion of the court against a party who has committed or is threatening to commit a breach of the duty. *Century Ins. Co., Ltd. v. Guerrero Bros., Inc., et al.*, 2010 MP 13 ¶ 12 (2010).

Under Restatement § 359, specific performance will not be granted if damages would adequately compensate a party for the breach. Another ground for refusing specific performance is unfairness such as if the contract was induced by a mistake or would cause unreasonable hardship. Restmt. § 364. Other grounds for refusing to grant specific performance are public policy considerations. Restmt. § 365. *Century Ins. Co., Ltd. v. Guerrero Bros., Inc., et al.*, 2010 MP 13 ¶ 12 (2010).

Subject to certain limitations, a court grants specific performance for a breach of contract at its discretion. *Century Ins. Co., Ltd. v. Guerrero Bros., Inc., et al.*, 2010 MP 13 ¶ 12 (2010).

In fashioning a remedy for the breach of a settlement agreement, whether that remedy is damages or specific performance, harm must flow from the breach. *Century Ins. Co., Ltd. v. Guerrero Bros., Inc., et al.*, 2010 MP 13 ¶ 12 (2010).

—Waiver

Waiver of breach is usually defined as the voluntary and intentional relinquishment of a known right and may be either express or implied. *Trinity Ventures, Inc. v. Guerrero*, 1 N.M.I. 54 (1990).

Waiver of breach can be implied from conduct such as making payments for or accepting performance which does not meet contract requirements; waiver can also be expressed verbally or in writing. *Trinity Ventures, Inc. v. Guerrero*, 1 N.M.I. 54 (1990).

——Particular Cases

Superior Court did not error in finding breach of a written lease agreement where it found that testimony that contract had been verbally modified was not credible. *Desince v. Sablan*, 1997 MP 20 ¶15

Party's acceptance of first contract installment payment after due date was waiver of breach as to first installment. *Trinity Ventures, Inc. v. Guerrero*, 1 N.M.I. 54 (1990).

Choice of Law

A court, subject to constitutional restrictions, will follow a statutory directive of its own state in determining the applicable law. Where there is no directive, as in the C.N.M.I., some of the factors relevant to the choice of the applicable rule of law include the relevant policies of the forum, the protection of the justified expectations of the parties, and the relevant policies and interests of other interested states. Restatement (Second) of Conflict of Laws § 6 (1971). *Bank of Saipan v. Superior Ct. (Attorneys' Liab. Assurance Soc'y, Inc.)*, 2001 MP 5 ¶ 28

Parties generally have the power to determine the terms of their contractual engagement, including the choice of which law shall apply to the contract. Restatement (Second) of Conflict of Laws § 187 (1971). *Bank of Saipan v. Superior Ct. (Attorneys' Liab. Assurance Soc'y, Inc.)*, 2001 MP 5 ¶ 29

Conditions

DC NMI 1983. A condition in a contract creates no right or duty in itself, but is merely a limiting factor and if it is breached or does not occur, the promisee acquires no right to enforce the promise. *Maruyama & Associates, Ltd. v. Mariana Islands Housing Authority*, 1 CR 798.

DC NMI 1983. Where contractor and public housing authority agree to a sixty day exclusive negotiating period to begin upon the completion of model homes, the completion of the homes is a condition precedent; where homes were never built, the condition did not occur and there was not created an express contract for an exclusive negotiating period. Maruyama *& Associates, Ltd. v. Mariana Islands Housing Authority*, 1 CR 798.

Consideration

A contract is not binding and enforceable unless it is predicated upon bargained-for consideration. Restatement (Second) of Contracts § 71 cmts. a & b (1981). *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 14

To constitute consideration, a performance or a return promise must be bargained for and a performance or return promise is bargained for if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise. Restatement (Second) of Contracts § 71 (1981). *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 14

The consideration and the promise typically bear a reciprocal relation of motive or inducement. Restatement (Second) of Contracts § 71 cmt. b (1981). *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 14

Consideration exists where there is some indicia of actual value. *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 14

Consideration must result from a bargain. *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 16

A contract is not valid unless supported by bargained-for consideration. *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 29

—Adequacy

CTC 1989. Where defendant's agreement to extend an option to plaintiffs resulted in a promise by a bank to loan money to the plaintiffs, and the agreement is supported by other consideration - the forbearance of plaintiffs to enforce defendant's warranty in the prior lease, the option agreement is supported by adequate consideration. *Bufton v. Ha*, 3 CR 776.

—Debt of Another

The existing debt of a third person, even a spouse or other close relation, is not regarded as sufficient

consideration and does not give rise to a legal duty. *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 15

Mere moral obligation, even if coupled with an express promise, does not constitute consideration sufficient to form a contract. *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 15

The existing debt of a third person does not constitute sufficient consideration. *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 29

If a party did not receive value in exchange for his or her promise when a person signs a promissory note to pay off the debt of another, then the promise is not enforceable. *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 29

Construction Contracts

—Consumer Protection

See **CONSUMER PROTECTION - Applications, Particular - Construction Contractors**

—Generally

Ordinarily, where a contract calls for achieving specific standards, strict compliance with those standards is required. A contractor is required to perform in accordance with plans and specifications. *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

CTC 1985. Contracts are to be constructed in a manner so as to uphold their validity and consistent with applicable government laws designed to protect the contracting parties interests. *Wabol v. Muna*, 2 CR 231, rev'd in part, 2 CR 963.

CTC 1985. If a contract is capable of a construction which will make it valid, legal, effective and enforceable, it will be given that construction. *Wabol v. Muna*, 2 CR 231, rev'd in part, 2 CR 963.

—Particular Cases

Fact that U.S. Farmers Home Administration, financor of construction project, found work satisfactory after completion of project did not relieve contractor from liability to owner for deficiencies in performance. Owner was not bound by agency's determination. *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

Where record showed that contractor failed to conform with certain provisions of minimum property standards specified in U.S. Farmers Home Administration construction contract, contractor's failure to do so constituted breach of contract upon which relief could be granted. Restatement (Second) of Contracts § 235(2) (1981). *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

In executing construction contract, contractor impliedly represented that he would perform his work in a skillful and workmanlike manner. *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

—Performance Bond

DC App. Div. 1987. Surety was bound to pay delay damages because the contractor's performance bond incorporated by reference the construction contract and thus, all provisions of the construction contract became provisions of the bond. *Korea Insurance Corp. v. Villaluz*, 2 CR 1016.

—Survey

CTC 1988. A contract cannot be said to have created any duty to conduct a survey if the contract makes no reference to any duty to conduct a survey. *Fidelino v. Sadhwani*, 3 CR 282.

CTC 1988. A contractor has a duty to survey the property if he is put on notice that there is a question as to the boundary lines. *Fidelino v. Sadhwani*, 3 CR 282.

—Warranties

Doctrine of implied warranty of habitability applies in Commonwealth, providing an alternative basis for relief for deficient housing construction. Coverage of doctrine includes situations in which builder of house is not the vendor and house is constructed on land owned by homeowner. *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

Question of how long after construction is completed remedy under implied warranty of habitability may be available depends upon a case by case review, taking relevant factors into account—including the age of a home, its maintenance and the use to which it has been put. *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

——Particular Cases

In action based on defective workmanship in construction of house, issue of whether plaintiff could independently claim relief for breach of

contract, apart from claim for recovery under builder's warranty specified in contract, was question of law, reviewable de novo. *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

Where builder's warranty in construction contract provided that warranty was in addition to and would in no way reduce all other rights and privileges which owner would have under any other law or instrument, owner was not barred by warranty from asserting claims for relief under other relevant legal principles or statutes. *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

Conveyances

See **DEEDS AND CONVEYANCES**

Covenant Not to Compete

It is the covenant not to compete, not merely a narrow promise not to solicit, which prohibits an employee from accepting business from a former employer's customers. *Pacific Am. Title Ins. & Escrow (C.N.M.I.), Inc. v. Anderson*, 1999 MP 15 ¶ 17

Covenant Not to Solicit

W here there is no dispute that a former employee agreed not to solicit the plaintiff's customers, but that she was free to compete, the interpretation of that agreement as a covenant not to solicit is neither unreasonable nor unsupported by the evidence. *Pacific Am. Title Ins. & Escrow (C.N.M.I.), Inc. v. Anderson*, 1999 MP 15 ¶ 18

Creditors

—Generally

Generally, commercial reasonableness is a question of fact for the jury. Where there are no disputes as to material facts, however, the issue becomes a question of law. *Triple J Saipan, Inc. v. Sanchez,* 2007 MP 23 ¶ 10

When commercial reasonableness is at issue, the burden of proof that every aspect of the sale was commercially reasonable is on the creditor. *Triple J Saipan, Inc. v. Sanchez,* 2007 MP 23 ¶ 12

Two months is hardly untimely for extensive repairs for a nine-year-old vehicle on Saipan where parts are not readily available. Thus, when Plaintiff resold the vehicle in a year the resale was timely. *Triple J Saipan, Inc. v. Sanchez,* 2007 MP 23 ¶ 14

5 CMC § 9507(1) is not a debtor's exclusive remedy for a creditor's failure to comply with the Code's requirements of commercial reasonableness and notice. Section 9507(1) is supplemental to remedies otherwise accorded to the debtor because the Code's drafters must have been aware of the existing remedies available to the injured debtor under prevailing commercial law. The absence of language making its provisions explicitly exclusive implies that it was not intended to supersede supplemental remedies under general principles of law and equity. *Triple J Saipan, Inc. v. Sanchez,* 2007 MP 23 ¶ 19

There is nothing improper or extortion-like in restructuring loans by consolidating the outstanding principal and interest due and creating a new principal. There is no mathematical difference between accruing interest on the outstanding interest and the outstanding principal separately, versus accruing the same rate of interest on a new principal created from combining the outstanding principal and interest due. *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22 ¶ 26

Generally, a "creditor" is one who holds some contractual obligations against another and who has a right to require the fulfillment of an obligation or contract. *In re Estate of Tudela*, 4 N.M.I. 1 (1993), appeal dismissed, 43 F.3d 1479 (9th Cir. 1994).

Damages

See also **DAMAGES - Contract**

In the context of a commercial lease, it is the breaching party that bears the burden of proving that the non-breaching party unreasonably attempted to mitigate damages. *Tano Group, Inc. v. Dep't of Publ. Works, et al.*, 2009 MP 18 ¶ 48 (2009).

The breaching party bears the burden of proof in establishing the unreasonableness of the non-breaching party's mitigation efforts. *Tano Group, Inc. v. Dep't of Publ. Works, et al.*, 2009 MP 18 ¶ 51 (2009).

CTC 1986. Where there is a breach of contract, nominal damages are assessed if actual damages cannot be proved, as where (1) actual damages are uncertain or not susceptible to proof, (2) damages are too remote or speculative, (3) the contract is not definite enough to measure damages or the terms are such that the plaintiff fails to bring himself within the scope of anticipated damages. *Saipan*

Secretarial/Employment Services, Inc. s. CNMI, 2 CR 819, aff'd, 3 CR 168 (DNMI App. Div. 1987).

CTC 1983. In action for damages for breach of contract based on an airline ticket and confirmed reservation, person who was denied boarding must prove his damages with reasonable certainty. *White v. Republic of Nauru*, 1 CR 342.

CTC 1983. Damages for refusal to allow boarding on flight for which he had ticket and confirmed reservation are based on the issued ticket, which is the contract between the passenger and airlines. *White v. Republic of Nauru*, 1 CR 342.

—Employment

DC App. Div. 1987. That plaintiff would have lost money if it had been awarded the contract and that no government contract could have come into existence absent compliance with government regulations controlling government contracts renders its cause of action for damages for breach of contract groundless. *Saipan Secretarial/Employment Services, Inc. v. CNMI*, 3 CR 168.

DC NMI 1981. Where government breaches employment contract, the plaintiff is entitled to recover the salary due under his initial two-year contract plus his salary for the next two-year contract, as well as the fringe benefits or their monetary equivalent provided for in the contract under travel, transportation and moving clause. *Bradshaw v. Camacho*, 1 CR 38.

—Mitigation

DC NMI 1981. Where government is in breach of employment contract, employee need not accept any employment outside of the Commonwealth in order to mitigate his damages or to seek employment other than as a public auditor. *Bradshaw v. Camacho*, 1 CR 38.

Defense

CTC 1986. Claim that party was unaware of the financial consequences of an option agreement on land and the question of whether the option agreement was based on good business judgment are matters of hindsight and second guessing and do not present factual issues of fraud, impossibility of performance, or some other theory to void the agreement. *Aldan-Pierce v. Mafnas*, 2 CR 855, aff'd, 3 CR 326 (DNMI App. Div. 1988).

Duty of Good Faith and Fair Dealing

Pursuant to the Restatement (Second) of Contracts § 205, every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement. Additionally, Comment c states that bad faith in negotiation is not within the purview of the section, and that remedies for bad faith in the absence of an agreement are found in the law of torts or restitution. Moreover, the covenant requires the parties to perform, in good faith, the obligations required by their agreement, and a violation of the covenant occurs when either party violates, nullifies or significantly impairs any benefit of the contract. *Tano Group, Inc. v. Dep't of Publ. Works, et al.*, 2009 MP 18 ¶ 41 (2009).

A cause of action for bad faith in negotiation exists in tort law. Neither the law of the Commonwealth nor the Restatement (Second) of Contracts allow for a recovery of damages under a covenant of good faith and fair dealing theory for the breakdown of negotiations to enter into arbitration. *Tano Group, Inc. v. Dep't of Publ. Works, et al.*, 2009 MP 18 ¶ 43 (2009).

Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement. however, this implied covenant only requires that neither party do anything which will injure the right of the other to receive the benefits of the agreement. *Rosario v. Camacho*, 2001 MP 3 ¶ 99

— Insurance Policies

Every contract imposes a duty of good faith and fair dealing on the parties, and when a party acts in bad faith they breach the covenant and become liable for that breach. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 13 (2010).

To prove bad faith in the insurance context, a plaintiff must show: (1) benefits due under the policy were withheld; and (2) the reason for withholding benefits was unreasonable or without proper cause. Otherwise stated, bad faith occurs when the refusal to pay policy benefits was unreasonable, and not as a result of mere negligence or bad judgment. *Hiponia, et al. v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 13 (2010).

Employment

—Government

The Commonwealth's statutes and laws are a part of every contract in the Commonwealth. *Deleon Guerrero v. Dep't Publ. Lands*, 2011 MP 3 ¶ 13 (2011).

Statutes controlling employment status cannot be superseded by language in a contract. *Deleon Guerrero v. Dep't Publ. Lands*, 2011 MP 3 ¶ 13 (2011).

Governmental bodies are not bound by contracts that exceed statutory grants of authority. *Deleon Guerrero v. Dep't Publ. Lands*, 2011 MP 3 ¶ 13 (2011).

A person contracting with a public entity is charged with knowledge of the statutes governing employment with that entity. *Deleon Guerrero v. Dep't Publ. Lands*, 2011 MP 3 ¶ 13 (2011).

A governmental body cannot contract around express statutory language. *Deleon Guerrero v. Dep't Publ. Lands*, 2011 MP 3 ¶ 17 (2011).

"At will" employees have no property interest in continued employment. *Deleon Guerrero v. Dep't Publ. Lands*, 2011 MP 3 ¶ 18 (2011).

The Open Government Act applies to "governing bodies," and "public agencies." *Deleon Guerrero v. Dep't Publ. Lands*, 2011 MP 3 ¶ 20 (2011).

Under the Open Government Act, a governing body may evaluate the qualifications of an applicant for public employment and review the performance of a public employee in a closed executive session. In contrast, final action such as hiring, setting the salary of employees, or discharging an employee shall be taken in a meeting open to the public. "Meeting" is defined as a meeting at which action is taken. "Final action" is a collective positive or negative decision, or an actual vote by a majority of the members of a governing body upon motion, proposal, resolution, order, or ordinance. A public agency or governing body may hold special meetings that may be called at any time, as long as notice is proper. Actions taken by a governing body that do not comply with the above-referenced provisions of the OGA shall be null and void. *Deleon Guerrero v. Dep't Publ. Lands*, 2011 MP 3 ¶ 20 (2011).

DC App. Div. 1987. An "acceptance" letter from the Director of Public Safety, who did not have authority to enter into a contract, did not constitute a contract under CNMI regulations, which require the signatures of other government officials, and plaintiffs action to enforce the terms of the letter was properly dismissed. *Saipan Secretarial/Employment Services, Inc. v. CNMI*, 3 CR 168.

DC NMI 1981. A public official who enters into a contract with one of the branches of the government for a stipulated salary for his services during a limited period is in a similar position to a private citizen entering into a contract with another citizen. *Bradshaw v. Camacho*, 1 CR 38.

—Termination

DC NMI 1983. Complaints concerning employee's work during her first year of employment, of which supervisors were aware, do not constitute ground for good cause to support employee's termination because they were condoned by the employer before and at the time her second year of employment commenced. *Numano v. Saipan Hotel Corp*., 1 CR 610.

DC NMI 1983. Where a contract of employment is for a definite term (one year) it may, nevertheless, be terminated for cause. *Numano v. Saipan Hotel Corp*., 1 CR 610.

DC NMI 1983. That the grounds for termination of the contract have not been specified in the contract itself does not preclude the employer from terminating the contract for good cause. *Numano v. Saipan Hotel Corp.*, 1 CR 610.

DC NMI 1983. An employer is not precluded from discharging an employee for a legal cause other than that stated in termination letter. *Numano v. Saipan Hotel Corp.*, 1 CR 610.

DC NMI 1983. It is within the discretion of the employer to consider all of the facts regarding the employment of the employee and to determine whether a discharge is the appropriate remedy and upon such a determination, the employer may lawfully discharge the employee. *Numano v. Saipan Hotel Corp.*, 1 CR 610.

DC NMI 1983. The issue of whether the employee has performed in a satisfactory manner is to be determined by the employer and not by the courts. *Numano v. Saipan Hotel Corp.*,1 CR 610.

DC NMI 1983. The plaintiff's repeated violation of the employer hotel's policies, flagrant disobedience of the employer's instruc-tions, the defiance of a supervisor, and the lack of cooperation by the

plaintiff with the employer are sufficient justifications for termination of the employment contract and the discharge of the plaintiff. *Numano v. Saipan Hotel Corp.*, 1 CR 610.

DC NMI 1983. Where employee's conduct tends to interfere with the employer's business and business discipline, the employer is justified in discharging the employee. *Numano v. Saipan Hotel Corp.*, 1 CR 610.

Enforcement

As a general rule, a contract can only be enforced against parties to the contract. This rule holds true for leases. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 40 (2011).

CTC 1987. An agreement to reach an agreement at some future time is not enforceable. *Atalig v. M.I.C. Corporation*, 3 CR 270.

Excuse For Nonperformance

DC NMI 1981. If a promissor prevents or hinders the occurrence of a condition, or the performance of a return promise, and the condition would have occurred or the performance of the return promise been rendered except for such prevention or hindrance, the condition is excused, and the actual or threatened nonperformance of the return promise does not discharge the promissor's duty, unless the terms of the contract are such that the risk of such prevention or hindrance as occurs is assumed by the other party. *Bradshaw v. Camacho*, 1 CR 165

Formation

—Generally

A guaranty is a contract collateral to the principal contract between the creditor and the principal debtor. *Island Leisure Corp. v. Rasa,* 2004 MP 4 ¶ 11

Like any other contract, the formation of a guaranty is governed by the principles of mutual assent, adequate consideration, definiteness, and a meeting of the minds. *Island Leisure Corp. v. Rasa*, 2004 MP 4 ¶ 12

A guarantor must know the terms of the obligation that is the subject of the guaranty; the terms must be definite since guaranties are contracts that are interpreted according to their clear and unambiguous meaning. *Island Leisure Corp. v. Rasa*, 2004 MP 4 ¶ 13

The essential elements of a contract are offer, acceptance and consideration. Restatement (Second) of Contracts § 17 (1981). *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 13

In challenge to formation of exclusive agency agreement to sell land, fact that party failed to make the first payment at time it was due was irrelevant to issue of whether contract had been formed, but might constitute grounds for breach of contract. *Trinity Ventures, Inc. v. Guerrero*, 1 N.M.I. 54 (1990).

—Intent

The intention relevant to the formation of a contract is manifested intention and not an undisclosed intention. *Riley v. Public Sch. Sys.*, 4 N.M.I. 85 (1994).

Neither real nor apparent intention that a promise be legally binding is essential to the formation of a contract, but a manifestation of intention that a promise shall not affect legal relations may prevent the formation of a contract. Restatement (Second) of Contracts § 21 (1981). *Ada v. K. Sadhwani's, Inc.*, 3 N.M.I. 303 (1992).

—Offer and Acceptance

See **Offer and Acceptance**, this topic.

—Particular Cases

In challenge to formation of exclusive agency agreement to sell land, fact that a term of payment was not strictly adhered to did not change fact that a contract had arisen, nor did it mean that the contract was automatically invalidated. *Trinity Ventures, Inc. v. Guerrero*, 1 N.M.I. 54 (1990).

Gambling

See generally **GAMBLING - Contracts**

Government

—Bidding

DC NMI 1984. An invitation to bid, followed by a submission of a bid, creates an implied contract obligating the government to consider the bid fairly and honestly. *Maruyama & Associates, Ltd. v. Mariana Islands Housing Authority*, 1 CR 997.

—Breach

DC NMI 1981. Governor's veto of appropriation for Public Auditor resulting in inability of the Government to pay Public Auditor's contracted salary, put Government in breach of contract. *Bradshaw v. Camacho*, 1 CR 165.

DC NMI 1981. Even though government employee should have been aware that regardless of employment contract, salary would have to be paid out of duly appropriated funds, employee did not assume the risk of non-appropriation and the employee had the right to enforce the terms and conditions of the contract. *Bradshaw v. Camacho*, 1 CR 165.

—Discharge

DC NMI 1981. Government employee's non-performance of his duties, as a result of veto of appropriations bill necessary to pay salary, does not discharge the Government's duty to pay him under the terms of his contract. *Bradshaw v. Camacho*, 1 CR 165.

—Generally

DC NMI 1984. In the analysis of contracts to which the government is a party, it is the applicable rules and regulations which determine and define the point at which a contract is enforceable. *Hill v. Government NMI*, 1 CR 990.

DC NMI 1984. The Governor established enforceable guidelines by which personnel contracts were to be created by issuing a memorandum to "All Department and Activity Heads" of the Governor's office and thus had the valid authority to disapprove plaintiffs contract. CNMI Const., Art. III, §14; 16; Public Law 1-8 [l CMC §2151]. *Hill v. Government NMI*, 1 CR 990.

CTC 1986. The applicable governmental rules and regulations determine and define at what point a government contract is enforceable. *Saipan Secretarial/Employment Services v. CNMI*, 2 CR 700, aff'd, 3 CR 168 (DNMI App. Div. 1987).

CTC 1986. Parties contracting with the government are charged with knowledge of the law and regulations governing the formation of government contracts. *Saipan Secretarial/Employment Services v. CNMI*, 2 CR 700, aff'd, 3 CR 168 (DNMI App. Div. 1987).

CTC 1984. Although a nonresident worker's employment contract between the employer and worker must be approved by the Chief of Labor, neither the provisions of law nor the employment agreements themselves establish a contractual action between the Chief of Labor and the employer. 3 CMC 4434(c); 7 CMC 2251(b). *Sicat v. O.K. International, Inc.*, 2 CR 1

Illegal

—Enforcement

DC App. Div. 1988. Although a court will not ordinarily allow recovery on an illegal contract, the illegality of a contract does not automatically render it unenforceable. *Loren v. E'Saipan Motors, Inc.*, 3 CR 564.

DC App. Div. 1988. Courts will enforce legal agreements where public policy will be served thereby whether or not the parties are in pari delicto. *Loren v. E'Saipan Motors, Inc.*, 3 CR 564.

DC App. Div. 1985. As a general matter, illegal contracts are invalid; however, the illegality of a contract does not automatically render it unenforceable. *Taimanao v. Young*, 2 CR 285

DC App. Div. 1985. Where nonresident workers were forced under threat of a lawsuit for breach of contract to change work locations the employment contract would be enforceable, notwithstanding the absence of government approval, by the workers under the theory of unjust enrichment, because the workers were not in pari delicto with the employer, but were instead the victims of manifest oppression. *Taimanao v. Young*, 2 CR 285.

—In Pari Delicto

DC App. Div. 1988. The in pari delicto maxim technically applies only when the plaintiffs fault is substantially equal to the defendant's and operates against conduct which is contrary to the dictates of good conscience or fair dealing. *Loren v. E'Saipan Motors, Inc.*, 3 CR 564.

DC App. Div. 1988. The in pari delicto maxim refers to willful misconduct rather than to merely negligent conduct, an intentional as opposed to an inadvertent act or a misapprehension of legal rights. The conduct must be morally reprehensible as to known facts. *Loren v. E'Saipan Motors, Inc.*, 3 CR 564.

DC App. Div. 1988. Where employer: (1) failed to have nonresident worker's change in employment status from mechanic to general helper registered with the chief of Labor, successfully evading payment of the $200 fee required by statute for the transfer of employees from one work assignment to another; (2) paid the nonresident worker lower wages than were called for in the original contract without the approval of that change in salary by the Chief of Labor; and (3) actually submitted two employment contracts to Labor for 1985 and 1986 which falsely represented the scope of appellant's duties, allowing appellee to continue to avoid payment of $200 transfer fee and continue to employ appellant without advertising his position as a general helper in order to ascertain if a resident worker was capable of filling that position, and nonresident worker's lone transgression was that he "begged" the employer to let him stay on and work doing odd jobs, the relative culpability of the parties was substantially different and therefore, trial court erred in finding that the parties were in pari delicto as to employment contract. *Loren v. E'Saipan Motors Inc.*,3 CR 564.

DC App. Div. 1988. It is inappropriate to invoke broad common-law barriers to relief, such as the in pari delicto doctrine, where a private lawsuit serves important public purposes. *Loren v. E'Saipan Motors, Inc.*, 3 CR 564.

DC App. Div. 1985. A party is regarded as being less in the wrong and not in pari delicto, where he or she has been the victim of oppression practiced on him or her by the other party. *Taimanao v. Young*, 2 CR 285.

DC NMI 1979. Plaintiff Commonwealth in the instant case is the successor to the Trust Territory Government, which was an active participant in the formation and implementation of the contract, and was equally at fault with the defendant under antitrust laws and, therefore, the Commonwealth is subject to the same & delicto defense as its predecessor in interest. *Government NMI v. Mobil Oil Micronesia, Inc.*, 1 CR 1.

—Restitution

DC App. Div. 1988. Where the performing party is not in pari delicto, or not equally in the wrong with the other party, the performing party is entitled to restitution. *Loren v. E'Saipan Motors Inc.*, 3 CR 564.

DC App. Div. 1985. Where a contract is invalid due to illegality, a performing party may recover in quasi-contract for unjust enrichment under certain circumstances. *Taimanao v. Young*, 2 CR 285.

DC App. Div. 1985. It is the law in the Commonwealth that where the performing party is not in pari delicto, or not equally in the wrong with the other party, the performing party is entitled to restitution. *Taimanao v. Young*, 2 CR 285.

—Void

DC App. Div. 1988. An agreement which cannot be performed without a violation of the law is illegal and void. *Loren v. E'Saipan Motors, Inc.*, 3 CR 564.

Implied Warranties

A sales contract includes an implied warranty of merchantability and an implied warranty of fitness for a particular purpose. *Triple J Saipan Inc. v. Agulto*, 2002 MP 11 ¶ 12

A seller of goods can exclude the implied warranty of merchantability and the implied warranty of fitness for a particular purpose with expressions like "as is," "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty. *Triple J Saipan Inc. v. Agulto*, 2002 MP 11 ¶ 12

Impracticability of Performance

See **Performance, Impracticability of**, this topic.

Indemnity

DC App. Div. 1987. Where indemnity agreement authorized the assignment of a performance bond, the principal contractor remained bound by the indemnification agreement notwithstanding assignment of the performance bond. *Korea Insurance Corp. v. Villaluz*, 2 CR 1016.

DC App. Div. 1987. Where the surety and indemnitee have the power pursuant to its contract of indemnity to settle claims, it is only necessary that such an adjustment or settlement be a reasonable one and made in good faith. *Korea Insurance Corp. v. Villaluz*, 2 CR 1016

Interference With Contract Relations

See **TORTS - Interference With Contract Relations**

Interpretation and Construction

—Ambiguities

A patent ambiguity arises from contract language if it is facially inconsistent. A latent ambiguity arises when either disputed relevant extrinsic evidence or the contract language itself shows potential reasonable differing meanings of terms. *Riley v. Public Sch. Sys.*, 4 N.M.I. 85 (1994).

Where a contract is facially ambiguous, it may be interpreted by the court, as a matter of law, where there is no evidence that would support a reasonable conflicting interpretation of the agreement. *Riley v. Public Sch. Sys.*, 4 N.M.I. 85 (1994).

—Definitions

The legal effect of a broad definition is more inclusive than a narrow one. *Riley v. Public Sch. Sys.*, 4 N.M.I. 85 (1994).

—Evidence

——Extrinsic

To be admissible, extrinsic evidence concerning interpretation of contract language must give rise to reasonably susceptible interpretation. *Riley v. Public Sch. Sys.*, 4 N.M.I. 85 (1994).

——Generally

CTC 1988. In interpreting a contract, the court is bound to give effect to the intention of the parties; such intentions are to be shown as much as possible from the language of the agreement, but where the agreement is silent on an issue the court may turn to extrinsic evidence for support. *Fidelino v. Sadhwani*, 3 CR 282.

—Generally

Under Commonwealth law the interpretation of a contract relates to the ascertainment of its meaning and the intent of contracting parties is generally presumed to be encompassed by the plain language of contract terms. *CPA v. Tinian Shipping*, 2007 MP 22 ¶ 15

The language need only be given legal effect, or construed, by the court and may be disposed of by summary judgment. *CPA v. Tinian Shipping*, 2007 MP 22 ¶ 15

In the Commonwealth, our primary concern in contract interpretation is to determine and give effect to the intentions of the parties as expressed in the instrument, and the intent of contracting parties is generally presumed to be encompassed by the plain language of contract terms. *CPA v. Tinian Shipping*, 2007 MP 22 ¶ 16

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*, 2007 MP 22 ¶ 16

The language in a contract is to be given its plain grammatical meaning unless doing so would defeat the parties' intent. Furthermore, in determining the intention of the parties, we look only within the four corners of the agreement to see what is actually stated, and not at what was allegedly meant. Confining our inquiry to the four corners of a contract is the most equitable method of determining the parties' intent. Doing so allows the court to interpret what both parties agreed to and not what the contract may have devolved into. *CPA v. Tinian Shipping*, 2007 MP 22 ¶ 17

An incidental beneficiary is a beneficiary who is not an intended beneficiary. *Aplus Co., Ltd. v. Niizeki Intern'l Saipan, Co., Ltd*., 2006 MP 13 ¶ 13

Unless otherwise agreed upon between promisor and promisee, a beneficiary of a promise is an intended beneficiary if recognition of a right to performance in the beneficiary is appropriate to effectuate the intention of the parties and either: the performance of the promise will satisfy an obligation of the promise to pay money to the beneficiary; or the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance. *Aplus Co., Ltd. v. Niizeki Intern'l Saipan, Co., Ltd.*, 2006 MP 13 ¶ 13

There is a three-part test to determine whether a third party is an intended beneficiary: first, the parties have not agreed otherwise, second, recognition of a right to performance is appropriate to effectuate the intention of the parties; and third, the circumstances indicate that either the performance of the promise will satisfy an obligation or discharge a duty owed by the promisee to the beneficiary or the promisee

intends to give the beneficiary the benefit of the promised performance. *Aplus Co., Ltd. v. Niizeki Intern'l Saipan, Co., Ltd*., 2006 MP 13 ¶ 14

Third-party beneficiaries will be allowed to enforce a contract as an intended beneficiaries only when enforcement would further the parties' objectives in making the agreement. Courts should look to what the parties intended to accomplish by their agreement, and a third party should not be deemed an intended beneficiary if so doing would undermine the parties' purposes. *Aplus Co., Ltd. v. Niizeki Intern'l Saipan, Co., Ltd*., 2006 MP 13 ¶ 16

A party is an intended beneficiary if, among other things, the promise intends to give the beneficiary the benefit of the promised performance. We interpret this to mean that the benefit is the promise of performance promise itself. One does not need to profit from the performance in order to benefit from performance of the promised obligation. *Aplus Co., Ltd. v. Niizeki Intern'l Saipan, Co., Ltd*., 2006 MP 13 ¶ 17

The distinction between intended and incidental beneficiaries is the test of whether there was an intent to benefit the beneficiary. *Aplus Co., Ltd. v. Niizeki Intern'l Saipan, Co., Ltd*., 2006 MP 13 ¶ 18

The intent of the parties to the actual contract to confer a benefit on a third party must appear from the contract itself, or be shown by necessary implication. It is a question of fact to be determined by the terms of the contract taken as a whole, construed in the light of the circumstances under which it was made and the apparent purposes the parties were trying to accomplish. *Aplus Co., Ltd. v. Niizeki Intern'l Saipan, Co., Ltd.*, 2006 MP 13 ¶ 18

Where the promisor has undertaken to render performance directly to the beneficiary, the intent to benefit the third party will be clearly manifested and the beneficiary will be an intended beneficiary. *Aplus Co., Ltd. v. Niizeki Intern'l Saipan, Co., Ltd*., 2006 MP 13 ¶ 18

The interpretation of a contract and the determination as to its breach are a mixed question of fact and law. *Manglona v. Commonwealth*, 2005 MP 15 ¶ 14

The intent of contracting parties is generally presumed to be encompassed by the plain language of contract terms. *Manglona v. Commonwealth*, 2005 MP 15 ¶ 26

Where a lease specifically provides that acceptance of the premises by the tenant shall be construed as recognition that the premises are in good state of repair and in sanitary condition, and the tenant enters into and accepts the leased premises, without preserving a right to claim otherwise post-entry, then despite the provisions contained in comment c of Restatement (Second) of Property: Landlord and Tenant § 5.3 (1977), that the tenant as a matter of law is unable to waive any remedies available to him at the time of entry, if at the time of entry it would be unsafe or unhealthy to use the leased property in the manner contemplated by the parties, the tenant's entry will be treated as its recognition that the premises at the time of entry were in a good state of repair and in a sanitary condition. . Restatement (Second) of Property: Landlord and Tenant § 5.3 cmt. C (1977). *Manglona v. Commonwealth*, 2005 MP 15 ¶ 26

The parole evidence rule precludes evidence that contradicts the express terms of a contract or is contrary to the entire purpose of a written contract. *Merci Corp. v. World Int'l Corp*., 2005 MP 10 ¶ 17

The inclusion of an integration clause in a written document, which requires any amendments to be made in writing, is strong evidence that the parties intended that document to represent the entirety of their agreement. *Merci Corp. v. World Int'l Corp.*, 2005 MP 10 ¶ 17

The N.M.I. Supreme Court can inquire into a question of fact when evidence of a definitive and clear promise supporting a promissory estoppel defense exists. *Merci Corp. v. World Int'l Corp*., 2005 MP 10 ¶ 31

An alleged oral agreement is integrated into a written agreement only if the parties, situated as were the ones to the contract, would naturally and normally have included the oral agreement in the written agreement if it were made. If the oral and written agreements relate to the same subject matter, and are so interrelated that both would be executed at the same time and in the same contract, the scope of the subsidiary agreement must be taken to be covered by the writing. *Merci Corp. v. World Int'l Corp*., 2005 MP 10 ¶ 37

Whether or not statements constitute a guaranty is a question of fact. Exact words are not essential where words or circumstances are sufficient to clearly infer a guaranty. *Island Leisure Corp. v. Rasa,* 2004 MP 4 ¶ 14

To charge one person with the debt of another the guaranty must be clear and explicit. *Island Leisure Corp. v. Rasa*, 2004 MP 4 ¶ 14

Not every assurance is a guaranty and must be distinguished from an opinion. *Island Leisure Corp. v. Rasa*, 2004 MP 4 ¶ 16

The fact that the purported guarantor is a government entity does not relive the entity attempting to recover on a guaranty theory of the burden of proving the case. *Island Leisure Corp. v. Rasa*, 2004 MP 4 ¶ 18

Words are interpreted in light of all circumstances and writings that are part of the same transaction are interpreted together. Restatement (Second) of Contracts § 202(1), (2) (1981). *Wabol v. Camacho*, 4 N.M.I. 388 (1996).

The construction of a contract is a legal process whereby contract terms are given effect. This differs from contract interpretation, which requires a choice between alternative reasonable meanings which may attach to contract terms. *Riley v. Public Sch. Sys.*, 4 N.M.I. 85 (1994).

The "interpretation" of a contract relates to the ascertainment of its meaning, and is distinguishable from the "construction" of a contract, which deals with the determination of the legal operation or effect of a contract. Restatement (Second) of Contracts § 200 (1981). *Riley v. Public Sch. Sys.*, 4 N.M.I. 85 (1994).

Where the language of a writing is plain and precise, a court can, as a matter of law, establish the intentions of the parties as declared in the writing. *Ada v. K. Sadhwani's, Inc.*, 3 N.M.I. 303 (1992).

In the interpretation of a promise or agreement or a term thereof, an interpretation which gives a reasonable, lawful, and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect. Restatement (Second) of Contracts § 203 (1979). *Trinity Ventures, Inc. v. Guerrero*, 1 N.M.I. 54 (1990).

—Intent

Our primary concern in contract interpretation is to determine and give effect to the intentions of the parties as expressed in the instrument, and the intent of contracting parties is generally presumed to be encompassed by the plain language of contract terms. *Saipan Achugao Resort Members Assoc. v. Yoon*, 2011 MP 12 ¶ 15 (2011).

The intention of contracting parties is generally presumed to be encompassed by the plain language of contract terms. *Riley v. Public Sch. Sys.*, 4 N.M.I. 85 (1994).

A party generally should not be bound to an intention of the other party unless there is evidence that he had reason to know of that intention. *Riley v. Public Sch. Sys.*, 4 N.M.I. 85 (1994).

Intent is the pivotal factor in choosing between alternative interpretations of contract terms. *Riley v. Public Sch. Sys.*, 4 N.M.I. 85 (1994).

CTC 1988. Generally, the intent of the parties to a contract can be inferred from the face of the instrument itself. *Fidelino v. Sadhwani*, 3 CR 282.

CTC 1988. A court is required to determine the obligations of the parties to a contract by careful examination of the four comers of the document and absent ambiguity, and the words of the contract are generally the sole indicators of what the parties intended. *Fidelino v. Sadhwani*, 3 CR 282.

—Particular Cases

In appeal from trial court order granting summary judgment based on breach of option and ordering specific performance of option, NMI Supreme Court would view facts in light most favorable to non-moving party and reasonable meaning of contract terms against drafter, the option promisor. Restatement (Second) of Contracts § 206 (1981). *Wabol v. Camacho*, 4 N.M.I. 388 (1996).

In dispute concerning contract terms, because party implied that intent of parties in forming contract was disputed issue, interpretation of contract terms was required. Court would consider whether contract terms were ambiguous and, if not, whether party submitted relevant evidence supporting its interpretation of contract. *Riley v. Public Sch. Sys.*, 4 N.M.I. 85 (1994).

Trial court's interpretation of term "land transaction" in exclusive agency agreement to sell land to mean any transaction involving either of two lots was reasonable interpretation under facts of case. *Trinity Ventures, Inc. v. Guerrero*, 1 N.M.I. 54 (1990).

—Particular Words

The preference in interpretation of contracts is that specific terms and exact terms are given greater weight than general language. *Cabrera v. Young*, 2001 MP 19 ¶ 22

The term "dependent" is generally understood to mean one who relies upon another for support, and commonly includes spouses and children. *Riley v. Public Sch. Sys.*, 4 N.M.I. 85 (1994).

The term "spouse" generally means one's husband or wife. *Riley v. Public Sch. Sys.*, 4 N.M.I. 85 (1994).

The term "repatriation" generally means the return or restoration of a person or object to his or its country of origin. *Riley v. Public Sch. Sys.*, 4 N.M.I. 85 (1994).

—Plain Meaning

Where possible, terms in a contract should be given their ordinary and common meaning. *Riley v. Public Sch. Sys.*, 4 N.M.I. 85 (1994).

—Summary Judgment

See **CIVIL PROCEDURE - Summary Judgement - Contracts**

Leases

See **DEEDS AND CONVEYANCES - Leases**

Legality

Question as to validity of a contract goes to whether the contract is illegal or contrary to public policy. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79 (1992).

Misrepresentation

—Generally

One who executes a written contract is presumed to know its contents and assent to them. Ignorance of the contents is not grounds for relief from liability. Thus, the relevant inquiry is not whether the one claiming fraud understood what he was signing, but whether the party accused of fraud misrepresented the true nature of the document. *Benavente v. Marianas Pub. Land Corp.*, 2000 MP 13 ¶ 41

A misrepresentation is fraudulent if the maker intends his assertion to induce a party to manifest his assent and the maker knows or believes that the assertion is not in accord with the facts, or does not have the confidence that he states or implies in the truth of the assertion, or knows that he does not have the basis he states or implies for the assertion. Restatement (Second) of Contracts § 162(1) (1981). *Rogolofoi v. Guerrero*, 2 N.M.I. 468 (1992).

One of the elements of a fraudulent misrepresentation is that the misrepresentation must be consciously false. *Rogolofoi v. Guerrero*, 2 N.M.I. 468 (1992).

Offer and Acceptance

See also **Formation**, this topic.

—Generally

All contracts require an offer, acceptance, and consideration to be legitimate and enforceable. A contract is not binding and enforceable unless it is predicated upon bargained-for consideration. *Stephanson v. Teregeyo*, 2008 MP 13 ¶ 22 (2008).

Unless otherwise indicated by the language or circumstances, an offer invites acceptance in any manner and by any medium reasonable in the circumstances. Restatement (Second) of Contracts § 30(2) (1981). *Eurotex (Saipan), Inc. v. Muna*, 4 N.M.I. 280 (1995).

Whether an offer, counter-offer or acceptance exists is a legal conclusion a court must make. *Trinity Ventures, Inc. v. Guerrero*, 1 N.M.I. 54 (1990).

An acceptance which requests a change or addition to the terms of the offer is not thereby invalidated unless the acceptance is made to depend on an assent to the changed or added terms. Restatement (Second) of Contracts § 61 (1979). *Trinity Ventures, Inc. v. Guerrero*, 1 N.M.I. 54 (1990).

—Rejection

A disappointed offeror cannot sue the offeree for refusal to enter into a contract. *In re Blankenship*, 3 N.M.I. 209 (1992).

A mere request by a party to a change in the terms of an offer or counter-offer is insufficient to make such a request a rejection. *Trinity Ventures, Inc. v. Guerrero*, 1 N.M.I. 54 (1990).

Option Contracts

See **DEEDS AND CONVEYANCES - Option Contracts**

Performance

—Generally

A condition is an event, not certain to occur, but which must occur, unless its non-occurrence is excused, before performance under a contract becomes due. *Manglona v. Commonwealth*, 2005 MP 15 ¶ 34

The doctrine of frustration of purpose arises in contract law when a change in circumstances occurs such that one party's performance is virtually worthless to the other. In other words, performance remains possible but the expected value of the performance to the party seeking to be excused is destroyed by a fortuitous event, which supervenes to cause an actual, but not literal, failure of consideration. *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22 ¶ 27

The purpose of a contract is to place the risk of performance on the promisor. *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22 ¶ 28

Frustration is no defense to performance of a contract if the frustrating event was reasonably forseeable. The circumstances surrounding the formation of the contract must be considered to determine whether the risk was foreseeable. If it was reasonably foreseeable, there should be a contractual provision in the contract for it, otherwise, it gives inference that the risk was assumed. *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22 ¶ 28

The burden of proving that the risk of the frustrating event was not reasonably foreseeable rests with the party seeking to excuse performance of a contractual obligation. *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22 ¶ 28

Where contracts contained no provision relating to deferral or forgiveness of loan payments in the event of operational troubles of a business, an event that is reasonably foreseeable, the business owner must have assumed the risk of the operational troubles and they will not support a defense of frustration. *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22 ¶ 29

Breach of contract occurs upon the nonperformance of a contractual duty of immediate performance, however, if nonperformance is justifiable, then there is no breach. *Rosario v. Camacho*, 2001 MP 3 ¶ 96

When performance of a duty under a contract is due, any nonperformance is a breach. *Triple J Saipan Inc. v. Agulto*, 2002 MP 11 ¶ 9

Once a party materially breaches a contract, that party cannot insist on the second party's performance of the same contract. *Triple J Saipan Inc. v. Agulto*, 2002 MP 11 ¶ 9

The material breach of an entire contract by one party justifies termination by the nonbreaching party. *Triple J Saipan Inc. v. Agulto*, 2002 MP 11 ¶ 9

Ordinarily, where a contract calls for achieving specific standards, strict compliance with those standards is required. A contractor is required to perform in accordance with plans and specifications. *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

—Impracticability of Performance

Impracticability of performance arises when certain events, occurring after a contract is made, constitute an impediment to performance by either party. The event that occurs must be an event the non-occurrence of which was a basic assumption on which the contract was made. Although absolute unforeseeability is not a requirement, the occurrence of the event must have been unexpected. *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22 ¶ 30

The level of foreseeability sufficient to render the defense of impracticability unacceptable is an issue of degree, the question being whether the non-occurrence of the event was sufficiently unlikely or unreasonable. *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22 ¶ 30

Impracticability of performance must involve conditions that approach impossibility. Merely incurring a somewhat greater expense of performance that what the parties had actually anticipated is insufficient. *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22 ¶ 31

Increased cost and difficulty of performance very rarely constitute impracticability. The impracticability defense largely pertains to the performance of a physical act. *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22 ¶ 31

Mere market shifts or financial inability do not usually justify discharge of the obligation to perform under the impracticability of performance.

Commonwealth Dev. Auth. v. Tenorio, 2004 MP 22 ¶ 31

Impracticability which suspends obligor's duty of performance may only be temporary. Temporariness of impracticability does not require a definite ending date. Obligor's duty suspended because of temporary impracticability is that duty which obligor is to perform for the obligee. Restatement (Second) of Contracts § 269 (1979). *Marianas Pub. Land Corp. v. Guerrero*, 2 N.M.I. 301 (1991).

—Particular Cases

The Commonwealth Development Authority is required by statute to engage in prudent financial management of its assets. Moreover, the CDA board of directors has a duty to assure the provisions of the loan agreements are adhered to. Thus, there is no public interest served in requiring the CDA to write off balances owed by borrowers when those amount may be collectible. *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22 ¶ 32

Restatement (Second) of Contracts § 269 (1979), excusing performance of duty due to temporary impracticability, applied in action for termination of commercial lease. Lessor's duty to improve property was suspended because "indefinite" moratorium by public utility agency on commercial utility hook-ups was, within context, temporary rather than permanent. Lease did not terminate. *Marianas Pub. Land Corp. v. Guerrer*o, 2 N.M.I. 301 (1991).

—Release

——Particular Cases

Although trial court erred in failing to consider plaintiff's theory of lack of consideration raised in response to defendant's affirmative defense of release, error was harmless. Even if court considered validity of release and voided it because of lack of consideration, plaintiff failed to introduce evidence of fraudulent misrepresentation as to procurement of quitclaim deed, which contained language similar to separate release and accomplished same thing. *Rogolofoi v. Guerrero*, 2 N.M.I. 468 (1992).

Plea Agreements

When a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such a promise must be fulfilled. *Commonwealth v. Camacho*, 2002 MP 21 ¶ 9

When a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such a promise must be fulfilled. *Commonwealth v. Camacho*, 2002 MP 21 ¶ 9

Detrimental reliance on a plea agreement could trigger a defendant's due process rights violation argument. *Commonwealth v. Camacho*, 2002 MP 21 ¶ 9

Plea agreements are to be construed by ordinary contract standards. *Commonwealth v. Camacho*, 2002 MP 21 ¶ 13

A plea agreement is a unilateral contract where the defendant can only accept through performance. A defendant's mere promise of performance does not qualify as acceptance of the government's offer. A defendant can only accept the plea agreement offer by pleading guilty. *Commonwealth v. Camacho*, 2002 MP 21 ¶ 13

Neither the defendant nor the government is bound by a plea agreement until it is approved by the court. *Commonwealth v. Camacho*, 2002 MP 21 ¶ 14

A plea agreement is not binding on either party until the defendant has pled guilty and that plea has been accepted by the court. *Commonwealth v. Camacho*, 2002 MP 21 ¶ 14

The general rule requiring the trial court's acceptance of a plea bargain agreement for such an agreement to become enforceable is subject to a detrimental reliance exception. Even if the agreement has not been finalized by the court, a defendant's detrimental reliance on a prosecutorial promise in plea bargaining could make a plea agreement binding. *Commonwealth v. Camacho*, 2002 MP 21 ¶ 16

A defendant who can show that he took action based on a promise, made in a plea bargain situation by a qualified government agent, may be entitled to some form of relief, although there is an issue of whether the relief required accords the defendant the benefit of the bargain or merely restores the defendant to the status quo. *Commonwealth v. Camacho*, 2002 MP 21 ¶ 17

Detrimental reliance occurs when a defendant relies upon a prosecutor's plea offer by taking some substantial step or accepting serious risk of an adverse result following acceptance of the plea offer. Detrimental reliance may be demonstrated where a

defendant performed some part of the bargain. For example, a defendant who provides beneficial information to law enforcement can be said to have relied to his detriment. Reliance may not be shown by the mere passage of time or where the defendant stopped preparing his defense, absent a showing of specific prejudice. *Commonwealth v. Camacho*, 2002 MP 21 ¶ 17

Promissory Estoppel

CTC 1987. Where there was no action or forbearance on plaintiffs part when the defendant's promise was allegedly made, there was no inducement to plaintiff and no injustice requiring enforcement of an obligation of the defendant. *Atalig v. M.I.C. Corporation*, 3 CR 270.

Promissory Notes

A promissory note is a form of contract subject to the ordinary requirements of contract law. *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 13

Quasi-Contracts

—Damages

DC NMI 1984. Unjust enrichment of the promisor is not an element of a claim on an implied contract, and promise may recover expectation or reliance interest. *Maruyama & Associates, Ltd. v. Mariana Islands Housing Authority*, 1 CR 997.

—Elements

DC NMI 1983. In order for plaintiff to recover under a theory of quasi-contract, it must show that defendant was unjustly enriched at plaintiffs expense and that the circumstances are such that defendant should be required to make restitution. *Maruyama & Associates, Ltd. v. Mariana Islands Housing Authority*, 1 CR 798.

DC NMI 1983. Motion for summary judgment is granted defendant public housing authority on claim in quasi-contract where plaintiff contractor presented no evidence, either through affidavits or documents, which tended to show that defendant housing authority used any data submitted by plaintiff in the planning of a turn-key housing project or that defendant intentionally solicited plaintiffs bid for defendant's subsequent use. *Maruyama & Associates, Ltd. v. Mariana Islands Housing Authority*, 1 CR 798.

Questions of Fact and Law

See **Offer and Acceptance - Generally**, this topic.

Release

—Liability

See **TORTS - Release of Liability**

—Performance, of

See **Performance - Release**, this topic.

Remedies

See **REMEDIES**

Rescission

—Generally

Rescission is the mutual agreement of the parties to an existing contract to discharge and terminate their duties under the contract. The legal effect of a rescission is the discharge of all rights and duties of both parties. Corbin on Contracts § 1236 (1964). *Tropic Isles Cable TV Corp. v. Mafnas*, 1998 MP 11 ¶14

—Particular Cases

Superior Court erred in finding an abandonment, or rescission, of contract between parties where its conclusion was based upon hearsay affidavit. *Tropic Isles Cable TV Corp. v. Mafnas*, 1998 MP 11 ¶14

Subrogation

— Generally

Pursuant to Restatement § 27(1), subrogation occurs when there is total satisfaction of the underlying obligation; in other words, there must be no outstanding performance owed to the obligee by either the primary or secondary obligor. *Century Ins. Co., Ltd. v. Guerrero Brothers, Inc.*, 2010 MP 4 ¶ 9 (2010).

A surety who pays the debt of another is entitled to all the rights of the person he paid to enforce his right to be reimbursed. This rule, widely applied in this country is generally known as the right of subrogation. A surety who completes a contract has an equitable right to indemnification out of a retained fund, and it does not matter whether the surety seeks

compensation for finishing the project or paying the contractor's debts. *Century Ins. Co., Ltd. v. Guerrero Brothers, Inc.*, 2010 MP 4 ¶ 10 (2010).

Equitable subrogation arises as a matter of equity irrespective of contract rights. *Century Ins. Co., Ltd. v. Guerrero Brothers, Inc.*, 2010 MP 4 ¶ 21 (2010).

Survival of Obligations

Contractual obligations which survive the death of the obligor are binding on his executor in his representative capacity and enforceable against the estate, and it is the duty of the executor to carry out such contracts and compliance may be enforced unless they are personal in nature and personal performance by the decedent is of the essence of the contract. *KTT Corp. v. Tomokane*, 2003 MP 17 ¶ 10

Terms

—Arbitration Clause

To determine whether a judicial action brought in violation of the provisions of an arbitration agreement can be maintained, the court must examine the relationship between the parties and the jurisdiction they chose to govern their arbitration. If a party can demonstrate a substantial relationship with a state then it has demonstrated a reasonable basis for choosing its laws. *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builder*s, 2002 MP 15 ¶ 17

The fact that a party is domiciled in a particular state establishes that it has a substantial relationship with that state, and therefore represents a reasonable basis for choosing the law of that state in the arbitration agreement. *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builders*, 2002 MP 15 ¶ 19

While the C.N.M.I. has no arbitration statute, it has no law prohibiting arbitration either. Moreover, the Commonwealth Code contains no indication that the Legislature favors the adjudication of contract claims in the Commonwealth courts. *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builders*, 2002 MP 15 ¶ 22

A party cannot escape mandatory arbitration under the laws of a chosen state, which it agreed to, even if it can prove that through its own carelessness, it mistakenly included the arbitration and choice of law clauses in the contract. *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builders*, 2002 MP 15 ¶ 28

—Choice of Laws

To determine whether a judicial action brought in violation of the provisions of an arbitration agreement can be maintained, the court must examine the relationship between the parties and the jurisdiction they chose to govern their arbitration. If a party can demonstrate a substantial relationship with a state then it has demonstrated a reasonable basis for choosing its laws. *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builders*, 2002 MP 15 ¶ 17

The fact that a party is domiciled in a particular state establishes that it has a substantial relationship with that state, and therefore represents a reasonable basis for choosing the law of that state in the arbitration agreement. *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builders*, 2002 MP 15 ¶ 19

Even if a court finds a reasonable basis for the parties' choice of law and that there exists a substantial relationship between the law of the state chosen by the parties and the parties or the transaction, the court will not apply the law of the state chosen by the parties if the application of the chosen state's law would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which would be the state of the applicable law in the absence of an effective choice of law by the parties. *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builders*, 2002 MP 15 ¶ 20

A choice of law provision, like any other contractual provision, will not be given effect if the consent of one of the parties to its inclusion in the contract was obtained by improper means, such as by misrepresentation, duress, or undue influence, or by mistake. *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builders*, 2002 MP 15 ¶ 27

—Condition Precedent

A condition is an event, not certain to occur, which must occur unless it is excused before performance under a contract becomes due. The nonoccurrence of a condition is not a breach unless the party is under a duty that the condition occur. An event may be made a condition either by the agreement of the parties or by a term supplied by the court. Restatement (Second) of Contracts §§ 224, 225(3), 226 (1981). *Rosario v. Camacho*, 2001 MP 3 ¶ 97

—Generally

When a debtor defaults on a primary contract, an unconditional guaranty becomes an actionable liability against the guarantor separate and apart from the principal debtor. *Island Leisure Corp. v. Rasa*, 2004 MP 4 ¶ 11

—Particular Cases

Rule posted on poker machine by operator precluding payment of winnings if machine malfunctioned was attempt by operator to formulate a condition precedent to operator's duty to pay player for winnings registered on machine. In action for collection of winnings, since trial court found notice of rule inconspicuous and ineffective, no condition precedent applied and operator was liable for payment of player's winnings despite malfunctioning of machine. *Agulto v. Northern Marianas Inv. Group, Ltd.*, 4 N.M.I. 7 (1993).

Third Party Beneficiary

DC NMI 1988. A cause of action as a third party beneficiary exists against contractor based on the contract language and is available to those workers who can show that they worked on one or more of the projects of the contractor and were not properly paid. *Gomez v. Western Equipment, Inc.*, 3 CR 436.

Types of Contracts

— Settlement Agreements

For a settlement to be enforced, it must actually have been agreed to by both parties. *Torres v. Fitial*, 2008 MP 15 ¶ 9 (2008).

Unenforceable Contracts

—Generally

A choice of law provision, like any other contractual provision, will not be given effect if the consent of one of the parties to its inclusion in the contract was obtained by improper means, such as by misrepresentation, duress, or undue influence, or by mistake. *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builders*, 2002 MP 15 ¶ 27

Generally, one who assents to a writing is presumed to know its contents and cannot escape being bound by its terms merely by contending that he did not read them. *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builders*, 2002 MP 15 ¶ 28

A party cannot escape mandatory arbitration under the laws of a chosen state, which it agreed to, even if it can prove that through its own carelessness, it mistakenly included the arbitration and choice of law clauses in the contract. *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builders*, 2002 MP 15 ¶ 28

A public policy may be based on either the constitution, statutes, rules or regulations, or the need to protect some aspect of the public welfare. *Bank of Saipan v. Superior Ct. (Attorneys' Liab. Assurance Soc'y, Inc.)*, 2001 MP 5 ¶ 20

Even where a contract provision does not by its terms squarely violate legislation, it may, nevertheless, be unenforceable if it contravenes a public policy behind such legislation. *Bank of Saipan v. Superior Ct. (Attorneys' Liab. Assurance Soc'y, Inc.)*, 2001 MP 5 ¶ 20

In the absence of C.N.M.I. 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. Srvs. v. Sablan*, 2001 MP 21 ¶ 12

A contract is not binding and enforceable unless it is predicated upon bargained-for consideration. Restatement (Second) of Contracts § 71 cmts. a & b (1981). *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 14

A contract is not valid unless supported by bargained-for consideration. *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 29

If a party did not receive value in exchange for his or her promise when a person signs a promissory note to pay off the debt of another, then the promise is not enforceable. *Isla Fin. Srvs. v. Sablan*, 2001 MP 21 ¶ 29

An unenforceable contract is one for the breach of which neither the remedy of damages nor the remedy of specific performance is available, but which is recognized in some other way as creating a duty of performance, though there has been no ratification. Restatement (Second) of Contracts § 8 (1981). *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79 (1992).

——Non-Parties

A fundamental principle of contract law is that nonparties are not bound to agreements to which they did not consent. Restatement (Second) of Contracts § 17 (1979). *Bank of Saipan v. Superior Ct. (Attorneys' Liab. Assurance Soc'y, Inc.)*, 2001 MP 5 ¶ 32

Validity

—Formation of Contract

See **Formation**, this topic.

—Legality of Object

See **Legality**, this topic.

—Voidable Contracts

See **Voidable Contracts**, this topic.

—Unenforceable Contracts

See **Unenforceable Contracts**, this topic.

Usury

Usury invalidates only that part of an agreement which provides for illegal interest and allows for recovery of the actual debt and legal interest. 4 CMC § 5301 et seq. *L & T Int'l Corp. v. Benavente*, 1997 MP 24 ¶17

Voidable Contracts

—Generally

A promise may be a valid and a subsisting contract even though it is voidable. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79 (1992).

A voidable contract is one where one or more parties have the power, by a manifestation of election to do so, to avoid the legal relations created by the contract, or by ratification of the contract to extinguish the power of avoidance. Restatement (Second) of Contracts § 7 (1981). *Lucky Dev. Co., Ltd. v. Tokai*, U.S.A., Inc., 3 N.M.I. 79 (1992).

—Public Policy

DC App. Div. 1987. A contract, or provision thereof, which violates public policy when made is not validated by a later statutory change in that public policy. *Wabol v. Muna*, 2 CR 963.

—Subsequent Change In Law

DC App. Div. 1987. Even though a lease would be valid if entered into at time appellate court considered matter, lease must be judged on the law as it existed when the contract was formed. *Wabol v. Muna*, 2 CR 963.

—Unconscionability

DC App. Div. 1988. Unconscionability is present in an agreement when it is such that no person in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other. *Aldan-Pierce v. Mafnas*, 3 CR 326.

—Undue Influence

——Elements

DC App. Div. 1988. Undue influence is available to void a contract only if the person asserting undue influence shows that the person was under the domination of another or was justified, by virtue of a relation with another, in assuming that the other will not act inconsistently with their welfare. *Aldan-Pierce v. Mafnas*, 3 CR 326.

Warranties

—Habitability

See **Construction Contracts - Warranties**, this topic.

CTC 1987. There is a common law implied warranty of habitability that protects purchasers and owners of newly-constructed homes. *Babauta v. Valdez*, 2 CR 1181.

Writings

See also **Interpretation and Construction - Generally**, this topic.

Where the language of a writing is plain and precise, the court can, as a matter of law, establish the parties' intent from the writing. *Cabrera v. Young*, 2001 MP 19 ¶ 15

CONVERSION

DC NMI 1984. Where bank as lien holder of vehicle quotes net payoff amount to car dealer and accepts payment in that amount, bank is estopped from

asserting any other existing lien rights, and bank's subsequent repossession of vehicle from third party amounted to conversion. *Nakazato v. Micro1 Corporation, Inc.*, 1 CR 887.

CORPORATIONS

By-Laws

CTC 1986. Corporate by-laws may be waived by continued disregard by the parties for whose benefit they were enacted. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 760.

Closely-Held Corporations

— Valulations

Valuation of a closely-held corporation must be supported by specific findings of fact. *Hee v. Oh*, 2011 MP 18 ¶ 11 (2011).

Trial courts should consider the following factors when valuing a closely held corporation: (1) The nature of the business and the history of the enterprise from its inception; (2) The economic outlook in general and the condition and outlook of the specific industry in particular; (3) The book value of the stock and the financial condition of the business; (4) The earning capacity of the company; (5) The dividend-paying capacity; (6) Whether or not the enterprise has goodwill or other intangible value; (7) Sales of the stock and the size of the block of the stock to be valued; and (8) The market price of stocks of corporations engaged in the same or a similar line of business having their stocks traded in a free and open market. Additionally, as part of the valuation process, courts should also consider the application of common sense, sound and informed judgment, and reasonableness to the process of weighing those facts and determining their aggregate significance. *Hee v. Oh*, 2011 MP 18 ¶ 16 (2011).

Revenue is but one component of the value of a closely-held corporation. The value of an ownership interest in a business such as a closely-held corporation is also known as equity. The term revenue is defined as the annual or periodical rents, profits, interest or issues of any species of property, income of individual, corporation, government, etc. Revenue is certainly one component of a closely-held corporation's equity and a factor that must be considered when valuing a corporation. *Hee v. Oh*, 2011 MP 18 ¶ 19 (2011).

Corporate Existence

—Disregard of Corporate Entity

DC App. Div. 1986. In determining whether to pierce the corporate veil courts consider: undercapitalization, failure to observe corporate formalities, nonpayment of dividends, siphoning of corporate funds by dominant stockholders, non-functioning of other officers or directors, absence of corporate records, use of the corporation as a facade for the operations of the dominant stockholders, and use of the corporate entity in promoting injustice or fraud. *EDLF v. Pangelinan*, 2 CR 451.

DC App. Div. 1986. In determining whether to pierce the corporate veil courts must determine if (1) the interests of the dominant stockholders are so intertwined with those of the corporation that separate entities no longer exist, and (2) whether injustice or fraud would result if the fiction of separate entities was upheld. *EDLF v. Pangelinan*, 2 CR 451.

DC App. Div. 1986. The alter ego doctrine is an equitable one and the court is called upon to balance the equities. *EDLF v. Pangelinan*, 2 CR 451.

DC App. Div. 1986. Where defendant director/shareholder used corporate funds to satisfy personal debts and otherwise treated the corporation as his personal business, and corporate formalities were not observed, the trial court properly allowed plaintiff creditor to pierce the corporate veil and seek repayment of the debt from the director/ shareholder's personal assets. *EDLF v. Pangelinan*, 2 CR 451.

DC App. Div. 1986. Where creditor produced no evidence that defendant, a former director of the corporation, ever used or authorized the use of corporate funds for non-corporate purposes, alter ego doctrine would not be applied to hold former director personally liable for corporate debt. *EDLF v. Pangelinan*, 2 CR 451.

—Generally

Once a corporation is incorporated, it exists until it is dissolved. If the corporation and the shareholders are deemed to be one entity under the alter-ego doctrine and the court pierces the corporate veil for the purposes of liability, the corporation continues to exist. *Milne v. Estate of Hillblom*, 1997 MP 11 ¶16

Piercing the corporate veil is a doctrine of law which allows individual shareholders to be held personally

liable for the debts of the corporation, and not to void the entity of the corporation itself. *Dela Cruz v. Hotel Nikko Saipan, Inc.*, 1997 MP 16 ¶17

—Insolvency

CTC 1986. Under the corporation regulations, the losses to the corporation's creditors are determined at the time insolvency reaches a point when the corporation files for bankruptcy or a receiver assumes control of the corporation. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 777, *aff'd* in part and *rev'd* in part, 3 CR 731 (DNMI App. Div. 1989).

Officers and Directors

—De Facto Directors

——Generally

CTC 1986. A de facto director of a corporation is one in possession of and exercising powers of the office under claim and color of an election or appointment. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 760.

CTC 1986. A de facto director is one who possesses and exercises powers of the directorship under the claim and color of an election or appointment. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 731.

CTC 1986. As a general rule, there can be no de facto officer unless there is a de jure office to hold. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 731.

CTC 1986. To be a de facto director the person must hold office under some degree of notoriety or color of title and the mere assumption of title to office on one occasion cannot make the person a de facto director. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 731.

——Ratification of Actions

CTC 1986. Where ninety-five percent of the shareholders of a corporation proceeded as if they had regularly met and elected directors pursuant to the by-laws of the corporation, they effectively ratified the informal action of the corporation's de facto directors. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 760.

—Liabilities

DC App. Div. 1989. Corporate regulation that holds breaching directors liable for stockholder losses does not allow for a reduction in directors' liability to the extent that liability runs to other directors. Corporate Regulation 2.7. *CNMI v. Micronesian Insurance Underwriters, Inc.*, 3 CR 731.

CTC 1986. The intent and purpose of Section 2.7 of the Corporate Regulations is to penalize incorporators and directors who are instrumental in or acquiesce in allowing a corporation to "open its doors" while undercapitalized. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 73 1.

CTC 1986. The process of subscribing for shares does not constitute engaging in business for the purpose of regulation imposing individual liability on directors and incorporators of under-capitalized corporations. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 760.

CTC 1986. Where bank was put into receivership as a result of undercapitalization, directors are jointly and severally liable for losses which are bank debts and obligations to creditors, but not post receivership interest. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 777, *aff'd* in part and *rev'd* in part, 3 CR 73 1 (DNMI App. Div. 1989).

CTC 1986. Where director is liable for losses of corporation as a result of undercapitalization, director is liable to those shareholders who are not codefendants. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 777, *aff'd* in part and *rev'd* in part, 3 CR 731 (DNMI App. Div. 1989).

CTC 1986. Where evidence supports allegations of repeated misrepresentations by a director regarding the financial status of the bank, of paid-in capital and of the prospective investors, director is liable as a common law director and for fraud and is liable for the total loss including the investments of shareholders who did not act in concert with him or her. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 777, *aff'd* in part and *rev'd* in part, 3 CR 731 (DNMI App. Div. 1989).

CTC 1986. To prove liability as a common law director, one must show more than neglect; that a director was inattentive and knew or should have known of banks poor financial status does not alone support common law liability. Rather, the neglect must be a proximate cause of the bank's losses. *Government NMI v. Micronesian Insurance*

Underwriters, Inc., 2 CR 777, *aff'd* in part and *rev'd* in part, 3 CR 731 (DNMI App. Div. 1989).

CTC 1986. Section of corporation regulations imposing liability on incorporators and directors where corporation is not capitalized in compliance with the regulations is penal in nature and accordingly will be strictly construed. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 777, *aff'd* in part and *rev'd* in part, 3 CR 731 (DNMI App. Div. 1989).

Receivership

CTC 1986. Before the date of Receivership, banking corporation incurred liability for the payment of interest on depositor's accounts and thus on the date of receivership, interest is properly calculated to be within the losses of the bank. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 777, *aff'd* in part and *rev'd* in part, 3 CR 73 1 (DNMI App. Div. 1989).

CTC 1986. Liabilities incurred during receivership of a corporation are liabilities of the receivership and not the corporation per se. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 777, *aff'd* in part and *rev'd* in part, 3 CR 731 (DNMI App. Div. 1989).

CTC 1986. Upon the entry of a bank into receivership, control of the bank was effectively and completely transferred from the directors, officers and shareholders of the corporation to the Receiver who receives protection from the court against interference with his custody and possession of assets as well as his management. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 777, *aff'd* in part and *rev'd* in part, 3 CR 73 1 (DNMI App. Div. 1989).

CTC 1986. The Receiver stands in the position of a representative and a protector of the interests of the depositors. *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 777, *aff'd* in part and *rev'd* in part, 3 CR 73 1 (DNMI App. Div. 1989).

Representation, Legal

Generally, a corporation without counsel cannot be a party to an appeal. Instead, it must be represented by an attorney and not its president appearing pro se on its behalf. Where a corporation is not represented by an attorney on appeal, the corporation is not properly before the appellate court and appeal is subject to dismissal for lack of jurisdiction. Com. R. App. P. 11; Com. R. App. P. 42(c). *Benavente v. Double One Enters., Inc.*, 4 N.M.I. 299 (1995).

Shareholders

—Liability

A corporation and its shareholders are deemed to be separate entities and shareholders are not liable to third parties for corporate debts beyond their investment in the stock of the corporation. *Milne v. Estate of Hillblom*, 1997 MP 11 ¶16

Where the shareholders treat the corporation as an instrument to conduct their own personal business, the corporation and the shareholders are deemed to be one entity under the alter-ego doctrine, and the court may pierce the corporate veil for the purposes of liability. *Milne v. Estate of Hillblom*, 1997 MP 11 ¶16

Piercing the corporate veil is a doctrine of law which allows individual shareholders to be held personally liable for the debts of the corporation, and not to void the entity of the corporation itself. *Dela Cruz v. Hotel Nikko Saipan, Inc.*, 1997 MP 16 ¶17

Generally, a corporation and its shareholders are deemed separate entities and, consequently, shareholders are not liable to third persons for corporate debts beyond their investment in stock of the corporation. *United Enters., Inc. v. King*, 4 N.M.I. 304 (1995).

Where shareholders treat the corporation not as a separate entity but instead as an instrument to conduct their own personal business, the corporation and the shareholder are deemed one entity under the alter ego doctrine, and the court may "pierce the corporate veil" for purposes of liability. *United Enters., Inc. v. King*, 4 N.M.I. 304 (1995).

Whether a corporation and a shareholder may be deemed one for purposes of liability under the alter ego doctrine requires a two-part examination. First, the court must look at several factors to determine whether the corporation and shareholder are indeed acting as one. Second, if the court has determined that a corporation and shareholder are acting as one, it will "pierce the corporate veil" for purposes of liability if (1) the interests of the dominant stockholders are so intertwined with those of the corporation that separate entities no longer exist, and (2) whether injustice or fraud would result if the fiction of separate entities was upheld. *United Enters., Inc. v. King*, 4 N.M.I. 304 (1995).

In determining whether a corporation and a shareholder may be deemed one for purposes of liability under the alter ego doctrine, courts commonly examine the following factors: undercapitalization, failure to observe corporate formalities, nonpayment of dividends, siphoning of corporate funds by dominant stockholders, non-functioning of other officers or directors, absence of corporate records, use of the corporation as a facade for the operations of the dominant stockholders, and use of the corporate entity in promoting injustice or fraud. Other relevant factors considered may include whether an individual: (1) is in a position of control or authority over the entity; (2) controls the entity's actions without need to consult others; (3) uses the entity to shield himself from personal liability; (4) uses the business entity for his own financial benefit; (5) mingles his own affairs in the affairs of the business entity; and (6) uses the business entity to assume his own debts, or the debts of another, or uses his own funds to pay the business entity's debts. *United Enters., Inc. v. King*, 4 N.M.I. 304 (1995).

DC App. Div. 1986. The general rule is that a corporation and its shareholders are separate entities and, consequently, shareholders are not liable to third persons for corporate debts beyond their investment in stock of the corporation. *EDLF v. Pangelinan*, 2 CR 451.

DC App. Div. 1986. The alter ego doctrine in the law of corporations exists for those instances where the stockholders no longer treat the corporation as a separate entity but instead as an instrument to conduct their own personal business. *EDLF v. Pangelinan*, 2 CR 451.

COURTS

Appellate Power

The N.M.I. Supreme Court is guided by the letter of the law and the limitations of its appellate power, provided at 1 CMC § 3103, when reviewing lower court findings of fact. 1 CMC § 3103. *Commonwealth v. Seman*, 2001 MP 20 ¶ 9

Association Of Local Counsel

DC NMI 1984. Strict compliance with local rule of District Court requiring association of local counsel is not necessary where attorney does not reside in the Northern Mariana Islands, counsel has had no previous contact with the Court or the jurisdiction and appears for the limited purpose of moving to dismiss the complaint for lack of an in personam jurisdiction, and the attorney was willing to fully comply with the Local Rules in the event proceedings continue further in jurisdiction. District Court Local Rule 110- 1. *Sirok v. Rotec Engineering, Inc.*, 2 CR 179.

Authority and Powers

The Supreme Court cannot order a direct or indirect appropriation of public funds to satisfy a judgment. *Marine Revitalization Corp., et al. v. DLNR*, 2010 MP 18 ¶ 36 (2010).

A Commonwealth court cannot order funds appropriated to a department or agency of the government be used to satisfy a judgment unless the Legislature indicates its intent that those funds can be used for that purpose. We can only order the government to honor the judgment against it in as much as our laws permit. *Marine Revitalization Corp., et al. v. DLNR*, 2010 MP 18 ¶ 39 (2010).

Neither the Supreme Court nor the trial court possess any power to seize federal funds or property absent a clear indication of Congressional intent that such federal funds and property can be used to satisfy judgments against the Commonwealth. *Marine Revitalization Corp., et al. v. DLNR*, 2010 MP 18 ¶ 48 (2010).

While a statutory court is dependent on the legislature for its authority and power, a constitutional court exercises its authority as a coequal branch of government. If there is expressed or implied constitutional authority for the judiciary to promulgate rules of practice and procedure, then this power is regarded as legislative power. The rules issued have the status of statutes enacted by the legislature. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 14

Constitutional courts are generally acknowledged to have the inherent or implied power to regulate practice and procedure as a necessary function of their duty to efficiently administer cases. The inherent power of the C.N.M.I. court to create rules of procedure is expressly recognized in the C.N.M.I. Constitution. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 15

It is the court's solemn duty to protect the judicial power from legislative encroachment and to preserve the integrity and independence of the judiciary. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 15

Certified Questions

Federal courts are bound by the answers of state supreme courts to certified questions just as they are bound by state supreme court interpretations of state law in other contexts. A federal court that certifies a question of state law should not be free to treat the answer as merely advisory unless the state court specifically contemplates that result. *United States v. Borja (Mayor of Tinian)*, 2003 MP 8 ¶ 1

A Supreme Court is free to rephrase a certified question if necessary, and may address issues that are fairly raised even if they are not exactly described. *United States v. Borja (Mayor of Tinian)*, 2003 MP 8 ¶ 2

When a dispute arises between or among officials regarding the exercise of their powers or responsibilities under the constitution or statute, the parties may certify to the Supreme Court the legal question raised, however, failure to do so does not render an official's actions unreasonable if the official relies instead on the opinion of the Attorney General. N.M.I. Const. art. IV, § 11. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 80

Citations Of Cases

DC NMI 1987. Where party directed the Court to cases not available in the court's library, without supplying the text of the cases, in the interest of fairness, the court will not consider cited authority which has not been verified. *American International Knitters Corporation, v. Kawasaki Kisen Kaisha Ltd.*, 3 CR 102.

Common Law

—Generally

Whether a person has a duty to retreat before acting in self-defense is an issue of first impression in the Commonwealth, as both our statutory law and case law are silent on the issue. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 15 (2008).

It is well established that the Commonwealth may look to the law of other United States jurisdictions where the Commonwealth's written law, local customary law, and the Restatements lack guidance. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 15 (2008).

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

Under the common law, a corporation may not appear without counsel in a court proceeding. There is the problem of a non-attorney corporate officer appearing essentially in the capacity of an attorney, who is then engaging in the unauthorized practice of law. *Chen's Corporation v. Hambros,* 2007 MP 4 ¶ 8

The power to transfer a case from one county to another existed at common law. In the CNMI, the common law principles of venue cannot be applied the way they would be in the United States because here it is the same Judges who sit on our only Superior Court. Whether the actual location is Saipan, Tinian or Rota, our Superior Court remains the same, and so we cannot fully analogize a change of location from Saipan to Tinian as a change in "county," as United States case law does. Concepts of venue in the CNMI must take into account our special geographical and cultural situation. *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26 ¶ 11

It is well established in American jurisprudence that there is no common law right of recovery for wrongful death. *Indalecio v. Yarofalir,* 2006 MP 18 ¶ 9

No recovery is permitted for wrongful death absent a statute expressly overcoming the common law prohibition. *Indalecio v. Yarofalir,* 2006 MP 18 ¶ 14

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

The articulation of the common law in the Restatement of Law controls in cases where there is no contrary written or customary law in the CNMI. *Sullivan v. Tarope*, 2006 MP 11 ¶ 38

7 CMC § 4208 explicitly authorizes imprisonment for non-compliance with an order in aid of judgment;

however, even if the Commonwealth adopted the common law rule barring imprisonment for debt, the trial court did not commit clear error where it was unclear whether petitioner was imprisoned for her debt or for willful violation of the order in aid of judgment. *Paulis v. Superior Court*, 2004 MP ¶ 35

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

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 Court*, 2004 MP 10 ¶ 34

The Commonwealth may look to the law of other United States jurisdictions where the Commonwealth's written law, local customary law and the Restatements do not provide guidance. The N.M.I. Supreme Court prefers to look to U.S. case law limited to states within the jurisdiction of the Ninth Circuit. *Rosario v. Camacho*, 2001 MP 3 ¶ 90

In the absence of written or local customary law in the C.N.M.I. on a particular subject matter, the C.N.M.I. courts will look to the United States common law as expressed in the Restatements. *PAC United Corp. (C.N.M.I.) v. Guam Concrete Builders*, 2002 MP 15 ¶ 15

Where the law of the Commonwealth is silent on an issue and there is no applicable restatement provision on the issue, NMI courts consult the generally understood and applied laws in the United States. 7 CMC §3401. *Estate of Hillblom*, 1996 MP 21 ¶10

In the absence of written law or local customary law to the contrary, the courts must apply the rules of the common law, as generally understood and applied in the United States. 7 CMC §3401. *Thornburgh v. Thornburgh*, 1997 MP 27 ¶9; *Commonwealth v. Manglona*, 1997 MP 28 ¶4

In the absence of written law or customary law, the rules of the common law, as expressed in the Restatements of the Law, are to be applied. 7 CMC §3401 (1992). *Mitchell v. Estate of Hillblom*, 1997 MP 30 ¶9; *Sablan Enter. v. New Century, Inc.*, 1997 MP 32 ¶7

NMI courts are bound by the common law of the fifty states only in the absence of written law or local customary law to the contrary. 7 CMC §3401. *Mundo v. Superior Ct.*, 4 N.M.I. 392 (1996).

In the absence of contrary statutory or customary law, NMI Supreme Court applies the common law as expressed in the Restatements of the Law. 7 CMC §3401. *Castro v. Hotel Nikko Saipan, Inc.*, 4 N.M.I. 268 (1995), appeal dismissed, 96 F.3d 1259 (9th Cir. 1996).

Ability of NMI courts to formulate NMI's common law is constrained by statutory mandate to apply the common law as enunciated in the Restatements of the Law. 7 CMC §3401. *Castro v. Hotel Nikko Saipan, Inc.*, 4 N.M.I. 268 (1995), appeal dismissed, 96 F.3d 1259 (9th Cir. 1996).

Only in the absence of local written or customary law may court consider the common law as enunciated in the Restatements of the Law. 7 CMC §3401. *In re Estate of Seman*, 4 N.M.I. 129 (1994).

In the Commonwealth, the rules of the common law as expressed in the Restatements of the Law as approved by the American Law Institute serve as the applicable rules of decision, in the absence of written or local customary law to the contrary. 7 CMC §3401. *Ito v. Macro Energy, Inc.*, 4 N.M.I. 46 (1993).

In the absence of legislation, the common law is developed based on the application of general notions of justice and fair play, taking into account the circumstances and experiences unique to a particular jurisdiction. NMI is not, however, vested with degree of freedom exercised by courts in other jurisdictions because of statutory dictate that NMI courts apply the Restatements of the Law as rules of decision. 7 CMC § 3401. *Ito v. Macro Energy, Inc.*, 4 N.M.I. 46 (1993).

In the Commonwealth, the common law, as expressed in the restatements of the law, or, if not so expressed, as generally understood and applied in the United States, applies in the absence of written or customary law. *Ada v. K. Sadhwani's, Inc.*, 3 N.M.I. 303 (1992).

In the absence of written law or local customary law to the contrary, the rules of the common law, as expressed in the restatements of the law, are the rules of decision in Commonwealth courts. 7 CMC § 3401. *Rogolofoi v. Guerrero*, 2 N.M.I. 468 (1992).

The nature and applicability of a common law doctrine under which a claim for relief is made are questions of law, reviewable de novo. *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

In the absence of written law or local customary law to the contrary, the rules of the common law as expressed in the restatements of the law approved by the American Law Institute or as generally understood and applied in the United States if they are not so expressed are the rules of decision in NMI courts. 7 CMC § 3401. *Trinity Ventures, Inc. v. Guerrero*, 1 N.M.I. 54 (1990).

DC App. Div. 1988. A local law case that is decided by the federal district court, must be decided under local law, which includes the specific Commonwealth statutes in effect at the time and the general law to be followed in the Commonwealth as delineated by statute, the restatements of law. 7 CMC §3401. *Gioda v. Saipan Stevedoring Co., Inc.*, 3 CR 516.

CTC 1987. Where there is no specific statutes on a matter, the court is obliged to apply the law as expressed and approved in the restatement of the law by the American Law Institute. 7 CMC §3401. *Guerrero v. L & T International Corp*, 2 CR 1068.

—Public Policy

Where the Court is called upon to formulate a common law rule based on public policy, the policy must be implicated in either local law or a recognized need to safeguard the welfare of the general public. *Bank of Saipan v. Superior Court (Connell)*, 2001 MP 1 ¶48

If NMI court is to formulate a common law rule based on public policy, the policy must be implicated in either local law or a recognized need to safeguard the welfare of the general public. 7 CMC § 3401. *Castro v. Hotel Nikko Saipan, Inc.*, 4 N.M.I. 268 (1995), appeal dismissed, 96 F.3d 1259 (9th Cir. 1996).

Contempt

—Civil

It is well-established that lower courts possess the inherent power to find a party in civil contempt and order imprisonment until compliance with a court order is achieved or is no longer possible. Sanctions for civil contempt are employed either to coerce compliance with a court order or to compensate a complainant for losses sustained. If the civil contempt sanctions are designed to coerce compliance with a court order, the alleged contemnor must be given the opportunity to comply and avoid the penalty. *In the Matter of the Estate of Malite*, 2010 MP 20 ¶ 57 (2010).

While individuals can be incarcerated for not complying with the probate court's orders, a probate court's contempt power is not limitless. A contemnor can assert a present inability to comply with an order as a defense to civil contempt. Courts have repeatedly stressed that parties asserting an inability defense face a high burden. *In the Matter of the Estate of Malite*, 2010 MP 20 ¶ 58 (2010).

A contempt proceeding does not open to reconsideration the legal or factual basis of the order alleged to have been disobeyed and thus become a retrial of the original controversy. Where the order imposing sanctions was not invalid on its face and immediate review was readily available, review of a finding of civil contempt is technically limited to questions of jurisdiction, such as whether the trial court had the authority to impose the punishment inflicted, and whether the acts for which the punishment was imposed constitute a contempt. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 15

Civil contempt occurs when a party fails to comply with a court order. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 16

The N.M.I. Supreme Court may reverse a contempt if the underlying order that it attempts to enforce was entered by a court that lacked the authority or jurisdiction to do so. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 17

While disobedience of, or resistance to, a void order is not contempt, where a court has jurisdiction over the person and the subject matter, no error in the exercise of such jurisdiction can make the judgment void. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 17

When the court has jurisdiction over the parties and of the subject matter of the suit, and the legal authority to make the order, a party refusing to obey the order, however erroneously made, will be liable for contempt. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 18

A court maintains inherent subject matter jurisdiction to enter orders of contempt, even if premised on an erroneous prior order. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 18

The Commonwealth courts have the inherent power and duty to regulate the practice of law, both in and out of court. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 19

A court may rely upon its inherent power to regulate the conduct of lawyers appearing before it, even when specific statutes and rules regulating the conduct are in place. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 19

Sanctions for civil contempt may be justified, even absent a finding of bad faith by an attorney, given the court's inherent power to regulate the practice of law for the protection of the public and to manage its own affairs so as to achieve the orderly and expeditious disposition of cases, where an attorney fails to perform his responsibility as an officer of the court, by lying to the court and violating his responsibility to his client, and where such conduct is unrelated to an attorney legitimate efforts at zealous advocacy for the client. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 21

The right to appellate review normally springs from the imposition of punishment. Where a contempt order has been issued, but no fine or imprisonment has been imposed, the proceeding is pending in the court below and the contempt order is not appealable. *Kaainoa v. Cabrera*, 2003 MP 18 ¶ 10

While at common law, the trial court's contempt proceedings were unreviewable, pursuant to the supervisory authority vested in the N.M.I. Supreme Court, it may issue a writ compelling the trial court to exercise its authority, but the trial court has a generous amount of leeway when issuing orders in aid of its judgment and coercing litigants to comply with its validly-entered orders. *Kaainoa v. Cabrera*, 2003 MP 18 ¶ 18

The trial court is in a far better position to determine when it is time to incarcerate a litigant found in contempt of an order of the trial court, and thus it is not very likely that the N.M.I. Supreme Court would ever compel the trial court to order the commitment of a party who violates one of the trial court's orders. However, when a party violates an order which is entered pursuant to a mandate from the Supreme Court, an appeal from an order refusing to find the party in contempt is proper for appellate consideration, and the Supreme Court can reverse and remand with instructions to order an appropriate punishment. *Kaainoa v. Cabrera*, 2003 MP 18 ¶ 20

Court has inherent judicial power to enforce its promulgated rules and may impose sanctions upon attorneys who violate the rules. However, before exercising inherent power to sanction, court must allow attorney fair notice and an opportunity for a hearing on the record. Attorney must have opportunity to demonstrate that his or her questionable conduct was not undertaken recklessly or wilfully or in bad faith. *Sonoda v. Villagomez*, 3 N.M.I. 535 (1993).

Type and amount of monetary sanction levied pursuant to court's inherent power to impose sanction is discretionary. *Sonoda v. Villagomez*, 3 N.M.I. 535 (1993).

Civil contempt flows from the court's inherent powers. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 343 (1992).

Sanctions for civil contempt are employed either to coerce compliance with a court order or to compensate a complainant for losses sustained. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 343 (1992).

Civil contempt flows from a court's inherent powers and may be used to enforce compliance with court's lawful orders. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

Sanctions for civil contempt are employed either to coerce compliance with a court order or to compensate a complainant for losses sustained. If the sanctions imposed for civil contempt are for compensatory purposes, the sanction imposed is to be paid to the complainant. If the civil contempt sanctions are designed to coerce compliance with a court order, the alleged contemnor must be given the opportunity to comply and avoid the penalty. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

Civil contempt sanctions are not constrained by the maximum punishment allowed for criminal contempt under 6 CMC § 3307. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

NMI Superior Court has a general "inherent power" to impose civil contempt sanctions. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

The fact that a rule does not expressly provide for sanctions does not mean that a court is powerless to enforce the rule when it is violated. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

A trial court must exercise its inherent power to sanction with restraint and discretion because such power is shielded from direct democratic controls. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

Before exercising its inherent power to sanction for civil contempt, court must allow attorney fair notice and an opportunity for a hearing on the record, and give counsel an opportunity to demonstrate that his or her questionable conduct was not undertaken recklessly or willfully. The trial court must then specifically find that the attorney acted in bad faith. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

If a court exercises its inherent power and imposes civil contempt sanctions, the amount of the sanction imposed is not "legislating." *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

Any civil contempt sanction imposed through the exercise of a court's inherent power must be proportionate to the offense and commensurate with principles of restraint and dignity inherent in judicial power. Attorneys should not be disciplined by financial reprisal for conduct attributable to mistake, inadvertence or error of judgment. Trial court should not assess monetary sanctions against counsel absent grossly negligent, reckless, or willful conduct. Even where monetary sanctions may properly be imposed, a trial court should consider the use of more moderate penalties, such as reprimanding counsel in open court. Monetary sanctions which the court may impose should be commensurate with the severity of the conduct and designed to deter similar misconduct in the future. The court system is not a private party that needs to be reimbursed for its inconvenience. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

——Particular Cases

Trial court erred in sanctioning attorney without giving him opportunity for hearing concerning his failure to have parties ready for trial or to advise court in advance that defendants would need continuance to obtain new counsel. On remand, unless court found after hearing that attorney acted recklessly, willfully or in bad faith, sanction could not be imposed. *Sonoda v. Villagomez*, 3 N.M.I. 535 (1993).

Sanction imposed by NMI Superior Court upon office of the Attorney General of $2,000 per day for each day beyond deadline for paying unconditional $10,000 sanction had characteristic of civil contempt sanction because Attorney General could avoid sanction by timely paying unconditional sanction. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

—Criminal

Criminal contempt sanctions are unconditional, and are intended to punish the contemnor and vindicate the authority of the court. Under 6 CMC § 3307, a court can impose penalties for criminal contempt, including up to six months in jail. *In the Matter of the Estate of Malite*, 2010 MP 20 ¶ 57 (2010).

Criminal contempt is specifically addressed by Commonwealth law and court rules. As such, the source of power for criminal contempt is not the court's inherent powers. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 343 (1992).

Sanctions for criminal contempt are unconditional, and are intended to punish the contemnor and vindicate the authority of the court. Commonwealth courts are empowered by statute to impose penalties for criminal contempt, but a court should (a) follow the procedural requirements of Com. R. Crim. P. 42 or, where appropriate, (b) instruct the prosecutor to file a charge for criminal contempt. The penalty for criminal contempt in the Commonwealth is limited to $100 or six months incarceration, or both. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 343 (1992).

Under Com. R. Crim. P. 42, NMI Superior Court may find one in criminal contempt by two methods: summary disposition or upon notice and hearing. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 343 (1992).

Criminal contempt is specifically addressed by 6 CMC § 3307 and by Com. R. Crim. P. 42. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

Sanctions for criminal contempt are unconditional, and are intended to punish the contemnor and vindicate the authority of the court. Commonwealth courts are empowered by statute to impose penalties for criminal contempt, 6 CMC § 3307, but a court should (a) follow the procedural requirements of Com. R. Crim. P. 42 or (b), where appropriate, instruct the prosecutor to file a charge for criminal

contempt. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

The penalty for criminal contempt is limited to $100 or six months incarceration, or both. 6 CMC § 3307. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

A contempt judgment is criminal when it requires the contemnor to pay to the government an unconditional fine. An unconditional penalty is criminal in nature because it is solely and exclusively punitive in character. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

Under Com. R. Crim. P. 42, Superior Court may find one in criminal contempt by two methods: summary disposition or upon notice and hearing. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

Summary contempt proceedings are unique to criminal procedure and are reserved for exceptional circumstances where instant action is necessary to protect the judicial institution itself. For example, where a person actively disrupts a session of court in the presence of the trial court judge, instant action by the judge through use of summary contempt proceedings would be appropriate. But even when instant action is necessary, the court must give the contemnor advance warning that he is at risk of being found in contempt. And where the conduct giving rise to the imposition of sanctions occurred outside the presence of the court, counsel should be provided an opportunity to explain his conduct. Com. R. Crim. P. 42. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

To adjudge one guilty of criminal contempt under Com. R. Crim. P. 42(b), the court must provide the alleged contemnor notice, an opportunity to respond, and a hearing. Com. R. Crim. P. 42(b) details the information which must be contained in the notice. To find one in criminal contempt requires that the contemnor acted in willful disobedience to an order of the court. The contemnor's willfulness must be proved beyond a reasonable doubt. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

——Particular Cases

Because trial court sanctioned attorney under criminal contempt power it was, under Com. R. Crim. P. 42, required to use either summary disposition or notice and hearing method. Since neither method was followed, and since court was not empowered to temporarily suspend attorney from practice, sanction was reversed. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 343 (1992).

To the extent that $10,000 sanction imposed by NMI Superior Court upon office of NMI Attorney General was unconditional and immediately due and payable to Superior Court clerk, it was tantamount to a sanction imposed for criminal contempt. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

Because record did not reveal that sanctioned party was given advance warning that its acts or omissions could be subject to contempt, or was given chance to explain its conduct, and record did not show that instant action was necessary to protect NMI Superior Court's integrity (a number of events constituting the contemptible conduct occurred outside the courtroom), Superior Court should not have applied summary contempt proceeding under Com. R. Crim. P. 42(a). *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

Because record did not show that instant contempt action was necessary under Com. R. Crim. P. 42(a), sanctioned party should have been afforded due process safeguards required under Com. R. Crim. P. 42(b): notice that court was considering sanctions, an opportunity to respond, a hearing, and proof beyond a reasonable doubt that party acted in willful disobedience of court order. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

In appeal of sanction imposed upon office of NMI Attorney General for failing to return money seized in criminal prosecution, although no specific order was entered requiring return of money to criminal defendant, that fact did not, by itself, mean that there was no basis for finding of contempt. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

In appeal of criminal contempt sanction, appellant could not interpose defense relying, in part, on facts which may have resulted from appellant's own misplaced representations and/or negligence. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

—Generally

If a jail sentence for contempt of court is determinate, it is criminal in nature and may not be imposed without the proper constitutional rights, including the right to be represented by counsel, being afforded to the defendant. *Paulis v. Superior Court*, 2004 MP 10 ¶ 31

A party must comply with a court order until it is reversed by orderly and proper proceedings. The ostensible purpose for such a rule is to prevent a

party from making himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside. *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶41

Only when a court is so obviously traveling outside its orbit as to be merely usurping judicial forms and facilities, may an order issued by a court be disobeyed and treated as though it were a letter to a newspaper. Whether a defendant may be brought to the bar of justice is not for the defendant himself to decide. *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶42

Contempt of court may be either civil or criminal. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

To distinguish civil contempt from criminal contempt in an appeal in which the nature of the sanction is not clear, an appellate court should look to what the trial court primarily sought to accomplish by imposing the sanction. In its inquiry, the appellate court should consider the character and purpose of the punishment imposed by the trial court and look to the substance of the contempt proceeding and character of the relief that the proceeding afforded. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

Where a fine contains an admixture of civil and criminal elements, the criminal aspect of the order fixes its character for purposes of procedure on review. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

—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 Court*, 2004 MP 10 ¶ 32

Counsel, Withdrawal of

See **ATTORNEY AND CLIENT - Withdrawal from Representation**

Dictum

DC App. Div. 1983. Although dictum may be followed if it is sufficiently persuasive, it is not controlling and may be disapproved. *CNMI v. Atalig*, 1 CR 552, rev'd, 723 F.2d 682 (9th Cir. 1984).

Docket, Control of

See **Inherent Powers - Docket, Control of**, this topic.

Duties

A bedrock tenet of American jurisprudence is that it is emphatically the province and duty of the judicial department to say what the law is. *Santos v. Pub. Sch. Sys.*, 2002 MP 12 ¶ 13

Ex Parte Practice

—Generally

A judicial proceeding or order is *ex parte* when granted at the instance and for the benefit of one party only and without notice to any person adversely interested. *In re Lizama*, 2008 MP 20 ¶ 10 (2008).

Ex parte practice, and the orders which may be obtained on an ex parte basis, should be subjected to careful control by the courts. Because of its non-adversarial nature, there is always a danger of misuse of an ex parte application. *Norita v. Norita*, 4 N.M.I. 381 (1996).

Inherent Powers

—Attorney Discipline

A court has the well-established inherent authority to suspend or disbar attorneys on its own motion. The legislative branch of government may not defeat this power. *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶37

Attorney disciplinary rules are not the exclusive means for punishing attorney misconduct in actions pending before the Court. The Commonwealth Courts have authority to suspend or dismiss attorneys directly for misconduct. *Saipan Lau Lau Development, Inc. v. Superior Court (San Nicholas)*, 2000 MP 12 ¶ 7

The courts have inherent powers, powers vested in the courts upon their creation, and not derived from any statute, to sanction attorneys. Courts may suspend or dismiss an attorney as an exercise of the courts' inherent powers. *Saipan Lau Lau Development, Inc. v. Superior Court (San Nicholas)*, 2000 MP 12 ¶ 8

The inherent power of a court to sanction attorneys derives from the absolute need of a judge to maintain

order and preserve the dignity of the court, as well as the lawyer's role as an officer of the court that granted the attorney admission. *Saipan Lau Lau Development, Inc. v. Superior Court (San Nicholas)*, 2000 MP 12 ¶ 8

—Contempt

See **Contempt - Civil**, this topic.

—Docket, Control of

The decision as to whether to grant a continuance of a trial date is within the court's discretion. *Commonwealth v. Palacios*, 2003 MP 6 ¶ 22

Trial court possesses inherent power to police its docket. *Ito v. Macro Energy, Inc.*, 4 N.M.I. 46 (1993).

Timing of trials and docket control are matters best left to the discretion of the trial court. *Ito v. Macro Energy, Inc.*, 4 N.M.I. 46 (1993).

Compliance with a court's scheduling order furthers the purpose of allowing a court to organize and control its calendar in an orderly manner. *Estate of Mendiola v. Mendiola*, 2 N.M.I. 233 (1991).

——Particular Cases

Where preparations for the November 2007 elections were currently underway, the Court weighed the matter's exigency as against the need for analytical diligence and issued a decision on its conclusions of law with additional reasoning to follow. *In re Pangelinan*, 2007 MP 14 ¶ 8

Trial court did not abuse its discretion in declining to hear defendant's motion for summary judgment on day of trial. Issue implicated court's control over its docket; hearing defendant's motion would have entailed continuing trial to another day, requiring court to shift its docket. *Ito v. Macro Energy, Inc.*, 4 N.M.I. 46 (1993).

—Extraordinary Writ

Pursuant to Article IV, section 3 of the Commonwealth Constitution, the Supreme Court is vested with all inherent powers, including the power to issue all writs necessary to the complete exercise of its duties and jurisdiction under this constitution and the laws of the Commonwealth. *Hocog v. Mendiola*, 2009 MP 20 ¶ 5 (2009).

—— Review of Agency Action by

Courts have inherent power to review the actions of administrative agencies by extraordinary writ. *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270 (1991).

—Generally

Contempt is within the trial court's inherent authority to enforce its judgments. 1 CMC § 3202. *Bank of Guam v. Ruben*, 2008 MP 22 ¶ 14 (2008).

As a general principle, where rules exist to sanction misconduct occurring within the context of a court proceeding, courts should rely on such rules to the extent they provide adequate mechanisms to deal with the misconduct in question. When rules are inadequate, inherent power may be employed. *Atalig, et al. v. Superior Court*, 2008 MP 19 ¶ 10 (2008).

Even when rules provide an adequate remedy, courts are not necessarily precluded from acting pursuant to their inherent power. Indeed, Commonwealth courts possess inherent power to regulate the practice of law in proceedings before them regardless of whether redress can also be had through the disciplinary rules. *Atalig, et al. v. Superior Court*, 2008 MP 19 ¶ 10 (2008).

When disciplining attorneys, each Commonwealth court is bound by the disciplinary rules only to the extent the court's inherent power over the practice of law before it is lacking. *Atalig, et al. v. Superior Court*, 2008 MP 19 ¶ 10 (2008).

Commonwealth courts punishing criminal contempt do so through a statutory grant of authority, not inherent power. Inherent power, however, is the source of the courts' authority to sanction civil contempt. *Atalig, et al. v. Superior Court*, 2008 MP 19 ¶ 12 (2008).

The trial court possesses inherent power to sanction attorneys for rule violations separate from its contempt power. *Atalig, et al. v. Superior Court*, 2008 MP 19 ¶ 14 (2008).

A court may rely upon its inherent power to regulate the conduct of lawyers appearing before it, even when specific statutes and rules regulating the conduct are in place. *Atalig, et al. v. Superior Court*, 2008 MP 19 ¶ 15 (2008).

Under its inherent power to control case management, and to regulate the practice of law both

in and out of courts, the trial court may consider a range of appropriate sanctions, where litigants or attorneys engage in dilatory conduct. *Atalig, et al. v. Superior Court*, 2008 MP 19 ¶ 16 (2008).

Much like the Supreme Court, the trial court has inherent power to control the proceedings before it. Included within that inherent power is the authority to sanction attorney misconduct. Whether the misconduct is limited to a particular proceeding or involves ethics violations that may have wider disciplinary ramifications, the trial court retains a degree of inherent power to sanction misconduct in addition to that provided by rule. *Atalig, et al. v. Superior Court*, 2008 MP 19 ¶ 17 (2008).

The trial court has inherent power to impose compensatory monetary sanctions for ethics and rule violations, and as an alternative to dismissing a case for failure to prosecute. Furthermore, at least in principle, the trial court has inherent authority to impose punitive monetary sanctions on attorneys who fail to follow court rules. *Atalig, et al. v. Superior Court*, 2008 MP 19 ¶ 18 (2008).

Article 4, sections 3 and 9 of the Commonwealth Constitution indicate that the Supreme Court has rule-making and procedural authority over the trial court and may, therefore, prescribe rules and guidelines to govern trial court procedure. NMI Const. art. IV, §§ 3 and 9. *Atalig, et al. v. Superior Court*, 2008 MP 19 ¶ 23 (2008).

Pursuant to the Supreme Court's authority, trial judges must follow the proper disciplinary procedures in order to encumber an attorney's license to practice law, trial judges still have the full panoply of contempt proceedings and rule-based sanctions provisions to ensure their courtrooms remain respected and functional. *Atalig, et al. v. Superior Court*, 2008 MP 19 ¶ 24 (2008).

The Supreme Court has the inherent authority and jurisdiction to regulate the conduct of attorneys practicing before us. *In the Admission of Nisperos*, 2007 MP 33 ¶ 9 (2007).

We have the inherent authority and jurisdiction to regulate the conduct of attorneys practicing before us, and the prosecutor, as a member of the bar, is subject to our jurisdiction. In determining the appropriate sanction, the court considers the nature of the misconduct, the cumulative weight of the violations, and the harm to the public and the profession. We decide the instant case, like each case, on its unique circumstances and facts. *In the Matter of Roy*, 2007 MP 28 ¶ 7 (2007).

Commonwealth Rule of Appellate Procedure 39(a) authorizes awards of costs only in appeals, unless provided by law. Nevertheless, because petitioners' request was reasonable, and because the Court believes it ill-advised to perpetuate disincentives for citizens acting to remedy governmental failures, the Court relied upon its Rule 2 authority to grant petitioners' request for costs. *In re Pangelinan*, 2007 MP 14 ¶ 16

This Court may waive procedural steps. This ability gives the Court the latitude to effectuate the policy behind the rules. In doing so, the Court considers whether a litigant's action is the functional equivalent of what the rule requires. *Chen's Corporation v. Hambros*, 2007 MP 4 ¶ 6

The Court has recognized the functional equivalent test when judging the adequacy of filings under our appellate rules. We now hold that although an application for a writ of mandamus fails, we may nevertheless address the issues by converting the application to an appeal. *Malite v. Tudela, et al.*, 2007 MP 3 ¶ 20

There is no specific statute in the CNMI which authorizes a change of venue in a civil case; the trial court's transfer of venue from Saipan to Tinian was rooted in its inherent powers. *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26 ¶ 11

We look to the federal rules and our local criminal venue statute for guidance in civil venue decisions. *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26 ¶ 12

A fundamental rule of judicial restraint states that the court must consider non-constitutional grounds for decision before reaching constitutional arguments. *Tenorio Enterprises, Inc. v. Uddin*, 2006 MP 22 ¶ 17

The appellate court will require strict compliance with the separate document rule. The rule will increase judicial efficiency and economy. The rule is neither onerous nor burdensome, and it provides the parties with conclusive notification that the case has ended and an appeal may be taken, ensures that a decision addressed on appeal is really the trial court's final resolution of the matter, and protects litigants from uncertainty. *Commonwealth v. Kumagai*, 2006 MP 20 ¶ 22

Only in the instance of untimely filing is an appeal beyond the power of the Court to resurrect. The authority to waive procedural technicalities is broad, without need to resort to suspension of rules pursuant

to Com. R. App. P. 2. *Commonwealth v. Pua,* 2006 MP 19 ¶ 13

If a litigant files papers in a fashion that is technically at variance with the letter of a procedural rule, a court may nonetheless find that the litigant has complied with the rule if the litigant's action is the functional equivalent of what the rule requires. *Commonwealth v. Pua,* 2006 MP 19 ¶ 13

The Commonwealth judiciary derives its power from the CNMI Constitution Article IV, specifically, section 2 grants the Superior Court original jurisdiction in all cases in equity and law and in all criminal actions, while section 3 vests appellate jurisdiction in the Supreme Court. Additionally, both Courts are granted the inherent powers necessary to fulfill their Constitutional mandate. *Northern Marianas College v. Civil Serv. Comm'n,* 2006 MP 4 ¶ 7

The Supreme Court may not take new or additional evidence. *Office of the Attorney Gen. v. Estel*, 2004 MP 24 ¶ 14

The purpose of the court's supervisory powers is threefold: (1) to implement a remedy for violation of a recognized right; (2) to preserve judicial integrity by ensuring that a conviction rests on appropriate considerations validly before a jury; and (3) to remedy or deter illegal conduct. *Commonwealth v. Rabauliman,* 2004 MP 16 ¶ 13

A challenge based on the abstention of one justice on a three justice panel from signing an opinion will only survive scrutiny if abstention from signing violates Commonwealth law. *Commonwealth v. Repeki,* 2004 MP 8 ¶ 5

The Commonwealth Supreme Court shall hear appeals from final judgments and orders of the superior court. The Supreme Court shall have all inherent powers, including the power to issue all writs necessary to the complete exercise of its duties and jurisdiction under the Constitution and laws of the Commonwealth. *Commonwealth v. Repeki,* 2004 MP 8 ¶ 8

Although a court has the power to dismiss a case pursuant to its supervisory powers, it is a disfavored remedy. A dismissal with prejudice is a harsh remedy that should be used sparingly so that the administration of justice does not override the victims and the public's rights in the enforcement of criminal law. *Commonwealth v. Jai Hoon Yoo,* 2004 MP 5 ¶ 15

Certain powers have been conceded to courts because they are courts. Such powers have been conceded because without them courts could neither maintain their dignity, transact their business, nor accomplish the purposes of their existence. These powers are called inherent powers. *Commonwealth v. Palacios*, 2003 MP 6 ¶ 20

The failure of the prosecution to appear on the day and time set for a trial is nothing less than an affront to the dignity of the court. Likewise, the ability of the court to transact its business and accomplish the purposes of its existence is also dealt a blow by the prosecution's failure to appear for trial. As such, a trial court's dismissal of the charges against a defendant in such a case is appropriate. *Commonwealth v. Palacios,* 2003 MP 6 ¶ 20

Inherent powers derive from a judge's absolute need to maintain order and preserve the dignity of the court. The court's inherent powers consist of those which are necessary to the exercise of all others. *Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas)*, 2001 MP 2 ¶37

The court has the inherent power to set aside a decree procured by extrinsic fraud. The doctrine of extrinsic fraud is quite broad. Extrinsic fraud is fraud that induced a party to default or consent to judgment against him. Restatement (Second) of Judgments § 70 (1980). *Piteg v. Piteg*, 2000 MP 3 ¶ 19

A trial court has wide latitude in determining the manner of conducting trials. *Commonwealth v. Delos Reyes*, 4 N.M.I. 340 (1996).

Inherent powers derive from the absolute need of a trial judge to maintain order and preserve the dignity of the court. The court's inherent powers consist of those which are necessary to the exercise of all others. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

Commonwealth courts have a basic inherent power to enforce court rules, whether rules may be considered "local" (e.g., rules of practice unique to that court) or not (e.g., rules of civil or appellate procedure). *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

—Sanctions

See **Contempt - Civil**, this topic.

—Witnesses, Disclosure of

Court has inherent power to order disclosure of witnesses to promote efficient administration of criminal justice system. *Commonwealth v. Adlaon*, 4 N.M.I. 171 (1994).

Judicial Acts

CTC 1983. There is a presumption of the regularity of judicial acts and it is incumbent upon the one attacking the judicial act to support the conclusion that the act is null and void for lack of authority. *Camacho v. Camacho*, 1 CR 620.

CTC 1983. The unsworn assertion in defendant's points and authorities that the person who signed a Trust Territory High Court judgment was not an authorized judge on the date signed is not sufficient to overcome the presumption of regularity, especially where the High Court accepted the appeal from the judgment, implicitly recognizing its validity. *Camacho v. Camacho*, 1 CR 620.

Judicial Review

—Constitutionality of Regulations

See **ADMINISTRATIVE LAW - Regulations - Constitutional Questions**

—Constitutionality of Statutes

See **STATUTES - Constitutional Questions**

Justiciability

—Generally

Generally, non-parties have no standing to appeal, but this rule is not without exception. *Malite v. Tudela, et al.*, 2007 MP 3 ¶ 13

A non-party has standing to appeal when: (1) they participated in the proceedings at the trial court level; (2) they have an interest in the matter which is apparent from the record; and (3) a weighing of the equities supports hearing the appeal. *Malite v. Tudela, et al.*, 2007 MP 3 ¶ 14

Standing in a probate matter is a necessary prerequisite to enjoying due process rights in a probate proceeding. *Malite v. Tudela, et al.*, 2007 MP 3 ¶ 32

Standing is a concept utilized to determine if a party is sufficiently affected so as to insure that a justiciable controversy is presented to the court. The essential element of standing is that a plaintiff personally has suffered either actual injury or threat of injury as a result of defendant's conduct. Moreover, a plaintiff must show that the injury fairly can be traced to the challenged action and is likely to be redressed by a favorable decision. *Malite v. Tudela, et al.*, 2007 MP 3 ¶ 33

In the absence of statutory language to the contrary, heirs in law generally have a right to appeal adverse probate court decisions based on their status as aggrieved parties, provided such orders are final or appealable interlocutory orders. *Malite v. Tudela, et al.*, 2007 MP 3 ¶ 34

An appellant's speculative future pecuniary interest in an estate if an appeal was resolved in her favor – thus deeming her a legal heir – sufficiently demonstrated an interest that will be affected by the outcome of the case. A vested interest being stronger than a speculative one, the same reasoning renders heirs with a vested interest in proceedings sufficiently affected to bring an appeal. *Malite v. Tudela, et al.*, 2007 MP 3 ¶ 35

Standing is a concept utilized to determine if a party is sufficiently affected so as to insure that a justiciable controversy is presented to the court. The essential element of standing is that a plaintiff personally has suffered either actual injury or threat of injury as a result of the defendant's conduct. Moreover, the plaintiff must show that the injury fairly can be traced to the challenged action and is likely to be redressed by a favorable decision. *Falcon v. McCue*, 2005 MP 7 ¶ 34

In order to decide a case, a court must be able to afford a petitioner the relief he or she seeks. The court's duty is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, r to declare principles or rules of law which cannot affect the matter in issue in the case before it. *Olupomar v. Mahora*, 2001 MP 17 ¶ 10

As a general rule, in order to decide a case a court must be able to afford a petitioner the relief he or she seeks. Court's duty is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions on moot questions or abstract propositions, or to declare principles of law which cannot affect the matter at issue in the case at bar. *In re Seman*, 3 N.M.I. 57 (1992).

As a general rule, in order to decide a case a court must be able to afford a petitioner the relief he or she

seeks. Court's duty is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue. *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270 (1991).

NMI courts are not subject to a "cases or controversies" limitation like that imposed upon the federal judiciary by U.S. Const. art. III, § 2, but are limited by similar policy considerations. *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270 (1991).

Claims based merely upon assumed potential invasions of rights are not enough to warrant judicial intervention. *Tenorio v. Superior Ct.*, 1 N.M.I. 112 (1990).

—Mootness

The duty of the Supreme Court is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions on moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter at issue in the case at bar. Further, courts lack jurisdiction to decide moot cases. *Castro v. Castro*, 2009 MP 8 ¶ 6 (2009).

The Supreme Court can depart from the mootness doctrine when a case rests soundly within one of three recognized exceptions. First, a defendant's voluntary cessation of illegal conduct does not moot a case; if it did the courts would be compelled to leave the defendant free to return to his old ways. Second, if the principal plaintiff in a class action lawsuit ceases to belong to the class, the case does not automatically become moot for the parties he or she formerly represented. The final exception applies if a controversy is capable of repetition yet has evaded, or will likely continue to evade review. *Castro v. Castro*, 2009 MP 8 ¶ 7 (2009).

The "capable of repetition yet evading review" exception applies when the issue raised is one that affects the public interest and it is likely that similar issues arising in the future would likewise become moot before the Court can make a determination. A case is justiciable even though the potentially repetitive act may never again involve the parties before the court. The issue must simply be a matter of public interest that will likely continue to arise yet become moot before the Court has an opportunity to review it. *Castro v. Castro*, 2009 MP 8 ¶ 8 (2009).

When applying the "capable of repetition yet evading review" exception, the Supreme Court must first determine whether the controversy involves an issue that affects the public interest. The Court has previously recognized that constitutional questions satisfy this prong of the exception. *Castro v. Castro*, 2009 MP 8 ¶ 8 (2009).

The Court will not issue a writ of mandamus on a moot question or abstract proposition, nor will it declare principles or rules of law that do not presently affect a case. *Bank of Saipan v. Superior Court*, 2004 MP 15 ¶ 6

The Court has a duty to decide actual controversies by a judgment which can be carried into effect; it does not give opinions on moot questions or abstract propositions, or declare principles or rules of law which do not affect the matter at bar. *Bank of Saipan v. Superior Court*, 2004 MP 15 ¶ 8

The Court may make an exception to the mootness rule when the issue raised affects the public interest and there is a likelihood of similar issues arising in the future which would likewise become moot before the Court can rule on the issue. The "capable of repetition yet evading review" exception applies when there is something inherent in the situation such that mootness will prevent consideration of the issue nearly every time the issue arises. *Bank of Saipan v. Superior Court*, 2004 MP 15 ¶ 8

The duty of the Court is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions on moot questions or abstract propositions, or declare principles or rules of law which cannot affect the case at bar. *Paulis v. Superior Court*, 2004 MP 10 ¶ 17

When an issue involved affects the public interest and it is likely that similar issues arising in the future would likewise become moot before the Court can make a determination, an exception to the mootness rule is justified. The Court has an interest in preventing litigants from attempting to manipulate its jurisdiction to insulate their actions from review. *Paulis v. Superior Court*, 2004 MP 10 ¶ 18

The mootness doctrine implicates a court's jurisdiction to hear the main issue on appeal, because courts lack jurisdiction to decide moot cases. *Commonwealth v. Repeki*, 2003 MP 1 ¶ 3

A case is moot if it cannot be said that there is an actual controversy currently before the court that can

be remedied by a judgment which can be carried into effect. *Commonwealth v. Repeki*, 2003 MP 1 ¶ 14

A case is not moot and an actual controversy is presently before the court where: a defendant claims he is presently incarcerated as a result of a trial wherein certain of his rights were denied. Should the defendant prevail, the court could, among other things, provide him with a new trial as a remedy. *Commonwealth v. Repeki*, 2003 MP 1 ¶ 15

In exceptional situations, such as when the matter in question affects the public's interest, is likely to recur and it is likely that similar issues arising in the future would likewise become moot before an authoritative determination by an appellate court could be made, mootness is not an obstacle to the consideration of an appeal. *Olupomar v. Mahora*, 2001 MP 17 ¶ 11

NMI Supreme Court lacks jurisdiction to decide moot cases. *Oriental Crystal (Holdings) v. Lone Star Casino (CNMI)*, 1997 MP 25 ¶3

An appeal from an expired temporary restraining order is moot. *Norita v. Norita*, 4 N.M.I. 381 (1996).

A well-established exception to the mootness doctrine allows a court to review a mooted matter if it is of public importance, is likely to recur, and is likely to become moot again prior to appellate review. *Norita v. Norita*, 4 N.M.I. 381 (1996).

Court's duty is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

Doctrine prohibiting court from ruling upon moot questions has exceptions, one of which applies where (1) the issue raised affects the public interest, (2) similar issues are likely to arise in the future, and (3) the issue will probably become moot prior to completion of review by appellate tribunal. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

The issue of mootness if a stay of sentence of a convicted criminal defendant is not granted pending appeal is one which the court may weigh into factors considered under Com. R. App. P. 9(c), and may tip the balance in favor of a stay, especially where the likelihood of success on appeal is strongly disputed. Where there is little or no likelihood of success on appeal, mootness would not be an important factor. *Commonwealth v. Martinez*, 4 N.M.I. 18 (1993).

When an issue raised affects the public interest, and it is likely that similar issues arising in the future would become moot before a ruling could be made by an appellate court, an exception to the rule precluding consideration of moot claims is justified. *In re Seman*, 3 N.M.I. 57 (1992).

The issue of mootness in the appeal of an administrative decision may be raised sua sponte by an appellate court. *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270 (1991).

Courts lack jurisdiction to decide moot cases. *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270 (1991).

In exceptional situations mootness is not an obstacle to the consideration of an appeal. When the question involved affects the public interest, and it is likely in the nature of things that similar questions arising in the future would likewise become moot before a needed authoritative determination by an appellate court can be made, an exception is justified. *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270 (1991).

—Particular Cases

The bank failed to establish the second prong of the "capable of repetition yet evading review" exception to the mootness rule when it did not offer any reason why similar issues arising in the future would likewise become moot before the Court could make a determination. *Bank of Saipan v. Superior Court*, 2004 MP 15 ¶ 13

The "capable of repetition yet evading review" exception to the mootness rule did not apply when the sole reason mootness prevented the Court from addressing the issue was because the parties voluntarily stayed the proceedings for nine months, during which time circumstances changed. *Bank of Saipan v. Superior Court*, 2004 MP 15 ¶ 13

The superior court's role in enforcing judgment debts is a matter of public interest because it applies to all civil judgment debtors in the Commonwealth. The widespread nature of the actions taken by the superior court suggests that the same issues are capable of repetition. *Paulis v. Superior Court*, 2004 MP 10 ¶ 19

The timing of the real-party-in-interest's request to have all post-judgment orders vacated after vigorously pursuing debt collection against debtor for

8 years suggests he is trying to avoid review of the debt collection practices of the superior court and is an obvious attempt to manipulate the Court's jurisdiction. Because it is likely that in the future such issues will become moot before the Court has a chance to rule upon them, the petition is not barred by the mootness doctrine. *Paulis v. Superior Court*, 2004 MP 10 ¶ 20

The enforceability of an agreement by plaintiff not to compete with casino operations was moot where defendant no longer had valid casino license and competition was not possible. *Oriental Crystal (Holdings) v. Lone Star Casino (CNMI)*, 1997 MP 25 ¶11

Exception to mootness doctrine permitting appellate court to review mooted matter if it is of public importance, is likely to recur, and is likely to become moot again prior to appellate review applied in appeal of expired temporary restraining order issued pursuant to Family Protection Act, 8 CMC § 1221 et seq. Exception applied because: (1) error claimed was matter of public importance, implicating court's duty to carefully control ex parte practice and assure safety of citizens; (2) issue was likely to recur; and (3) absent extraordinary circumstances, there was no practical way for party to appeal issuance of temporary restraining order before it expired. *Norita v. Norita*, 4 N.M.I. 381 (1996).

NMI Supreme Court would not review issue of whether Ninth NMI Senate violated Open Government Act during special session because, after filing of suit charging violation: (1) Ninth NMI Senate ceased to exist, preventing Court from granting relief requested by plaintiff; and (2) legislature repealed Open Government Act provision expressly making Act applicable to legislature, eliminating Court's option of considering issue as dispute capable of repetition yet evading review. 1 CMC § 9901 et seq. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

Although suit by deposed President of Ninth NMI Senate seeking reinstatement to Senate Presidency was moot because, during pendency of appeal, Ninth NMI Senate ceased to exist, NMI Supreme Court would nonetheless consider appeal because case fit squarely within recognized exception to doctrine prohibiting court from ruling upon moot questions. Issue raised affected public interest (operation of NMI Senate), similar issues were likely to arise in future, and, given relatively brief two-year life of each Senate, issue in future case would probably become moot prior to completion of review by appellate tribunal. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

Despite fact that nonresident worker appealing trial court deportation order on basis that order violated claimed due process right to pursue administrative proceeding for transfer to new employer after alleged assault and battery by former employer had already been deported, appeal was not moot because order would prohibit appellant from reentering NMI for five years. 3 CMC § 4322. *Office of the Attorney General v. Paran*, 4 N.M.I. 191 (1994).

In weighing motion for review of single-justice order staying short sentence of imprisonment of criminal defendant pending appeal, NMI Supreme Court would sua sponte consider possibility of mootness if stay was not granted. Com. R. App. P. 9. *Commonwealth v. Martinez*, 4 N.M.I. 18 (1993).

In view of threat of harm to convicted criminal defendant (i.e., a short sentence of imprisonment) that could have rendered his appeal moot, NMI Supreme Court would affirm grant of stay by single justice, giving defendant time to formulate and pursue any additional issues on appeal evinced by transcript or tapes of proceedings. Burden imposed on government by grant of stay was outweighed by burden on defendant if stay was not continued. Com. R. App. P. 9. *Commonwealth v. Martinez*, 4 N.M.I. 18 (1993).

Although rule precluding court from considering moot claims would ordinarily preclude consideration of claim, raised after party had been released from involuntary commitment, that mental illness commitment statute violated U.S. and NMI Constitutions, NMI Supreme Court would nonetheless consider claim. Issues raised were of public concern and, if they were to recur, would likely become moot before they could be determined on appeal. *In re Seman*, 3 N.M.I. 57 (1992).

In action challenging agency's decision to approve construction of factory without declaring it a major siting under applicable regulations, because record indicated that factory at issue had already been constructed at time of trial, it was necessary for court to determine whether appeal was barred by mootness. *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270 (1991).

In action challenging agency's decision to approve construction of factory without declaring it a major siting under applicable regulations, despite fact that factory had been completed and appeal was

technically moot, NMI Supreme Court would nonetheless consider appeal because question presented was of public concern, and, if it were to recur, would likely become moot before it could be determined on appeal. *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270 (1991).

—Political Questions

In the absence of express authority to the contrary, participation in the 2010 United States Census is a question best left to the political process, and thus the Court is without authority to require it. *In re Pangelinan,* 2007 MP 14 ¶ 15

The political question doctrine is a policy of judicial abstention wherein the judiciary declines to adjudicate a case, so as not to violate the separation of powers by interfering with a coequal branch of government. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 40

The political question doctrine comes into play when the controversy brought before the court involves a decision made by a branch of the government coequal to the judiciary, and concerns a political matter. The determination of whether any specific controversy is a nonjusticiable political question is to be made on a case-by-case basis, based on the unique facts of the case itself. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 41

A number of factors may be considered in determining whether a controversy concerns a political matter: whether there is a textually demonstrable commitment of the issue to a coordinate branch of government; whether judicially discoverable and manageable standards for assessing the dispute are lacking; whether a court could render a decision without also making an initial policy determination that clearly should be left to another branch; whether it would be possible for a court independently to resolve the case without undercutting the respect due to coordinate branches of government; whether there is an unusual need to adhere to a political decision already made; or whether an embarrassing situation might be created by various governmental departments ruling on one question. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 42

Because Article X, Section 9 of the Commonwealth Constitution specifically grants taxpayers the right to maintain an action to enjoin the misspending of pubic funds, there is a presumption that the alleged misspending of public funds by a public official presents a justiciable matter. The public official should expect to justify his or her actions in court pursuant to the Commonwealth Constitution. N.M.I. Const. art. X, § 9. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 44

The separation of powers concept takes the form of the political question doctrine in the context of judicial review of legislative and executive decisions. The doctrine, a doctrine of judicial abstention, comes into play when controversy brought before court (1) involves a decision made by a branch of the government coequal to the judiciary, and (2) concerns a political matter. The presence of a political question renders the controversy nonjusticiable; in other words, it immunizes the disputed legislative or executive decision from judicial scrutiny. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

The assessment of whether a given controversy presents a political question must be made on a case-by-case basis. A number of factors may be considered in this analysis: (1) whether there is textually demonstrable commitment of the issue to a coordinate branch of government; (2) whether judicially discoverable and manageable standards for assessing the dispute are lacking; (3) whether a court could render a decision without also making an initial policy determination; (4) whether it would be possible for a court independently to resolve the case without undercutting the respect due to coordinate branches of government; (5) whether there is an unusual need to adhere to a political decision already made; or (6) whether an embarrassing situation might be created by various government departments ruling on one question. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

——Particular Cases

Trial court's determination, in ruling on cross-motions for summary judgment and preliminary injunction, that alleged violation of NMI Senate rules of procedure constituted nonjusticiable political question should have led to dismissal for failure to state a claim upon which relief could be granted. Com. R. Civ. P. 12(b)(6). *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

NMI Supreme Court would not consider suit by deposed President of Ninth NMI Senate seeking reinstatement, implicating Senate's adherence to procedural rules, because: (1) Court would accord proper respect to legislature as separate and coequal branch of government, free from domination and unnecessary intrusion by judiciary, by refraining from interfering with Senate's constitutionally-

exercised power to promulgate rules under N.M.I. Const. art. II, § 14(b); (2) Court deemed it necessary to adhere to political decision already made (in which deposed President was replaced and body resumed its legislative duties, continuing to function since change in leadership), rather than risk disruption of legislative process; and (3) suit did not present cognizable constitutional questions. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

Suit for declaratory judgment to determine which of two senators claiming to be President of NMI Senate was legally elected to the position presented justiciable controversy. *Mafnas v. Inos*, 1 N.M.I. 101 (1990).

—Ripeness

A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all. *Marine Revitalization Corp., et al. v. DLNR*, 2011 MP 2 ¶ 8 (2011).

An issue that is actually affecting the government and not a contingent future event is ripe. *Marine Revitalization Corp., et al. v. DLNR*, 2011 MP 2 ¶ 8 (2011).

The ripeness doctrine prevents courts from deciding theoretical or abstract questions that do not yet have a concrete impact on the parties. *Bank of Saipan, Inc. v. Atalig*, 2005 MP 3 ¶ 12

A court cannot determine whether a receiver is entitled to immunity where there is no live controversy before the court, as it cannot determine whether the challenged actions were taken in good faith or not. For a court to do so would constitute an error. *Bank of Saipan, Inc. v. Atalig*, 2005 MP 3 ¶ 12

A ripe dispute is one which has matured sufficiently for judicial resolution. *In re Estate of Tudela*, 4 N.M.I. 1 (1993), appeal dismissed, 43 F.3d 1479 (9th Cir. 1994).

——Particular Cases

Since resolution of constitutional challenges to probate code statutes depended upon unresolved factual issues, issues were not ripe for review and appellate court would not consider them. *In re Estate of Tudela*, 4 N.M.I. 1 (1993), appeal dismissed, 43 F.3d 1479 (9th Cir. 1994).

——Standard of Review

Whether violations of Article III, Section 9(a) of the Commonwealth Constitution and 1 CMC § 7402(d) arising out of reprogramming and expenditure decisions constitute nonjusticiable political questions is a question of law and is reviewed de novo. N.M.I. Const. art III, § 9(a), 1 CMC § 7402(d). *Rayphand v. Tenorio*, 2003 MP 12 ¶ 3

—Standing

See **PARTIES - Standing**

Law of the Case

—Generally

The law of the case doctrine developed to maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit. While the doctrine is not a limit on a court's power, it is the Supreme Court's practice to generally refuse to reopen what has been decided, which rests on the desire to protect both court and parties against the burdens of repeated reargument by indefatigable diehards. This policy is true even where the court on remand disagrees with or finds error in the remanding court's decisions. *In the Matter of the Estate of Roberto*, 2010 MP 7 ¶ 18 (2010).

The Supreme Court's duty is to apply the relevant facts to the applicable law and reach the conclusion that the law requires. The Court must always guard against deciding a case based on its personal predilections and opinions concerning the correct outcome. The law, not its interprets, provides the correct conclusion. *In the Matter of the Estate of Roberto*, 2010 MP 7 ¶ 30 (2010).

In order to create the better jurisprudence and foster confidence in the Commonwealth's judiciary, the Supreme must only address the dispute before it. While it may be difficult at times, the Court must not attempt to right all of the wrongs that the dispute created; such an approach to judging will cause far more harm in the long run than any temporary gain that the parties may enjoy from having the Court adjudicate issues not properly before it under guises such as "justice" and "exceptional circumstances." *In the Matter of the Estate of Roberto*, 2010 MP 7 ¶ 30 (2010).

Once decided, a past opinion should not be overturned simply because a new panel of justices

disagrees with its reasoning or outcome. The citizens of the Commonwealth benefit from a stable and dependable judiciary where finality and the rule of law are properly respected. *In the Matter of the Estate of Roberto*, 2010 MP 7 ¶ 30 (2010).

The majority of circuits find adjudication of liability as the appropriate trigger for interest accrual. *Northern Marianas Housing Corp. v. Flores,* 2006 MP 23 ¶ 8

On remand from appellate court, trial court must proceed in accordance with appellate court mandate and such law of the case as was established by the appellate court. *Wabol v. Villacrusis*, 4 N.M.I. 314 (1995).

Under the law of the case doctrine, courts are generally required to follow legal decisions of the same or higher court in the same case. This is true even where the court on remand disagrees with or finds error in the remanding court's decision. *Wabol v. Villacrusis*, 4 N.M.I. 314 (1995).

The policy underlying law of the case doctrine is one of finality of court decisions. *Wabol v. Villacrusis*, 4 N.M.I. 314 (1995).

Law of the case doctrine applies to issues either explicitly or implicitly decided by the previous court. *Wabol v. Villacrusis*, 4 N.M.I. 314 (1995).

—Particular Cases

In action challenging lease as violative of N.M.I. Const. art. XII, restricting ownership of long-term interests in real property to persons of NMI descent, on remand trial court violated law of the case doctrine by failing to follow appellate court mandate directing it to consider lessor's obligations arising under quasi-contract, periodic tenancy and unjust enrichment theories. *Wabol v. Villacrusis*, 4 N.M.I. 314 (1995).

—Predecessor Court

NMI Supreme Court affords NMI District Court Appellate Division decisions in same case the deference it would afford one of its own decisions in the same case. *Wabol v. Villacrusis*, 4 N.M.I. 314 (1995).

NMI Supreme Court will not question, absent reasons mandating an exception to the law of the case doctrine, the propriety of an NMI District Court Appellate Division mandate in the same case. *Wabol v. Villacrusis*, 4 N.M.I. 314 (1995).

——Particular Cases

Doctrine of law of the case applied in NMI Supreme Court's consideration of order granted by NMI District Court Appellate Division prior to transfer of appeal from Appellate Division to NMI Supreme Court (pursuant to PL 6-25, 1 CMC § 3001 et seq.) after party submitted motion for rehearing. *Camacho v. J.C. Tenorio Enters., Inc.*, 2 N.M.I. 407 (1992).

Orders

—Challenges To

When a party is aggrieved by an action of the trial court, there are two paths to seeking appellate review – appeals and extraordinary writs. *Office of Attorney General v. Superior Court (Fabricante)*, 1999 MP 14 ¶ 8

—Generally

An order issued by a court with jurisdiction over the parties and the subject matter of an action must be obeyed unless and until it has been vacated or stayed, or until it expires by its own terms. The appropriate avenue for relief, in the event that an individual truly believes that the order was improperly issued, is to seek to have the order vacated or amended. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶27

If an individual believes in good faith that the trial court erred in imposing sanctions, he should either pay the sanction, litigate the case, and then appeal the sanction, or demonstrate his inability to comply and his good faith disagreement with the court, and ask the court to stay the sanction pending an appeal. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 27

Where trial court announces its ruling in open court, leaves it to counsel for prevailing party to reduce decision to written form, and signs and files a verbatim copy of order prepared by counsel, NMI Supreme Court subjects the court's order to particularly careful scrutiny. *Lifoifoi v. Lifoifoi-Aldan*, 1996 MP 14 ¶20

A court order is usually a direction of a court or judge made or entered in writing, and not included in a judgment. *Commonwealth v. Borja*, 3 N.M.I. 156 (1992).

Powers

—Generally

DC App. Div. 1983. It is the province and duty of the judiciary to say what the law is and this duty may not be surrendered or waived. *CNMI v. Atalig*, 1 CR 552, rev'd, 723 F.2d 682 (9th Cir. 1984).

CTC 1987. Courts should not reach to decide an important and complex issue which, depending upon the disposition of remaining issues, may never actually require resolution. *Tenorio v. Camacho*, 3 CR 263.

—Stipulations

CTC 1988. Where parties had stipulated to settlement of action, court would sua sponte void settlement as violative of land alienation restriction of the NMI Constitution. NMI Const., Art. XII. *Ferreira v. Borja*, 3 CR 472.

Precedent

See **Stare Decisis**, this topic.

—Attorney General Opinions Not Precedent

An opinion rendered by the Attorney General of the Commonwealth of the Northern Mariana Islands is not binding on the Commonwealth's judiciary, but should be treated as persuasive authority only so far as it is properly and thoroughly researched. *United States v. Borja (Mayor of Tinian)*, 2003 MP 8 ¶ 20

—Generally

The Court is bound to follow precedent only by the doctrine of stare decisis, which is not mandatory. Where facts or circumstances change, the opinion of a court may also change. *In re Estate of Roberto*, 2004 MP 7 ¶ 3

—Law of the Case

See **Law of the Case**, this topic.

—Other Jurisdictions

Commonwealth courts are not bound to follow the holding of a specific state court, and particularly not a state's trial court. *Sablan v. Fitial, et al.*, 2009 MP 11 ¶ 29 (2009).

Although the decisions of another jurisdiction are helpful, Commonwealth Courts are not bound by a decision of the U.S. District Court in Guam in interpreting a C.N.M.I. statute. *Bank of Saipan v. Superior Ct. (Attorneys' Liab. Assurance Soc'y, Inc.)*, 2001 MP 5 ¶ 25

—Trial Court Decision

An appellate court is not bound by the decision of a trial court, especially where the trial court made an erroneous conclusion of law. *Rosario v. Camacho*, 2001 MP 3 ¶ 86

The doctrine of stare decisis does not compel one trial court, much less an appellate court, to follow the decision of another trial court. *Bank of Saipan v. Superior Ct. (Carlsmith)*, 2001 MP 7 ¶ 21

A Commonwealth trial court decision does not establish binding precedent. *Reyes v. Ebeteur*, 2 N.M.I. 418 (1992).

—Unpublished Decision

Unpublished Trust Territory opinion purportedly establishing Chamorro custom was of no precedential value. *Willbanks v. Stein*, 4 N.M.I. 195 (1994), reh'g denied, 4 N.M.I. 205 (1994).

Procedural Rules

—Generally

Since the inherent power to fix bail is grounded in the power to hold a defendant, and thus relates to the manner of ensuring that the alleged offense will be heard by the court, it is implicit that the right to bail is essentially procedural in nature. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 18

The power to set bail is procedural in nature and therefore under the auspices of the court's constitutionally granted rule-making power. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 18

—Hierarchy of Laws

For purposes of statutory construction, rules issued by courts with statutory grants of authority are comparable to administrative regulations with their relative standing in the hierarchy of law. Thus, prior to 1997, when the C.N.M.I. Supreme Court was transformed from a statutory court into a constitutional judiciary, the C.N.M.I. court rules were trumped when in direct conflict with a duly enacted statute. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 12

While a statutory court is dependent on the legislature for its authority and power, a constitutional court exercises its authority as a coequal branch of government. If there is expressed or implied constitutional authority for the judiciary to promulgate rules of practice and procedure, then this power is regarded as legislative power. The rules issued have the status of statutes enacted by the legislature. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 14

Constitutional courts are generally acknowledged to have the inherent or implied power to regulate practice and procedure as a necessary function of their duty to efficiently administer cases. The inherent power of the C.N.M.I. court to create rules of procedure is expressly recognized in the C.N.M.I. Constitution. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 15

The 1997 amendment to the C.N.M.I. Constitution affected the court rules in place at that time by giving them the same status as rules of procedure promulgated by the constitutionally created court. Thus the court rules are legislative in nature and have the status of statutes. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 16

Substantive law prescribes norms for societal conduct and punishments for violations thereof. It thus creates, defines, and regulates primary rights. In contrast, practice and procedure pertain to the essentially mechanical operations of the courts by which substantive law, rights, and remedies are effectuated. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 18

Questions of dominance between the judiciary's rules and the legislature's statutes only occur when a statute directly and irreconcilably conflicts with a rule of the court on a matter within the court's authority and in such cases, the court rule will prevail over the statute. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 19

It is the duty of the court to give effect to both the court rule and the statute, if possible, and to make all attempts to harmonize the rules and the code. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 20

—Violations

Repeated and unexcused rules violations are disruptive and prejudicial to court. *Villagomez v. Sablan*, 4 N.M.I. 396 (1996).

Retrospective Application of Rule of Law

See **APPEAL AND ERROR - Retrospective Application of Rule of Law**

DC App. Div. 1988. Generally, unless a manifest injustice would result, a reviewing court applies the law as it exists at the time of its decision and court would use the current nonresident workers law, rather than previous law, where the new law has been used at every step of this proceeding. *Wacangan v. Arriola*, 3 CR 556.

DC NMI 1987. In determining whether or not to apply a newly-formulated rule of law retroactively, three factors are considered: 1) whether the decision establishes a new principle of law; 2) whether retroactive application will further or retard the purposes of the rule in question; and 3) whether applying the new decision will produce substantial inequitable results. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 952.

DC NMI 1987. Where retroactive application of new principle of law relating to statute of limitations in civil rights actions would produce a substantial inequitable result by depriving plaintiffs of money that it has been determined that they are entitled to, court would not apply new rule retroactively. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 952.

Separation of Powers

See generally **CONSTITUTIONAL LAW - Separation of Powers**

—Political Question Doctrine

See **Justiciability - Political Questions**, this topic.

Stare Decisis

The doctrine of stare decisis does not compel one district court to follow the decision of another. *Rosario v. Camacho*, 2001 MP 3 ¶ 86

DC App. Div. 1986. Stare decisis rests upon the principle that the laws by which we are governed should be fixed, definite, and known. *Marianas Public Land Trust v. Government NMI*, 2 CR 870, rev'd , 838 F.2d 341 (9th Cir. 1988).

DC App. Div. 1986. Stare decisis effect is accorded to decisions of an equal or higher courts unless the

prior decision is clearly erroneous. *Marianas Public Land Trust v. Government NMI*, 2 CR 870, rev'd, 838 F.2d 341 (9th Cir. 1988).

DC App. Div. 1986. Stare decisis is applied with less force where matters involving interpretation of a constitution are concerned, because judicial error in construing a constitution cannot be corrected by the legislature and can be corrected only by the court. *Marianas Public Land Trust v. Government NMI*, 2 CR 870, rev'd, 838 F.2d 341 (9th Cir. 1988).

DC App. Div. 1986. The stare decisis effect is weakened when only a single precedent is involved. *Marianas Public Land Trust v. Government NMI*, 2 CR 870, rev'd, 838 F.2d 341 (9th Cir. 1988).

DC NMI 1985. The dismissal of an appeal by the United States Supreme Court for want of a substantial federal question is a decision on the merits and carries with it a stare decisis effect which binds state and lower federal courts. *Gower v. CNMI*, 2 CR 174.

DC App. Div. 1983. The precedential force of older case authority may be as effectively dissipated by a later trend of decision as by a statement expressly overruling it, and where subsequent Supreme Court decisions have eroded an older case, a lower federal court must follow the Supreme Court's new lead to a conclusion inconsistent with the older case. *CNMI v. Atalig*, 1 CR 552, *rev'd*, 723 F.2d 682 (9th Cir. 1984).

DC NMI 1983. Stare decisis does not require one district judge to follow the decision of another. *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1983. A court should give less deference to a decision which was rendered without benefit of a full airing of all the relevant considerations. *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1983. Although district courts should not prematurely anticipate the judicial invalidation of circuit precedent, they must respect and enforce supervening congressional enactments; it is preeminently a judicial duty to perceive the impact of legislation upon pre-existing case law principles. *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

Time for Decision

Decisions by Commonwealth courts must be rendered within one year from the time the case is taken under submission. 1 CMC § 3404. *Office of the Attorney General v. Superior Court (Fabricante)*, 1999 MP 14 ¶ 25

The purpose behind the one year rule of 1 CMC § 3404 is to allow sufficient time for research and writing. For example, if the case involves complex issues or if the court's docket is overburdened, then the one year rule applies. The one year period was not intended to allow judges to delay issuing decisions arbitrarily. *Office of the Attorney General v. Superior Court (Fabricante)*, 1999 MP 14 ¶ 27

Section 3404 of Title 1 of the Commonwealth Code explicitly grants the court up to one year to issue its decision. 1 CMC § 3404. *Office of the Attorney General v. Superior Court (Fabricante)*, 1999 MP 14 ¶ 28

Waiver Of Issues

DC NMI 1985. Court has the inherent power to consider certain legal issues as required by the interests of justice despite the failure of the parties to preserve them in a timely fashion. *Temengil v. Trust Territory of the Pacific Islands*, 2 CR 34, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989)

COVENANT

(Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America, 48 U.S.C. § 1801 note, reprinted in Commonwealth Code in preface material)

See also **UNITED STATES**

DC App. Div. 1983. Section of the Covenant that is a restraint upon legislative authority and which specifies fundamental Covenant provisions may be modified only by the mutual consent of the governments of the United States and the NMI does not prevent the judiciary from invalidating Covenant provisions which conflict with the United States Constitution. Covenant §105. *CNMI v. Atalig*, 1 CR 552, rev'd, 723 F.2d 682 (9th Cir. 1984).

DC App. Div. 1983. The Commonwealth, which derives its authority directly from the governed pursuant to a local constitution, entered political

affiliation with the United States under a bilateral agreement which confers vested rights and therefore is not unilaterally revocable by Congress. *CNMI v. Atalig*, 1 CR 552, rev'd, 723 F.2d 682 (9th Cir. 1984).

CTC 1985. The Covenant is to be given significant weight and credence even if it should conflict with traditional notions of constitutional rights as might be applied in the United States. *Wabol v. Muna*, 2 CR 231, rev'd in part, 2 CR 963

Capital Improvement Projects

DC NMI 1980. Although an allocation of funds is specifically earmarked for capital improvement projects on Rota, these funds belong to the government of the Northern Marianas and, as such, must be appropriated by legislative action as provided by the Constitution; there is no requirement that they be appropriated for Rota's use each fiscal year. Covenant, Article VII, §§702, 704; C.N.M.I. Const., Art. 11, §5(a). *Atalig v. Camacho*, 1 CR 93, *rev'd*, sub nom. *Taisacan v. Camacho*, 660 F.2d 41 1 (9th Cir. 1981).

Construction

DC NMI 1988. By adopting the Covenant, the people of the Commonwealth excepted from the Covenant those provisions of the United States Constitution and laws which they chose not to accept and chose to accept those laws, civil and criminal, which were applicable to Guam and which were of general application to the several states. Covenant §502. *United States of America v. Mafnas*, 3 CR 403.

DC NMI 1983. Construction of the Covenant must comport with the guiding principle that circumstances not plainly covered by the terms of a statute are subsumed by the underlying policies to which Congress was committed. *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989).

DC NMI 1983. The legislative history of the Covenant instruct that ambiguities in the document must be construed in favor of the NMI's people. *Temengil v. Trust Territory of the Pacific Islands*, 1 CR 417, *rev'd* in part and *aff'd* in part, 881 F.2d 647 (9th Cir. 1989)

Courts

—Appellate Jurisdiction

Fact that federal statute concerning NMI District Court jurisdiction over appeals from NMI cases did not contain language providing that if NMI established its own appellate court appeals pending in the NMI District Court would not be affected was significant. The U.S. Congress was bound by terms of Covenant: the NMI will provide the NMI District Court with whatever appellate jurisdiction it was to have, and it could at any time eliminate appellate jurisdiction. 48 U.S.C. § 1694b. Covenant § 402. *Commonwealth v. Superior Ct.*, 1 N.M.I. 287 (1990).

Covenant § 402(c) permits the NMI to provide NMI District Court with appellate jurisdiction over NMI cases, or to eliminate such jurisdiction. The NMI cannot establish NMI District Court. *Wabol v. Villacrusis*, 1 N.M.I. 34 (1989), rev'd, 11 F.3d 124 (9th Cir. 1993).

Pursuant to Covenant § 402(c), the U.S. Congress provided that the appellate jurisdiction of the NMI District Court in future or pending appeals from NMI cases would cease upon establishment of NMI appellate court. 48 U.S.C. § 1694b(a). *Wabol v. Villacrusis*, 1 N.M.I. 34 (1989), *rev'd*, 11 F.3d 124 (9th Cir. 1993).

Under Covenant, only NMI could properly enact law eliminating appellate jurisdiction of the NMI District Court. 1 CMC § 3109. *Wabol v. Villacrusis*, 1 N.M.I. 34 (1989), *rev'd*, 11 F.3d 124 (9th Cir. 1993).

NMI effectively eliminated appellate jurisdiction of NMI District Court in all NMI cases, whether pending or future. 1 CMC § 3109. *Wabol v. Villacrusis*, 1 N.M.I. 34 (1989), *rev'd*, 11 F.3d 124 (9th Cir. 1993).

U.S. Ninth Circuit Court of Appeals functions as a second appellate level for NMI cases because of authority granted in Covenant Article IV and because of its jurisdiction to hear appeals from NMI District Court. *Wabol v. Villacrusis*, 1 N.M.I. 34 (1989), *rev'd*, 11 F.3d 124 (9th Cir. 1993).

Federal statute granting Ninth Circuit Court of Appeals jurisdiction over appeals from NMI District Court Appellate Division should be interpreted consistent with Covenant, implementing obligations imposed thereunder upon United States. 48 U.S.C. § 1694b(c). *Wabol v. Villacrusis*, 1 N.M.I. 34 (1989), rev'd, 11 F.3d 124 (9th Cir. 1993).

To interpret federal statute granting U.S. Ninth Circuit Court of Appeals jurisdiction over appeals from NMI District Court Appellate Division to

contradict or limit right of NMI to provide for or eliminate jurisdiction of federal courts over appeals in NMI cases would mean a rewriting of the Covenant by U.S. Congress and NMI Supreme Court. 48 U.S.C. § 1694b(c). *Wabol v. Villacrusis*, 1 N.M.I. 34 (1989), *rev'd*, 11 F.3d 124 (9th Cir. 1993).

Nothing in the Covenant or 48 U.S.C. § 1694b(c) expressly or impliedly limits the authority of the NMI to eliminate jurisdiction of federal courts over appeals in NMI cases, whether pending or future. *Wabol v. Villacrusis*, 1 N.M.I. 34 (1989), *rev'd*, 11 F.3d 124 (9th Cir. 1993).

Within context of Covenant Article IV, purpose of 48 U.S.C. § 1694b(c) is to provide that NMI cases, once appealed to NMI District Court Appellate Division, will continue on in the normal appellate process within the federal court system. *Wabol v. Villacrusis*, 1 N.M.I. 34 (1989), *rev'd*, 11 F.3d 124 (9th Cir. 1993).

Since, pursuant to Covenant Article IV, NMI could terminate jurisdiction of U.S. Ninth Circuit Court of Appeals as to future appeals from NMI cases, then logically it could terminate such jurisdiction over pending appeals. *Wabol v. Villacrusis*, 1 N.M.I. 34 (1989), *rev'd*, 11 F.3d 124 (9th Cir. 1993).

—Generally

The source of judicial authority in the NMI is Covenant § 203(d), which essentially provides that the disposition of a case arising under the laws of the Commonwealth is ultimately a decision for the people (Constitution) or legislature (laws) of the Commonwealth. Therefore, it is manifestly impermissible for the U.S. Congress to pass a law that places a case arising under the laws of the Commonwealth beyond the reach of the people or the legislature of the Commonwealth. *Vaughn v. Bank of Guam*, 1 N.M.I. 160 (1990), stay denied, 1 N.M.I. 318 (1990).

Covenant provides for the NMI to choose whether to use the federal court system as part of its judicial process, all of its judicial process, or none of its judicial process. *Wabol v. Villacrusis*, 1 N.M.I. 34 (1989), *rev'd*, 11 F.3d 124 (9th Cir. 1993).

Covenant § 203(d), providing that judicial power of NMI will be vested in such courts as NMI Constitution and laws provide, is the basis for N.M.I. Const. art. IV, providing for a local judiciary. Section 203(d) may not be amended without mutual consent of NMI and U.S., and any enactment under that provision is exclusively within the authority of the NMI. Covenant § 105. *Wabol v. Villacrusis*, 1 N.M.I. 34 (1989), *rev'd*, 11 F.3d 124 (9th Cir. 1993).

Covenant §§ 401 and 402(c) permit the U.S. Congress to establish the NMI District Court and to empower it to receive original and appellate jurisdiction over NMI cases as may be provided by the NMI, and nothing more. *Wabol v. Villacrusis*, 1 N.M.I. 34 (1989), *rev'd*, 11 F.3d 124 (9th Cir. 1993).

Eminent Domain

See **EMINENT DOMAIN - Authority, Nature of - Public Purpose**

Jury Trial

See **JURIES - Right to Jury Trial - Generally**

Land Alienation Restriction

See **LAND ALIENATION RESTRICTION (N.M.I. Const. art. XII) - Generally - Origin and Purpose**

Nature and Effect

—Generally

The Thirteenth Amendment prohibits slavery and involuntary servitude, except as punishment for a crime established by conviction. The Thirteenth Amendment applies in the Commonwealth through the Covenant. Covenant § 501, Pub. L. 94-241. *Bank of Guam v. Ruben*, 2008 MP 22 ¶ 14 (2008).

The N.M.I. Equal Protection Clause is analogous to the federal Equal Protection Clause and will generally be given the same interpretation. However, the N.M.I. Equal Protection Clause, like all provisions of the N.M.I. Constitution, is subservient to the Covenant. It must be interpreted in accordance with Covenant requirements; it may not contravene them. Where Covenant language renders federal authority inapplicable, no N.M.I. Constitutional provision may resurrect it. *In re Pangelinan*, 2008 MP 12 ¶ 100 (2008).

When interpreting the Covenant, we look first to its plain language, just as we do when interpreting the N.M.I. Constitution, statutes, and court rules. Only where circumstances render Covenant language indefinite will we consider interpretations contrary to its plain language. Contrary interpretations may arise through, or be dispelled by, the contemporaneous

Covenant analyses. *In re Pangelinan,* 2008 MP 12 ¶ 46 (2008).

The analyses of the Covenant are highly persuasive due to their close proximity in time and space to the Covenant. In the event Covenant language is called into doubt by a seemingly contrary interpretation given it in the analyses, the Covenant's plain language can only be overcome by convincing evidence the parties approving the Covenant adhered to the competing interpretation. Where the Covenant's plain language and the analyses agree, we consider such agreement dispositive. *In re Pangelinan,* 2008 MP 12 ¶ 48 (2008).

We have repeatedly expressed our understanding that the Covenant is an agreement between two sovereign peoples, rather than a unilateral act by the United States. We have supported our conclusions by reference to the United States' responsibility to prepare N.M.I. residents for self-rule under the United Nations Trusteeship Agreement, and the unique mutual consent provisions requiring both N.M.I. and United States agreement before altering fundamental Covenant provisions. We have also expressed disapproval at being conceptualized, analogized, or treated as a United States "territory" when the Covenant clearly envisions a relationship in contrast to, rather than premised on, the conventional United States territory paradigm. *In re Pangelinan,* 2008 MP 12 ¶ 49 (2008).

Federal courts have recognized and upheld Covenant limitations on federal power, noting that whereas the United States' authority over the N.M.I. originally emanated from the United Nations Trusteeship Agreement, since the Trusteeship was terminated in 1986, that authority now arises solely under the Covenant, and that the Covenant has created a unique relationship between the United States and the CNMI, and its provisions alone define the boundaries of those relations. *In re Pangelinan,* 2008 MP 12 ¶ 50 (2008).

Although United States sovereignty extends to legal and legislative matters, local N.M.I. autonomy is insulated from federal overreach. Federal laws are supreme, but only applicable federal laws have any affect in the N.M.I. and the Covenant is co-equal with them. Although the United States may legislate for the N.M.I., such legislation may not interfere with fundamental Covenant provisions. *In re Pangelinan,* 2008 MP 12 ¶ 51 (2008).

The Covenant constrains federal legislative authority from unilaterally modifying fundamental Covenant provisions. And the Covenant selectively applies federal constitutional provisions, limiting their application in favor of Covenant requirements that might be impermissible if the N.M.I. were a state. *In re Pangelinan,* 2008 MP 12 ¶ 52 (2008).

Federal legislation impermissible in the states, but permissible in the territories, does not apply to the N.M.I. through inference; application to the N.M.I. must be purposeful and express. However, unilateral legislation modifying fundamental Covenant provisions is completely barred, regardless of whether the N.M.I. is expressly mentioned. *In re Pangelinan,* 2008 MP 12 ¶ 53 (2008).

Covenant § 103 only provides an *institutional right* of local self-government such that the United States may not exercise its maximum degree of plenary power available under the Territory Clause of the United States Constitution. Section 105 limited Congress's legislative authority only insofar as Congress could not unilaterally modify the fundamental provisions of the Covenant. *In re Pangelinan,* 2008 MP 12 ¶ 55 (2008).

Covenant § 501(a) makes certain constitutional provisions, to the extent they are not applicable of their own force, applicable in the N.M.I. as if it were one of the states, and requires mutual consent before other constitutional provisions which do not apply of their own force are applicable in the N.M.I. Section 501(b) seeks to insulate essential Covenant provisions from constitutional infirmity regardless of whether the contrary constitutional requirement is applicable in the N.M.I. as an enumerated provision or of its own force. *In re Pangelinan,* 2008 MP 12 ¶ 62 (2008).

The Covenant is co-equal with applicable U.S. Constitutional provisions. Constitutional provisions are applicable in the Commonwealth in one of two ways, either because they are specifically made applicable through Section 501(a) or because they are fundamental and beyond the authority of Congress to impugn. *In re Pangelinan,* 2008 MP 12 ¶ 63 (2008).

An alleged constitutional right applies in the N.M.I. if the Covenant expressly makes it applicable or if the right is fundamental for purposes of the Insular Cases. *In re Pangelinan,* 2008 MP 12 ¶ 75 (2008).

Section 203(c) of the Covenant requires that both the N.M.I. House and Senate be popularly elected. However, Section 203(c) mandates senators be apportioned by municipality, not population. Reading Section 203(c) as a whole and giving meaning to each of its provisions, as we must, we are unable to equate the requirement of a popularly

elected legislature with a requirement of population-based apportionment in the N.M.I. House, much less one person, one vote. *In re Pangelinan,* 2008 MP 12 ¶ 80 (2008).

The Covenant is prejudiced whenever a constitutional provision is incompatible with Covenant intent, express or implied. Accordingly, even where the Covenant is silent, if it's clear intent is contradicted, it is prejudiced. *In re Pangelinan,* 2008 MP 12 ¶ 81 (2008).

The majority of Covenant analyses agree, and the remaining do not contest, that Covenant drafters modeled the N.M.I. legislature on the federal legislative scheme rather than that of the states. *In re Pangelinan,* 2008 MP 12 ¶ 82 (2008).

We conclude the Covenant requires the N.M.I. House of Representatives to be apportioned in large part based on population. *In re Pangelinan,* 2008 MP 12 ¶ 91 (2008).

Controlling immigration is an important governmental interest over which the Commonwealth Legislature exercises plenary power pursuant to section 503 of the Covenant. The Legislature's decision to require aliens to maintain a valid immigration status is directly and substantially related to a compelling governmental interest. *Office of the Attorney Gen. v. Estel,* 2004 MP 20 ¶ 20

The entire relationship between the United States and the Commonwealth is governed by the Covenant. *Sablan v. Inos,* 3 N.M.I. 418 (1993).

The Covenant is not a unilateral enactment by the U.S. Congress. It is not an organic act, which Congress may unilaterally change at its pleasure. Because the Covenant is a binding bilateral agreement between the U.S. and the people of the NMI, neither party may unilaterally amend Covenant's fundamental provisions without the consent of the other. To do so would constitute a material breach of the Covenant. *Sablan v. Inos,* 3 N.M.I. 418 (1993).

In entering into the Covenant, the U.S. fulfilled its United Nations Trusteeship obligation to have the people of the NMI exercise their inherent right of self-determination. The people of the NMI entered into the Covenant to become a self-governing commonwealth in political union with and under the sovereignty of the U.S.; they did not enter into the Covenant to become a territory or possession of the U.S., as those terms are used in the U.S. Constitution.

In interpreting the Covenant, the aspirations of the people of the NMI and the purpose for which the U.S. entered into the Covenant should be kept in mind. *Sablan v. Inos,* 3 N.M.I. 418 (1993).

Covenant § 101 places the NMI under the sovereignty of the United States. *Sablan v. Inos,* 3 N.M.I. 418 (1993).

The Covenant is an agreement entered into between the United States government and the government and people of the Northern Mariana Islands. The parties entered into agreement as two separate but equal sovereign entities. The Covenant governs the relationship between the parties. *Sablan v. Inos,* 2 N.M.I. 388 (1991).

The Covenant may be amended or terminated only by agreement of the parties to the Covenant, or as provided in Covenant, but not by unilateral action. Covenant § 105. *Sablan v. Inos,* 2 N.M.I. 388 (1991).

The Covenant is a permanent, binding and solemn agreement entered into between two sovereign peoples. *Wabol v. Villacrusis,* 1 N.M.I. 34 (1989), *rev'd,* 11 F.3d 124 (9th Cir. 1993).

The Covenant is not just a simple contract. It is a binding commitment by two peoples with certain provisions so sacrosanct as to be unchangeable without the consent of both parties. *Wabol v. Villacrusis,* 1 N.M.I. 34 (1989), *rev'd,* 11 F.3d 124 (9th Cir. 1993).

Purpose of the Covenant is to establish a self-governing Commonwealth and to define the future relationship between the NMI and the United States. Covenant preamble. *Wabol v. Villacrusis,* 1 N.M.I. 34 (1989), *rev'd,* 11 F.3d 124 (9th Cir. 1993).

All acts of U.S. Congress and NMI Legislature relevant to Covenant should be interpreted consistent with Covenant, unless a contrary intention is clear. *Wabol v. Villacrusis,* 1 N.M.I. 34 (1989), *rev'd,* 11 F.3d 124 (9th Cir. 1993).

NMI Supreme Court may not question the wisdom of an enactment of the NMI Legislature when the legislature is within its authority under the Covenant. *Wabol v. Villacrusis,* 1 N.M.I. 34 (1989), *rev'd,* 11 F.3d 124 (9th Cir. 1993).

—Judicial System

See **Courts**, this topic.

—U.S. Law, Applicability of

See **U.S. Law, Applicability of**, this topic.

Self-Government

—Generally

Covenant § 103 guarantees the people of the NMI the right to self-government, and assures that they will govern themselves with respect to their internal affairs. *Sablan v. Inos*, 3 N.M.I. 418 (1993).

While, under the Covenant, it may be difficult to draw the line where NMI self-government ends and U.S. sovereignty begins, it is clear from the document itself that at the very least the U.S. has absolute control over foreign affairs and defense, and the people of the NMI have the right to self-government with respect to their internal affairs. At a minimum, the people of the NMI, not the federal government, will enact, interpret and execute local laws. *Sablan v. Inos*, 3 N.M.I. 418 (1993).

Covenant § 103 provides that the people of the Northern Mariana Islands will have the right of local self-government. This provision retains in the people of the Commonwealth the sovereign right to self-government they had prior to and at the time that they entered into the Covenant. This provision cannot be unilaterally amended. *Sablan v. Inos*, 2 N.M.I. 388 (1991).

Term "self-government" in Covenant means that the people of the Commonwealth will enact, interpret and execute Commonwealth laws. *Sablan v. Inos*, 2 N.M.I. 388 (1991).

Commonwealth's right to self-government in Covenant is with respect to internal affairs as opposed to foreign affairs and defense. *Sablan v. Inos*, 2 N.M.I. 388 (1991).

In Covenant, Commonwealth agreed to relinquish its right of self-government and to apply U.S. laws in certain matters. Covenant art. V sets forth certain provisions of U.S. Constitution and laws which apply or are incorporated by reference in the Commonwealth in contradiction of principle of self-government. Covenant § 105 specifically authorizes U.S. to enact laws applicable in Commonwealth, provided laws do not contradict Covenant arts. I, II or III. *Sablan v. Inos*, 2 N.M.I. 388 (1991).

—Audits, Federal

See **U.S. Law, Applicability of - Statutes: Particular Provisions**, this topic.

—Judicial System

See **Courts**, this topic.

—Jury Trial

See **JURIES - Right to Jury Trial - Generally**

—Land Alienation Restriction

See **LAND ALIENATION RESTRICTION (N.M.I. Const. art. XII) - Generally - Origin and Purpose**

—Taxation

Commonwealth tax laws, the manner in which the Commonwealth collects taxes, the tax returns filed with the government and all related information are matters of internal affairs, not related to foreign affairs or defense. In exercise of self-government, Commonwealth may enact, interpret and execute laws related to local taxation. *Sablan v. Inos*, 2 N.M.I. 388 (1991).

U.S. Law, Applicability of

—Constitution: Particular Provisions

Federal case law interpreting the Fourteenth Amendment is analogous to Article I, section 5 and directly applicable to the Commonwealth. The Fourteenth Amendment applies to the Commonwealth as if it were one of the several states. All CNMI residents, including aliens are afforded the same Fourteenth Amendment Due Process protections as mainland U.S. citizens. *Commonwealth v. Minto*, 2011 MP 14 ¶ 22 (2011).

Under section 501 of the Covenant and Article I, section 5 of the CNMI Constitution, CNMI residents are afforded the same Fourteenth Amendment Due Process protections as mainland U.S. citizens. *Commonwealth v. Hossain*, 2010 MP 21 ¶ 13 (2010).

The Extradition Clause of the U.S. Constitution is applicable to the Commonwealth through § 501(a) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. *Commonwealth v. Miura*, 2010 MP 12 ¶ 10 (2010).

The Extradition Clause is not self-executing and is thus implemented by federal statute. The U.S. Congress effectuated the Extradition Clause through the Extradition Act of 1793, and it applies equally to all states, territories, and U.S. possessions. *Commonwealth v. Miura*, 2010 MP 12 ¶ 10 (2010).

Pursuant to the Covenant, a federal statute of general applicability to the states and to Guam presumptively applies to the same extent in the Commonwealth if Congress enacted the federal statute prior to January 9, 1978. *Commonwealth v. Miura*, 2010 MP 12 ¶ 10 (2010).

Even though the Extradition Act applies to the Commonwealth, states and territories can still enact their own extradition statutes as long as those laws do not contravene federal law. *Commonwealth v. Miura*, 2010 MP 12 ¶ 11 (2010).

The Covenant defines the legal relationship between the Commonwealth and the United States. 48 U.S.C. § 1801. The Covenant states that "the following provisions of the Constitution of the United States will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were one of the several States: . . . Article I, Section 10, Clause 1 . . ." Covenant § 501(a) (48 U.S.C. § 1801). Therefore, U.S. Supreme Court cases interpreting this clause are binding precedent upon the Supreme Court. *Tano Group, Inc. v. Dep't of Publ. Works, et al.*, 2009 MP 18 ¶ 59 (2009).

The one person, one vote principle to state legislatures applies to the N.M.I. House of Representatives only to the extent the Equal Protection Clause controls N.M.I. legislative apportionment. In determining whether the Equal Protection Clause applies, we look first to the Covenant. This approach is necessary with any claim of federal preemption, as the applicability of federal directives to the Commonwealth cannot be taken for granted. *In re Pangelinan*, 2008 MP 12 ¶ 45 (2008).

Just as the United States Supreme Court applies the one person, one vote principle differently to congressional and state apportionment schemes based on the differing context of their constitutional sources, so too must we consider the circumstances surrounding our founding document – the Covenant – in determining the extent to which one person, one vote circumscribes N.M.I. legislative apportionment. *In re Pangelinan*, 2008 MP 12 ¶ 45 (2008).

Seventh Amendment to the U.S. Constitution, concerning right to jury trial in civil actions, applies within the Commonwealth. Covenant § 501(a). *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155 (1994), appeal dismissed, 76 F.3d 299 (9th Cir. 1996).

Double Jeopardy Clause of Fifth Amendment to the U.S. Constitution, providing that no person shall be subject for the same offence to be twice put in jeopardy of life or limb, is applicable to the Commonwealth. Covenant § 501(a). *Commonwealth v. Oden*, 3 N.M.I. 186 (1992), *aff'd*, 19 F.3d 26 (9th Cir. 1994).

The Sixth Amendment to the U.S. Constitution is made applicable to the Commonwealth by Covenant § 501(a). *Commonwealth v. Hanada*, 2 N.M.I. 343 (1991).

Fourteenth Amendment to the U.S. Constitution has been made applicable to the Commonwealth pursuant to Covenant § 501(a). *In re "C.T.M.,"* 1 N.M.I. 410 (1990).

—Generally

Whether a party must first move to set aside an entry of default or vacate a default judgment before filing an appeal is a novel question in the CNMI. Thus, the Supreme Court will look to the restatement and the common law as it is generally understood in the United States to answer the question. *Commonwealth Dev. Auth. v. Camacho, et al.*, 2010 MP 19 ¶ 16 (2010).

Covenant § 101, providing that, upon termination of the Trusteeship Agreement, the NMI will become a self-governing commonwealth under U.S. sovereignty, means that the U.S. has sovereignty except as limited by the Covenant. Federal laws applying throughout the states and territories generally apply in the NMI, unless the Covenant provides otherwise. Where the Covenant provides that federal laws control, the U.S. has absolute political authority. *Sablan v. Inos*, 3 N.M.I. 418 (1993).

Where it appears that a federal law violates a fundamental provision of the Covenant, the law should be scrutinized to determine whether it in fact contravenes any fundamental provisions of the Covenant. If it does, the Covenant negates its applicability to the NMI. *Sablan v. Inos*, 3 N.M.I. 418 (1993).

Covenant § 105 permits U.S. Congress to enact laws applicable to the NMI, but also, to respect rights of self-government guaranteed by Covenant, expressly limits that authority with respect to fundamental provisions of Covenant. It is a limitation on the plenary authority of the U.S. with respect to the NMI, and provides an enforceable assurance that the basic relationship between the NMI and the U.S. will be governed by the Covenant unless the people of the NMI agree to a change. Any attempt by the U.S. or the NMI to circumvent the fundamental aspects of the Covenant would be void and of no effect. *Sablan v. Inos*, 3 N.M.I. 418 (1993).

In Covenant, Commonwealth agreed to relinquish its right of self-government and to apply U.S. laws in certain matters. Covenant art. V sets forth certain provisions of U.S. Constitution and laws which apply or are incorporated by reference in the Commonwealth in contradiction of principle of self-government. Covenant § 105 specifically authorizes U.S. to enact laws applicable in Commonwealth, provided laws do not contradict Covenant arts. I, II or III. *Sablan v. Inos*, 2 N.M.I. 388 (1991).

All acts of U.S. Congress and NMI Legislature relevant to Covenant should be interpreted consistent with Covenant, unless a contrary intention is clear. *Wabol v. Villacrusis*, 1 N.M.I. 34 (1989), rev'd, 11 F.3d 124 (9th Cir. 1993).

—Judicial System

See **Courts**, this topic.

—Statutes: Particular Provisions

Federal statute authorizing private civil rights enforcement actions against persons allegedly violating such rights applies to the Commonwealth as it is applicable to the several states. Covenant § 502(a)(2); 42 U.S.C. § 1983. *Sablan v. Tenorio*, 4 N.M.I. 351 (1996).

48 U.S.C. § 1681b, authorizing Inspector General of U.S. Department of the Interior to audit the NMI local tax system, infringes upon right to self government guaranteed in Covenant § 103, a fundamental provision of Covenant, and is void and of no effect in the NMI. *Sablan v. Inos*, 3 N.M.I. 418 (1993).

48 U.S.C. § 1681b, authorizing Inspector General of U.S. Department of the Interior to audit Commonwealth "accounts," is not made applicable in the Commonwealth by the Covenant because it contradicts Covenant § 103, providing that the people of the Northern Mariana Islands will have the right of local self-government. Statute is void and has no force and effect in Commonwealth. *Sablan v. Inos*, 2 N.M.I. 388 (1991).

U.S. Legislative Authority

See **U.S. Law, Applicability of**, this topic.

U.S. Sovereignty

See **U.S. Law, Applicability of**, this topic.

CRIMINAL LAW

Aiding And Abetting

The apparent inconsistency between sections 201 and 251(d) of Title 6 of the Commonwealth Code can be reconciled by reading 251(d) to mean that the legislature sought to preserve only those common law defenses not previously addressed by codified Commonwealth law. Thus one convicted as an aider and abettor is not entitled to be punished differently from a principal, according to the distinction established by the common law. 6 CMC §§ 201, 251(d). *Commonwealth v. Camacho*, 2002 MP 6 ¶ 38

Charges of conspiracy and charges of aiding and abetting in the commission of a substantive offense are separate offenses for the purposes of double jeopardy. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 46

The trial court correctly denied a jury instruction on the common law defense of not being a principal to the commission of a crime requested by a party accused of aiding and abetting because 6 CMC § 201 draws no distinction between principal and an accessory before the fact. 6 CMC § 201. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 55

To obtain punishment as a principal, of any person who aids, abets, counsels, commands, induces, or procures the commission of a crime, it is necessary to prove that the direct perpetrator had the specific intent to commit the crime. If the direct perpetrator did not have the specific intent to commit the crime, then the subsequent act by another would not be a crime. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 59

CSC 1989. It is not necessary for the information to specifically allege aiding and abetting for aiding and

abetting instructions to be given. 6 CMC §201. *CNMI v. Hall*, 3 CR 901.

CSC 1989. Every person who willfully participates in the commission of a crime may be found guilty of that offense whether that person is charged as a principal or an aider and abettor. 6 CMC §201. *CNMI v. Hall*, 3 CR 901.

CSC 1989. Aiding and abetting need not be specifically pleaded, and a defendant charged in information for a substantive offense can be convicted as an aider and abettor upon a proper demonstration of proof. 6 CMC §201. *CNMI v. Hall*, 3 CR 901.

Aquittal Motion

—Burden Of Proof

DC App. Div. 1989. To overcome a motion for acquittal, the government had the burden of presenting evidence from which a reasonable trier of fact could have found beyond a reasonable doubt the essential elements of receiving stolen property. *CNMI v. Tenorio*, 3 CR 679.

Assault

—Evidence

To convict a defendant of assault with a dangerous weapon in the Commonwealth, the prosecution must prove that the defendant (1) threatened to cause, attempted to cause, or purposely caused, (2) bodily injury to another, (3) with a dangerous weapon. 6 CMC § 1204(a). *Commonwealth v. Demapan*, 2008 MP 16 ¶ 13 (2008).

There need not be direct evidence for a conviction on a charge of assault with a dangerous weapon. Circumstantial evidence is sufficient. 6 CMC § 1204. *Commonwealth v. Kaipat*, 4 N.M.I. 300 (1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996).

Assault with a deadly weapon can be proven by the nature of the wound, even if there was no direct testimony that a knife was seen in the hands of the defendant. 6 CMC § 1204(a). *Commonwealth v. Kaniki*, 2 N.M.I. 353 (1991).

——Particular Cases

Because of undisputed evidence that defendant punched victim in chest, was the only person to do so, that only he was close to victim when victim was struck, and that victim bled after he was struck, although no witness saw defendant use a knife trial court could reasonably infer from nature of wound, as established by attending physician, that victim had been stabbed with a dangerous weapon. It was not necessary for direct evidence to be presented at trial that knife or other sharp instrument was used to convict defendant of assault with dangerous weapon. 6 CMC § 1204(a). *Commonwealth v. Kaniki*, 2 N.M.I. 353 (1991).

—Generally

Assault and battery under the Commonwealth criminal code is committed if a person unlawfully strikes, beats, wounds, or otherwise does bodily harm to another, or has sexual contact with another without the other person's consent. The statute does not mention cumulative punishments, and thus, the Supreme Court presumes that the legislature did not intend to subject defendants to multiple sentences for its violation. *Commonwealth v. Peter*, 2010 MP 15 ¶ 12 (2010).

In the Commonwealth, a person commits assault and battery if he or she unlawfully strikes, beats, wounds, or otherwise does bodily harm to another, or has sexual contact with another without the other person's consent. 6 CMC § 1202(a). *Commonwealth v. Zhang*, 2009 MP 6 ¶ 7 (2009).

In the Commonwealth, "[a] person commits the offense of assault with a dangerous weapon if he or she threatens to cause, attempts to cause, or purposely causes bodily injury to another with a dangerous weapon." 6 CMC § 1204(a). *Commonwealth v. Demapan*, 2008 MP 16 ¶ 36 (2008).

Pursuant to the Commonwealth Code, a dangerous weapon is defined as "any automatic weapon, dangerous device, firearm, gun, handgun, long gun, semiautomatic weapon, knife, machete, or other thing by which a fatal wound or injury may be inflicted." 6 CMC § 102(f). *Commonwealth v. Demapan*, 2008 MP 16 ¶ 36 (2008).

A person commits "assault and battery if the person unlawfully strikes, beats, wounds, or otherwise does bodily harm to another." 6 CMC § 1202(a). *Commonwealth v. Demapan*, 2008 MP 16 ¶ 47 (2008).

The elements of assault and assault and battery are not a subset of disturbing the peace. *Commonwealth v. Crisostomo*, 2007 MP 7 ¶ 17

A firearm is not required for commission of either assault or assault and battery. *Commonwealth v. Crisostomo,* 2007 MP 7 ¶ 20

Reasonable corporal punishment is allowed in the Commonwealth. *Commonwealth v. Perez,* 2006 MP 24 ¶ 16

The standard of conduct for professional teachers is much higher, as it should be, than what is expected from the general population. PSS has a regulation in place that forbids all corporal punishment. Accordingly, no matter how reasonable, corporal punishment is not allowed in a Commonwealth public school. *Commonwealth v. Perez,* 2006 MP 24 ¶ 17

The Commonwealth Criminal Code, PSS regulations, and the Lovaas method require different minimum behavior standards from the individuals to whom they apply. *Commonwealth v. Perez,* 2006 MP 24 ¶ 19

For the Government to obtain a conviction for child abuse, it must demonstrate beyond a reasonable doubt that a defendant willfully and intentionally strikes, beats or by any other act or omission inflicts physical pain, injury or mental distress upon a child under the age of 18 who is in the person's custody, such pain or injury being clearly beyond the scope of reasonable corporal punishment, with the result that the child's physical or mental health and well-being are harmed or threatened. *Commonwealth v. Perez,* 2006 MP 24 ¶ 20

To be convicted of child abuse, the Government must establish that the defendant's conduct was beyond the scope of reasonable corporal punishment. This requires two determinations: (1) were the acts corporal punishment, and (2) were they reasonable? *Commonwealth v. Perez,* 2006 MP 24 ¶ 21

The trial court abused its discretion when it denied an expert to the defense where there were questions of whether the Lovaas Method of mirroring is corporal punishment and whether or not it is reasonable outside the PSS setting. *Commonwealth v. Perez,* 2006 MP 24 ¶ 21

While certain assaultive acts might cost a defendant his job under PSS regulations, that does not mean that such acts were child abuse as defined by Commonwealth law. *Commonwealth v. Perez,* 2006 MP 24 ¶ 22

Where there was no expert testimony, the lower court could not determine if a parent or other authorized caregiver may implement the Lovaas behavior modification system legally in the Commonwealth. Consequently, the defendant did not receive a fair trial. *Commonwealth v. Perez,* 2006 MP 24 ¶ 23

To be guilty of child abuse a defendant must inflict physical harm willfully and intentionally and thus mere negligence will not suffice to find a defendant guilty of this crime. *Commonwealth v. Manila*, 2005 MP 17 ¶ 35

Assault and assault and battery must be intentional, but neither offense requires willful conduct. 6 CMC §§ 1201, 1202. *Commonwealth v. Taisacan*, 2005 MP 9 ¶ 40

Assault and battery under 6 CMC § 1202(a) is not a specific intent crime, but is, rather, a general intent crime. *Commonwealth v. Palacios*, 2004 MP 23 ¶ 12

Assault and battery under 6 CMC § 1202(a) contains two separate crimes with separate intent requirements. Assault and battery comprised of unlawfully striking, beating, wounding, or otherwise doing bodily harm to another, requires a general intent analysis. Assault and battery comprised of having sexual contact with another person without the person's consent, when further defined by the sexual contact definition of 6 CMC § 103(r), requires a specific intent analysis. *Commonwealth v. Palacios*, 2004 MP 23 ¶ 14

Conviction under the 6 CMC § 1202(a) for assault and battery by sexual contact requires: sexual contact with another person; without that person's consent; for the purpose of arousing or gratifying the sexual desire of either party. *Commonwealth v. Palacios*, 2004 MP 23 ¶ 15

Establishing the issue of a defendant's intent under the element of sexual contact in an assault and battery charge is a question of fact, and the trier of fact may infer intent from a defendant's behavior. *Commonwealth v. Palacios*, 2004 MP 23 ¶ 15

It is within the discretion of the trier of fact to find a defendant's behavior was done for the purpose of arousing or gratifying his sexual desire. *Commonwealth v. Palacios*, 2004 MP 23 ¶ 16

The specific intent requirement for sexual contact to constitute an assault and battery is intended to distinguish an innocent, inadvertent or accidental touching of another's sexual or other intimate part

from one done with conscious thought and motive, thus distinguishing sexual imposition from ordinary assault and from non-criminal touching. *Commonwealth v. Palacios*, 2004 MP 23 ¶ 17

The Court will weigh the totality of the evidence and motivation for sexual contact in determining whether the touching constitutes sexual contact. The evidence must prove that defendant's conduct was sexually motivated and intended to be the source of sexual arousal or gratification for victim or defendant. *Commonwealth v. Palacios*, 2004 MP 23 ¶ 18

Assault with a dangerous weapon is an offense which has alternative elements and, hence, may be committed in multiple ways. It may be committed either with or without injury to another person. 6 CMC § 1204(a). *Commonwealth v. Kaipat*, 4 N.M.I. 300 (1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996).

——Particular Cases

In prosecution for assault with dangerous weapon and unlawful possession of firearm, jury's verdict that defendant was guilty of assault with dangerous weapon (with special finding that he was armed with firearm at time he committed assault) but innocent of charge of unlawful possession of firearm was not necessarily inconsistent. Verdict and special finding reflected determination that defendant was armed with a firearm while committing assault, but that firearm was not necessarily a handgun. *Commonwealth v. Esteves*, 3 N.M.I. 447 (1993).

—Intent

Assault and Battery under 6 CMC § 1202(a) is not a specific intent crime, rather it is a general intent crime. 6 CMC § 1202(a). *Commonwealth v. Atalig*, 2002 MP 20 ¶ 65

—Jurisdiction

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, and pursuant to 1 CMC § 3103, the N.M.I. Supreme Court has jurisdiction over the appeal of a trial court order finding defendant guilty of criminal offenses of assault and battery, disturbing the peace, and misconduct in public office, and over the trial court's sentencing order. N.M.I. Const. art. IV, § 3, 1 CMC § 3103. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 1

——Particular Cases

Pursuant to Article IV, Section 3 of the Constitution of the Northern Mariana Islands and pursuant to 1 CMC § 3102(a), the N.M.I. Supreme Court has jurisdiction over the appeal of a bench trial resulting in a criminal conviction for misconduct in public office and assault and battery. N.M.I. Const. art. IV, § 3, 1 CMC § 3102(a). *Commonwealth v. Seman*, 2001 MP 20 ¶ 1

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands the N.M.I. Supreme Court has jurisdiction over a criminal defendant's appeal from his conviction for assault and battery against his wife. N.M.I. Const. art. IV, § 3. *Commonwealth v. O'Connor*, 2000 MP 11 ¶ 1

Pursuant to 1 CMC § 3102, the N.M.I. Supreme Court has jurisdiction over a criminal defendant's appeal from his conviction for assault and battery against his wife. 1 CMC § 3102. *Commonwealth v. O'Connor*, 2000 MP 11 ¶ 1

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands the N.M.I. Supreme Court has jurisdiction over a criminal defendant's appeal from his conviction for assault and battery against his wife. N.M.I. Const. art. IV, § 3. *Commonwealth v. O'Connor*, 2000 MP 11 ¶ 1

Pursuant to 1 CMC § 3102, the N.M.I. Supreme Court has jurisdiction over a criminal defendant's appeal from his conviction for assault and battery against his wife. 1 CMC § 3102. *Commonwealth v. O'Connor*, 2000 MP 11 ¶ 1

NMI Supreme Court had jurisdiction, pursuant 1 CMC § 3102(a), over appeal from conviction for assault and battery, as a lesser-included offense to aggravated assault and battery. *Commonwealth v. Mitchell*, 1997 MP 4 ¶1

NMI Supreme Court had jurisdiction, pursuant to 1 CMC § 3102(a), over appeal from condition of suspended imposition of sentence for assault and battery. *Commonwealth v. Itibus*, 1997 MP 10 ¶1

NMI Supreme Court had jurisdiction over appeal from criminal prosecution for assault and battery pursuant to general jurisdictional statute. 1 CMC § 3102(a). *Commonwealth v. Kaipat*, 4 N.M.I. 300 (1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996).

NMI Supreme Court had jurisdiction over appeal from criminal prosecution for aggravated assault and

battery pursuant to 1 CMC § 3102(a). *Commonwealth v. Brel*, 4 N.M.I. 200 (1994).

—Jury Instructions

——Particular Cases

In prosecution for assault with a dangerous weapon, trial court did not abuse its discretion in refusing to submit defendant's requested instruction to jury regarding lesser offenses of assault and assault and battery. Defendant's argument that a rational jury could find him guilty of assault and not assault with a dangerous weapon was inconsistent with evidence that defendant had attacked victim with an axe. *Commonwealth v. Kaipat*, 4 N.M.I. 300 (1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996).

Because trial court's instructions to jury as to essential elements of assault with a dangerous weapon were incomplete and did not provide jury with adequate guidance, court committed plain error and appellate court had no recourse but to set aside guilty verdict. Trial court failed to set forth an essential element, the use of a dangerous weapon. In order for jury to find defendant guilty of assault with a dangerous weapon, trial court must instruct the jury that an essential element of the offense includes use of a dangerous weapon in the commission of the offense. Fact that court separately instructed jury on definition of term "dangerous weapon" did not cure error. Defining the term separately did not indicate to jury that use of a dangerous weapon was an essential element of the offense. Each element of the offense must be proven beyond a reasonable doubt. Although jury specially found that defendant was armed with firearm when he committed crime, that fact did not fulfill trial court's obligation to provide a complete instruction setting forth all of the essential elements of the offense. *Commonwealth v. Esteves*, 3 N.M.I. 447 (1993).

—Lesser Included Offense

Even though aggravated assault and battery was a separately charged offense, it was also a lesser included offense of second-degree murder. *Commonwealth v. Repeki*, 2004 MP 19 ¶ 11

Aggravated assault and battery is a lesser-included offense of second-degree murder because defendant had to have necessarily committed aggravated assault and battery in committing second-degree murder. *Commonwealth v. Repeki*, 2004 MP 19 ¶ 11

Where defendant was charged with second-degree murder, he was put on notice that he may be convicted of the lesser included offense of aggravated assault and battery. *Commonwealth v. Repeki*, 2004 MP 19 ¶ 12

The elements of assault and battery are a subset of the elements of aggravated assault and battery. *Commonwealth v. Mitchell*, 1997 MP 4 ¶11

Whether an offense is a lesser included offense of assault with a dangerous weapon depends upon whether its elements are a subset of any one set of the alternative elements of assault with a dangerous weapon. *Commonwealth v. Kaipat*, 4 N.M.I. 300 (1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996).

Both assault and assault and battery are alternative lesser included offenses of assault with a dangerous weapon. Each offense contains dispositive set of elements which is a subset of one of the alternative sets of elements of assault with a dangerous weapon, with use of dangerous weapon the additional element within the greater offense. 6 CMC §§ 1201(a), 1202(a), 1204(a). *Commonwealth v. Kaipat*, 4 N.M.I. 300 (1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996).

Common Law Crimes

Common law crimes generally require intent or guilty knowledge, even if the statute at issue is silent, however, traffic safety statutes are statutory crimes or regulatory offenses, as opposed to common law crimes. *Commonwealth v. Abuy*, 2001 MP 8 ¶ 12

Commonwealth Entry and Deportation Act Violations

—Jurisdiction

The N.M.I. Supreme Court has jurisdiction, pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands and pursuant to 1 CMC § 3102(a), over the appeal of a conviction for illegal subcontract employment, 3 CMC § 4361(g). N.M.I. Const. art. IV, § 3, 1 CMC § 3102(a), 3 CMC § 4361(g). *Commonwealth v. Lucas*, 2003 MP 9 ¶ 1

Competency

CTC 1983. The standard for determining competency at trial is whether the defendant has sufficient present ability to consult with his/her lawyer with a reasonable degree of rational understanding and whether helshe has a rational as

well as a factual understanding of the proceedings against him/her. *CNMI v. Aldan*, 1 CR 717.

Confessions

—Voluntariness

DC App. Div. 1987. The prosecution must prove by a preponderance of the evidence that a statement was made voluntarily. Whether or not a confession was obtained by coercion is determined from the totality of the circumstances and this standard applies in juvenile proceedings. *CNMl v. Cabrera*, 2 CR 1092.

DC App. Div. 1987. Psychological coercion is as unconstitutional as physical coercion. *CNMI v. Cabrera*, 2 CR 1092.

DC App. Div. 1987. Among the circumstances considered in determining whether given the totality of the circumstances, the juvenile's confession was voluntary are: 1) the age of the minor; 2) the length of the questioning; 3) the youth's education; 4) the prior experience of the youth with the police; and, 5) the presence and/or notification of the juvenile's parents. *CNMI v. Cabrera*, 2 CR 1092.

DC App. Div. 1987. From the totality of the circumstances it cannot be said that appellant's statements were coerced or involuntary where: (1) the defendant was seventeen years and three months old at the time he was questioned, in the 10th grade; (2) he was told he was under arrest for murder, and he was allowed to talk to his father before being questioned, and he was advised of all his rights in the presence of his father and again the next day; and (3) defendant clearly understood his rights, as demonstrated by his responses to questions at the suppression hearing. *CNMI v. Cabrera*, 2 CR 1092.

Conspiracy

Because most conspiracies are clandestine in nature, the prosecution is seldom able to present direct evidence of the agreement. As such, most conspiracy convictions are based on circumstantial evidence, and courts allow juries to draw inferences as to the existence of an agreement from the defendants' conduct. *Commonwealth v. Minto*, 2011 MP 14 ¶ 41 (2011).

Charges of conspiracy and charges of aiding and abetting in the commission of a substantive offense are separate offenses for the purposes of double jeopardy. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 46

Culpability

CTC 1983. Commonwealth statute which expresses the M'Naghten rule for determining criminal responsibility is obsolete and will not be applied prospectively. 12 T.T.C. §401 [6 C.M.C. §6601]. *CNMI v. Aldan*, 1 CR 717.

CTC 1983. A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law. *CNMI v. Aldan*, 1 CR 717.

Contempt of Court

See **COURTS - Contempt - Criminal**

Defenses

—Entrapment

See **Entrapment, Defense of**, this topic.

—Infancy

See **MINORS - Infancy, Defense of**

—Necessity

See **Necessity, Defense of**, this topic.

Disturbing the Peace

—Generally

A person disturbs the peace "if he or she unlawfully and willfully does any act which unreasonably annoys or disturbs another person so that the other person is deprived of his or her right to peace and quiet, or which provokes a breach of the peace." 6 CMC § 3101(a). *Commonwealth v. Demapan*, 2008 MP 16 ¶ 47 (2008).

The language of 6 CMC § 3101 indicates that the statute applies to both private and public disturbances. The legislature omitted an express provision to the statute punishing only public disturbances. 6 CMC § 3101. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 28

It is significant to note that the Third Legislature, in enacting Public Law 3-71, Section 1, which was codified as 6 CMC § 3101, rejected the wording of

the Model Penal Code for Disorderly Conduct, § 250.2 which specifically focuses on "public" disturbances. Public Law 3-71; 6 CMC § 3101; Model Penal Code for Disorderly Conduct, § 250.2. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 31

The Trust Territory cases which interpret the Disturbing the Peace statute, TTC § 426 (1966), the predecessor to 11 TTC § 551 (1970) (which according to Senate Bill No. 3-85, S.D. 2, Standing Committee Report No. 3-141 is the source for 6 CMC § 3101) indicate that disruption of the peace encompasses a large range of activities, as such 6 CMC § 3101 can apply to both public and private disturbances. TTC § 426 (1966); 11 TTC § 551 (1970); 6 CMC § 3101. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 32

The right to peace and quiet guaranteed by 6 CMC § 3101 is personal. 6 CMC § 3101. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 34

Disturbing the Peace under 6 CMC § 3101(a) is a general intent crime, not a specific intent crime. 6 CMC § 3101(a). *Commonwealth v. Atalig*, 2002 MP 20 ¶ 73

—Jurisdiction

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, and pursuant to 1 CMC § 3103, the N.M.I. Supreme Court has jurisdiction over the appeal of a trial court order finding defendant guilty of criminal offenses of assault and battery, disturbing the peace, and misconduct in public office, and over the trial court's sentencing order. N.M.I. Const. art. IV, § 3, 1 CMC § 3103. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 1

Domestic Violence

— Protection Orders

An individual commits the crime of violating an order for protection under the Domestic Violence Act if the person is subject to an order for protection containing a provision from the Act and knowingly commits or attempts to commit an act in violation of that provision. *Commonwealth v. Peter*, 2010 MP 15 ¶ 12 (2010).

Under the Domestic Violence Act, the punishments a person faces for violating the order include a term of imprisonment up to one year, a fine up to $2,000, or both. In addition, a person convicted of violating an order for protection, for conduct charged and specially found to be true, shall be sentenced to a mandatory minimum term of imprisonment, which may not be suspended, and which shall run consecutively to any other term of imprisonment: (1) If the person threatens to cause physical injury to any other person, or attempts to cause physical injury to any other person, 10 days; and (2) If the person causes physical injury to any other person, 20 days. *Commonwealth v. Peter*, 2010 MP 15 ¶ 12 (2010).

Under 6 CMC § 1464(b), a court may impose consecutive sentences even if one of those sentences could potentially be a lesser included offense. *Commonwealth v. Peter*, 2010 MP 15 ¶ 13 (2010).

The legislature intended to subject individuals who violate an order for protection, through actual or threatened physical injury, to multiple punishments if their conduct resulted in other violations of the Commonwealth Code, and the Double Jeopardy Clause's prohibition against multiple sentences for lesser included offenses never arises. *Commonwealth v. Peter*, 2010 MP 15 ¶ 13 (2010).

There is no violation of the Commonwealth or U.S. Constitution's Double Jeopardy Clause when consecutive sentences are imposed for a single course of conduct that violates an order for protection through actual or threatened physical injury and another provision of the Commonwealth Code, such as 6 CMC § 1202(a), because the legislature intended to impose multiple sentences on such defendants. *Commonwealth v. Peter*, 2010 MP 15 ¶ 14 (2010).

Double Jeopardy

DC App. Div. 1989. Decisions of whether and how to charge an accused are exclusively within the domain of the prosecutor, but, generally, states are prohibited from punishing a defendant twice for a single offense. *CNMI v. Pangelinan*, 3 CR 839.

DC App. Div. 1989. Generally, the double jeopardy clause prohibits multiple punishments for the same offense except: (1) where the legislature has specifically provided for separate convictions and dual sentences for the same act; and (2) where proof of the second offense requires proof of an additional element not contained in the first. *CNMI v. Pangelinan*, 3 CR 839.

DC App. Div. 1987. Where both judge and jury heard all the evidence during the trial, the jury was told by the attorneys that they would consider only the charge of assault with a dangerous weapon, and

defense counsel then requested an instruction on the lesser-included offense of assault and battery, there was no evidence that the jury was confused as to the nature of the charge they were to consider. When both judge and jury separately considered charges of assault and battery against defendant simultaneously at the end of trial, defendant's right to double jeopardy protection was not violated. U.S. Const., Amend V. *CNMI v. Magofna*, 3 CR 181, *aff'd*, 855 F.2d 860 (9th Cir. 1988).

DC App. Div. 1987. It was not error to sentence appellant consecutively for each of the five misdemeanor convictions, where five different offenders and five different courses of conduct were involved. *CNMI v. Ahn*, 3 CR 35.

DC App. Div. 1987. That defendant was tried by a judge and found guilty for a misdemeanor that contained one element in addition to those contained in the felony count decided simultaneously by a jury, did not subject defendant to double jeopardy because the offenses were not identical and original jeopardy was terminated simultaneously for both offenses. *CNMI v. Ahn*, 3 CR 35.

DC App. Div. 1987. Simultaneous prosecution of greater and lesser offenses is valid. *CNMI v. Ahn*, 3 CR 35.

DC App. Div. 1987. Jeopardy in a jury trial attaches when the jury is sworn, and when evidence is first heard in a court-tried case. *CNMI v. Ahn*, 3 CR 35.

DC App. Div. 1987. Double jeopardy cannot occur until the first proceeding ends with conviction, acquittal, or is dismissed with prejudice. *CNMI v. Ahn*, 3 CR 35.

DC App. Div. 1985. It has long been understood that separate statutory crimes need not be identical -- either in constituent elements or in actual proof -- in order to be the same within the meaning of the double jeopardy clause. U.S. Const., Amend. V; NMI Const., Art. I, §4(a). *CNMI v. Taitano*, 2 CR 356.

DC App. Div. 1985. In double jeopardy analysis, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether one statute requires proof of an additional fact which the other does not. U.S. Const., Amend. V; NMI Const., Art. I, §4(a). *CNMI v. Taitano*, 2 CR 356.

DC App. Div. 1985. Where 'riot' is defined as placing others in fear or danger and 'disturbing the peace' is defined as unreasonably annoying or disturbing another person, the offense of disturbing the peace requires proof of an element (awareness of the victim) not required by the offense of riot subject to double jeopardy and defendant convicted of both was not. U.S. Const., Amend. V; NMI Const., Art. I, §4(a). *CNMI v. Taitano*, 2 CR 356.

—Separate Offenses

DC App. Div. 1989. Absent legislative intent to the contrary, any doubts of whether to turn a single transaction into multiple offenses should be resolved in favor of the defendant. *CNMI v. Pangelinan*, 3 CR 839.

DC App. Div. 1989. The crime of removal of government property is encompassed in the crime of theft when the theft involved government property. *CNMI v. Pangelinan*, 3 CR 839.

DC App. Div. 1989. Separate convictions and separate punishments under two different statutes for a single act run counter to the double jeopardy clause. *CNMI v. Pangelinan*, 3 CR 839.

Driving Under Influence of Alcohol or Other Drug

In the Commonwealth, drivers are prohibited from operating a vehicle with a blood alcohol concentration of 0.08% or greater, or driving under the influence of alcohol to any degree that renders the driver incapable of safely driving. *Commonwealth v. Andrew*, 2007 MP 25 ¶ 5

The driver of any vehicle impliedly consents to a breath test for alcohol. If a driver refuses to submit to a breath test, evidence of refusal is admissible at trial, and the driver's license can be revoked for six months. *Commonwealth v. Andrew*, 2007 MP 25 ¶ 5

It is proper for the trier of fact to consider a driver's refusal to take a blood or breath test, along with other evidence, in determining the driver's guilt of driving under the influence. *Commonwealth v. Andrew*, 2007 MP 25 ¶ 5

—Evidence

Title 9 CMC § 7105(a)(2) requires that the Commonwealth prove beyond a reasonable doubt that: (1) the defendant drove, operated or was in physical control of; (2) a vehicle; (3) while under the

influence of alcohol. *Commonwealth v. Guerrero*, 2011 MP 12 ¶ 11 (2011).

Evidence of alcohol on the breath, with no other physical symptoms of alcohol use, weakens the inference of guilt. *Commonwealth v. Guerrero*, 2011 MP 12 ¶ 14 (2011).

In the Commonwealth, drivers are prohibited from operating a vehicle with a blood alcohol concentration of 0.08% or greater, or driving under the influence of alcohol to any degree that renders the driver incapable of safely driving. *Commonwealth v. Wu,* 2007 MP 29 ¶ 12 (2007).

A driver impliedly consents to a breath test for alcohol. If a driver refuses to submit to a breath test, evidence of refusal is admissible at trial, and the driver's license can be revoked for six months. The trier of fact can consider a driver's refusal to take a breath test, along with other evidence, in determining the driver's guilt of driving under the influence. *Commonwealth v. Wu,* 2007 MP 29 ¶ 12 (2007).

It is necessary only to introduce testimony as to facts based on observations of the driver's appearance and conduct which establish intoxication. *Commonwealth v. Blas,* 2007 MP 17 ¶ 8

Observation of a defendant in the act of driving is not an indispensable prerequisite for a DUI conviction. *Commonwealth v. Scragg,* 2000 MP 4 ¶ 15

Based on circumstantial evidence, that the defendant's car was found on the side of the road around midnight, that the hood of the car was warm, that the defendant was found near the scene of a traffic accident, which he admitted being involved in, a reasonable trier of fact could have found that the defendant had driven the car shortly before police officers discovered him. *Commonwealth v. Scragg*, 2000 MP 4 ¶ 21

Evidence of the defendant's intoxication, consisting of testimony by police officers that the defendant had failed two field sobriety tests, that the defendant's eyes were bloodshot, his speech slurred, his face pale and that he swayed while standing, gathered by the police within a short time after the accident was relevant to establishing that the defendant was intoxicated at the time he drove the car off the road, and was sufficient to support the trial court's conclusion that the defendant was under the influence of alcohol at the time that he drove his vehicle off the road. *Commonwealth v. Scragg*, 2000 MP 4 ¶ 22

Where the arresting officer testified that he observed the defendant's car speeding and swerving, where the defendant did not pull over immediately after the officer began pursuing him, where the defendant smelled of alcohol, had bloodshot eyes and slurred speech, and failed two field sobriety tests, and the defendant admitted to having consumed three cans of beer within ninety minutes prior to driving, the evidence is sufficient to support a conviction for driving under the influence of alcohol. *Commonwealth v. Martinez,* 2000 MP 5 ¶ 23

The odor of alcohol, by itself, does not establish probable cause to arrest someone to determine blood alcohol content, however, the odor of alcohol, in combination with other factors, may be sufficient to provide probable cause for such an arrest. *Commonwealth v. Martinez,* 2000 MP 5 ¶ 25

Any discrepancies between an arresting Officers' written and oral testimony represent a credibility issue which the N.M.I. Supreme Court need not evaluate on review. An arresting Officers' testimony is sufficient evidence to support a reasonable trier of fact's finding, beyond a reasonable doubt, that the defendant was under the influence of alcohol. *Commonwealth v. Martinez,* 2000 MP 5 ¶ 26

DUI field sobriety tests are not scientific evidence subject to the requirements of Com. R. Evid. 702. Thus, the government is not required to lay a scientific foundation prior to introducing results of tests. *Commonwealth v. Delos Reyes*, 4 N.M.I. 340 (1996).

In a DUI prosecution, an officer testifying about simple field sobriety tests designed to ascertain DUI suspect's balance, coordination and ability to follow instructions need not be qualified as an expert witness. Tests evaluate behavior well within the realm of ordinary human experience, and are therefore not "scientific, technical or specialized knowledge" within meaning of Com. R. Evid. 702, concerning qualification of expert witnesses. *Commonwealth v. Palacios,* 4 N.M.I. 330 (1996).

Com. R. Evid. 701(1) sets forth the proper evidentiary threshold for testimony concerning simple DUI field sobriety tests, specifying that testimony be rationally based on the perception of the witness. In this context, the government must show that an officer's experience and training enabled him to observe the fine points of a accused's actions in performing a field sobriety test, and that this perception was rationally related to the conclusion that the accused was intoxicated at the time of

observation. *Commonwealth v. Palacios*, 4 N.M.I. 330 (1996).

Under 9 CMC § 7107(a) and (b), result of breathalyzer test is admissible in DUI prosecution and information about the test is available to defendant, upon request. At trial, defendant may question credibility of test result, but cannot exclude result from evidence. *Commonwealth v. Peters*, 1 N.M.I. 466 (1991).

——Particular Cases

Trial court did not err in finding defendant guilty of DUI where record indicated that: (1) arresting officer observed defendant's car speeding and swerving; (2) defendant failed to pull over for half a mile after officer began pursuing him; (2) defendant smelled of alcohol, had bloodshot eyes and slurred speech, and failed field sobriety tests; and (3) defendant admitted that he consumed three cans of beer within ninety minutes prior to driving. *Commonwealth v. Delos Reyes*, 4 N.M.I. 340 (1996).

Since defendant did not object to admission of breathalyzer test result in DUI prosecution, he could not, on appeal, claim error in admission of test result. Com. R. Evid. 103(a)(1). *Commonwealth v. Peters*, 1 N.M.I. 466 (1991).

Because finding of guilt in DUI prosecution was not based solely on result of breathalyzer test, NMI Supreme Court would not apply plain error rule and reverse admission of test result into evidence. Other uncontradicted evidence supported conviction: defendant's face was flushed, his eyes were bloodshot, his speech was slurred, a strong odor of alcohol was present, and he failed field sobriety tests twice. These facts are sufficient to support a conviction of driving under the influence of alcohol. *Commonwealth v. Peters*, 1 N.M.I. 466 (1991).

—Generally

No one may drive while under the influence of alcohol or other drugs. 9 CMC § 7105. *Commonwealth v. Martinez*, 2000 MP 5 ¶ 22

The driver of a motor vehicle impliedly consents to a breath test for alcohol or drugs. 9 CMC § 7106(a). *Commonwealth v. Martinez*, 2000 MP 5 ¶ 22

If a driver refuses to submit to a breath test, his license will be revoked for six months. 9 CMC § 7106(c). *Commonwealth v. Martinez*, 2000 MP 5 ¶ 22

—Intoxication Testing

Pursuant to 9 CMC § 7106(a) & (c), a person who operates a motor vehicle on the highways in the C.N.M.I. is deemed to have given his or her consent to submit to intoxication testing, and he or she only has the power to revoke his or her implied consent. 9 CMC § 7106(a); 9 CMC § 7106(c). *Commonwealth v. Suda*, 1999 MP 17 ¶ 9

While the decision whether to submit to intoxication testing may be critical for the accused in the sense that it can have serious consequences at trial, it is not "critical" in the constitutional sense. No right to counsel under Article I, Section 4(a) of the Commonwealth Constitution attaches prior to intoxication testing. N.M.I. Const. art. I, § 4(a). *Commonwealth v. Suda*, 1999 MP 17 ¶ 18

During a general roadside inquiry into a traffic offense, a suspect does not have a right to counsel under Article I, Section 4(a) of the Commonwealth Constitution. N.M.I. Const. art. I, § 4(a). *Commonwealth v. Suda*, 1999 MP 17 ¶ 20

When a defendant is asked to submit to a field sobriety test and a breathalyzer test after she is arrested and taken to the police station, the privilege against self-incrimination is not implicated because the privilege is a bar against compelling communications or testimony, but that compulsion which makes a suspect or accused the source of real or physical evidence does not violate it. *Commonwealth v. Suda*, 1999 MP 17 ¶ 24

An individual enjoys the right to counsel only where the assistance of counsel is required to protect other rights guaranteed by law. A breathalyzer test threatens no invasion of a protected right. An individual who operates a vehicle on Commonwealth highways is deemed, as a matter of law, to have consented to testing for intoxication. Neither consent nor refusal is constitutionally protected, and thus no right to consult counsel attaches to a choice between the two. *Commonwealth v. Suda*, 1999 MP 17 ¶ 24

The right to counsel under N.M.I. Const. art. I, § 4(a) is not implicated when a defendant is asked to submit to intoxication testing at the police station. Rather, the right to counsel is derived from the privilege against self-incrimination under N.M.I. Const. art. I, § 4(c). Since a request to submit to intoxication testing involves no compulsion for a defendant to testify against herself, her privilege against self-incrimination is not violated. N.M.I.

Const. art. I, § 4(a); N.M.I. Const. art. I, § 4(c). *Commonwealth v. Suda*, 1999 MP 17 ¶ 25

—Jurisdiction

The N.M.I. Supreme Court has jurisdiction, pursuant to Article IV, Section 3 of the Commonwealth Constitution, over a defendant's appeal from his traffic convictions for driving under the influence of alcohol and refusing to submit to a breath test. N.M.I. Const. art. IV, § 3. *Commonwealth v. Scragg*, 2000 MP 4 ¶ 1

The N.M.I. Supreme Court has jurisdiction, pursuant to 1 CMC § 3102, over a defendant's appeal from his traffic convictions for driving under the influence of alcohol and refusing to submit to a breath test. 1 CMC § 3102. *Commonwealth v. Scragg*, 2000 MP 4 ¶ 1

The N.M.I. Supreme Court has jurisdiction, pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, over a defendant's appeal from his convictions of driving without a license, failure to yield the right of way, and driving under the influence of alcohol. N.M.I. Const. art. IV, § 3. *Commonwealth v. Martinez*, 2000 MP 5 ¶ 1

The N.M.I. Supreme Court has jurisdiction, pursuant to 1 CMC § 3102, over a defendant's appeal from his convictions of driving without a license, failure to yield the right of way, and driving under the influence of alcohol. 1 CMC § 3102. *Commonwealth v. Martinez*, 2000 MP 5 ¶ 1

—Particular Cases

Subsection 7106(a) of Title 9 of the Commonwealth Code allows an officer to request a test of a person's breath if the officer has reasonable grounds for believing that the person was DUI. Reasonable grounds are established where a reasonable person in the position of the officer viewing the facts and circumstances as they appeared at trial could have concluded that the motorist had operated the vehicle while under the influence of alcohol. 9 CMC § 7106(a). *Commonwealth v. Scragg*, 2000 MP 4 ¶ 25

Subsection 7106(a) of Title 9 of the Commonwealth Code allows an officer to request a test of a person's breath if the officer has reasonable grounds for believing that the person was DUI. For reasonable grounds to exist, the police officer need not be correct in his belief that the motorist had been driving while under the influence. 9 CMC § 7106(a). *Commonwealth v. Scragg*, 2000 MP 4 ¶ 25

NMI Supreme Court had jurisdiction, pursuant to general jurisdictional statute, over appeal from conviction for driving motor vehicle under the influence of alcohol. 1 CMC § 3102(a). *Commonwealth v. Delos Reyes*, 4 N.M.I. 340 (1996).

NMI Supreme Court had jurisdiction, pursuant to general jurisdictional statute, over appeal from prosecution for driving motor vehicle under the influence of alcohol. 1 CMC § 3102(a). *Commonwealth v. Palacios*, 4 N.M.I. 330 (1996).

NMI Supreme Court had jurisdiction, pursuant 1 CMC § 3102, over appeal by government of order dismissing prosecution for driving under the influence of alcohol or other drug. 9 CMC § 7105. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), aff'd, 42 F.3d 546 (9th Cir. 1994).

Drug Trafficking

—Jurisdiction

——Particular Cases

NMI Supreme Court had jurisdiction, pursuant to1 CMC § 3102(a), over appeal from conviction for possession of methamphetamine hydrochloride, denial of motion to suppress, and imposition of five year sentence pursuant to 6 CMC § 2142(d)(4). 6 CMC § 2142(a). *Commonwealth v. Aldan*, 1997 MP 31 ¶1

NMI Supreme Court had jurisdiction, pursuant to general jurisdictional statute, over appeal from drug trafficking conviction and sentence. 1 CMC § 3102(a). *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

—Sentencing

The plain language of the current version of 6 CMC § 2141(b)(1) mandates the imposition of one of three punishments: a fine not exceeding $10,000; a term of imprisonment for not less than 25 years; or both. 6 CMC § 2141(b)(1). *Commonwealth v. Diaz*, 2003 MP 14 ¶ 17

Where there is evidence of confusion on the part of the trial court regarding the interpretation of a statute regarding sentencing, 6 CMC § 2141(b)(1), and where the N.M.I. Supreme Court is unconvinced, after reviewing the record, that the trial court was aware of the minimum sentence available under the

applicable statute, it will vacate the sentence. 6 CMC § 2141(b)(1). *Commonwealth v. Diaz*, 2003 MP 14 ¶ 25

When sentencing pursuant to 6 CMC § 2141(b)(1), the trial court has discretion as to whether the sentence shall include a term of imprisonment of no less than twenty-five years; however, once that determination is made, the term of imprisonment ordered by the trial court may not be suspended. 6 CMC § 2141(b)(1). *Commonwealth v. Diaz*, 2003 MP 14 ¶ 30

Statute establishing penalties for drug trafficking, 6 CMC § 2141(b)(1), gives the trial court discretion to impose a sentence of imprisonment, or a fine, or both. It does not call for a mandatory minimum sentence of five years without suspension or parole. *Commonwealth v. Cabrera*, 1997 MP 1 ¶4

Civil forfeitures do not constitute punishment for purposes of the Double Jeopardy Clause. CNMI forfeiture statute is civil in nature even though it is contained in the criminal code. U.S. Const. Fifth Amend., N.M.I. Const. art. 1, § 4(e), 6 CMC § 2150. *Commonwealth v. Cabrera*, 1997 MP 18 ¶9

Statute specifying penalties for controlled substance trafficking offenses authorizes trial court to impose a sentence of imprisonment or a fine or both. Statute does not prescribe mandatory prison term. 6 CMC § 2141(b)(1). *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

——Particular Cases

Where trial court sentenced defendant convicted of delivery of controlled substance under 6 CMC § 2142 to prison term, and record did not disclose whether court erroneously interpreted sentencing statute to prescribe mandatory prison term, NMI Supreme Court would remand for clarification and, if necessary, resentencing. 6 CMC § 2141(b)(1). *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

Entrapment, Defense of

—Generally

Defense of entrapment has two elements: (1) government inducement of the crime, and (2) the absence of predisposition on the part of the defendant. Once defendant has shown evidence of inducement, burden shifts to government to prove that defendant was predisposed to violate the law before government intervened. *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

Where facts are undisputed, court rules on issue of entrapment as matter of law. Otherwise, issue is reserved for trier of fact as part of its function of determining guilt or innocence of the accused. *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

—Jury Instructions

——Particular Cases

In prosecution for delivery of controlled substance under 6 CMC § 2142, after defendant raised entrapment defense trial court adequately apprised jury of government's burden to prove predisposition to commit the offense where court instructed jury that: (1) it was to consider instructions as a whole, and each in light of all the others; (2) burden was always upon prosecution to prove guilt beyond reasonable doubt, with burden never shifting to defendant; and (3) to find defendant guilty, jury would have to find beyond reasonable doubt that defendant had previous intent or disposition or willingness to commit the offense. *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

Escape

DC App. Div. 1989. Once a person is in custody, he is a prisoner; because defendant was in lawful custody at the time he fled the police station, he could be convicted of the crime of escape. 6 CMC §3202. *CNMI v. Delos Santos*, 3 CR 661.

Forfeiture

—Exceptions

CTC 1989. To sustain a defense to forfeiture under statutory section excepting actions of one not lawfully in possession, the owner must establish not only that the user of the vehicle was in possession of the vehicle unlawfully at the time of the illegal act, but also that the user of the vehicle acquired its possession by a criminal act. 6 CMC §2150(a)(4)(B). *CNMI v. Torres*, 3 CR 699.

CTC 1989. Where "owner" of a vehicle is defined as "the person entitled to possession of a vehicle as the purchaser under a conditional sales contract ...," and defendant acquired the vehicle in a lawful manner by a straightforward purchase financed by bank, statutory exception to forfeiture does not apply. 9

CMC §1l03(e); 6 CMC §2150 (a)(4)(B). *CNMI v. Torres*, 3 CR 699.

CTC 1989. Where claimant offered no proof that it did all it reasonably could to avoid having a vehicle put to unlawful use, claimant's petition for remission of the forfeited vehicle would be denied. *CNMI v. Torres*, 3 CR 699.

CTC 1989. Even assuming that a claimant is truly innocent and exercised great care in transferring possession of a vehicle, in order for claimant to avail itself to the innocent owner defense in a forfeiture proceeding, it must show that it had an ownership interest in the vehicle at the time the illegal acts which were the basis for the forfeiture were committed. *CNMI v. Torres*, 3 CR 699.

CTC 1989. Where the claimant was not an "owner" of the vehicle at the time that such vehicle was involved in the criminal activity which eventually let to its forfeiture, under the "relation back doctrine claimant cannot avail itself of any exception to forfeiture as an "innocent owner." *CNMI v. Torres*, 3 CR 699.

CTC 1989. Opposition to forfeiture by a claimant who acquired his interest after the illegal use must be dismissed. *CNMI v. Torres*, 3 CR 699.

Guilty Plea

CTC 1987. Where before sentencing the defendant was asked and he admitted that this was his second DUI offense, this notice was sufficient for purposes of apprising defendant of the consequences of his guilty plea. *CNMI v. Hiroichi*, 2 CR 1080.

Immigration Fraud

—Jurisdiction

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, the N.M.I. Supreme Court has jurisdiction over an appeal from a conviction for immigration fraud. N.M.I. Const. art. IV, § 3. *Commonwealth v. Caja*, 2001 MP 6 ¶ 1

Indictment & Information

DC NMI 1988. Where: (1) indictment is valid on its face; (2) there was no showing of impropriety in the conduct of the grand jury; and (3) there was nothing to support counsel's attempt to breach the confidentiality to which grand jury proceedings are entitled, request for transcript of grand jury proceedings would be denied. Fed. R. Crim. Pro. 6(e)(3)(c). *United States of America v. Mafnas*, 3 CR 421.

CTC 1987. Even if an information fails to plead, or the Government fails to prove, that a specific DUI charge is a second or subsequent DUI offense, the defendant can be subjected to the harsher penalty provided by statute. 9 CMC §7109(b). *CNMI v. Hiroichi*, 2 CR 1080.

CTC 1987. Where defendant was charged and convicted of a DUI offense, and the defendant personally knew this was his second DUI offense, but the information did not specify whether he was being charged as a repeat DUI offender, the Government is not necessarily obligated to put him on notice of its intention to charge him as a repeat offender subject to a harsher statutory penalty. *CNMI v. Hiroichi*, 2 CR 1080.

CTC 1987. An information need not allege a prior DUI conviction to call into play the provision of an enhanced statutory penalty, so long as before sentencing defendant is aware that he is subject to the enhanced penalty. 9 CMC §7109(b). *CNMI v. Hiroichi*, 2 CR 1080.

—Multiplicious Charges

CTC 1989. Where it appeared that the elements of each of three counts were different and that each count would require certain proof of facts that the other counts do not require, and that if all three counts are combined into one count, it might obscure the specific charges and prevent the jury from deciding guilt or innocence on each offense separately and may lead to uncertainty as to whether the defendant's conviction is based on a unanimous jury decision, the three separate counts in the information did not constitute a multiplicious charge. *CNMI v. Lee*, 3 CR 639.

Intent

It is well understood that subjecting a person to criminal liability generally requires both an actus reus, an unlawful act, and a mens rea, a culpable mental state. The Commonwealth statutory definition of robbery describes an actus reus, but does not state the necessary mens rea. The issue of the requisite mens rea to commit robbery is one of first impression for the Commonwealth Supreme Court. Given that few areas of criminal law pose more difficulty than the proper definition of the mens rea

required for any particular crime, this matter warrants particularly in-depth examination. *Commonwealth v. Cepeda*, 2009 MP 15 ¶ 31 (2009).

Crimes are generally divided by mental state into three categories: strict liability offenses, crimes requiring general intent, and crimes requiring specific intent. *Commonwealth v. Cepeda*, 2009 MP 15 ¶ 31 (2009).

A commonly understood meaning of specific intent, which the Supreme Court adopts, is a special mental element which is required above and beyond any mental state required with respect to the actus reus of the crime. In the context of robbery, this is the specific intent to permanently deprive a person of his or her property. *Commonwealth v. Cepeda*, 2009 MP 15 ¶ 33 (2009).

General intent is defined as, in criminal law, the intent to do that which the law prohibits. It is not necessary for the prosecution to prove that the defendant intended the precise harm or the precise result which eventuated. *Commonwealth v. Cepeda*, 2009 MP 15 ¶ 33 (2009).

Specific intent crimes are those which require not merely the carrying out of some unlawful behavior, but the intent to accomplish the precise criminal act that one is later charged with. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 66

General intent is broadly (and somewhat circularly) defined as the state of mind required for certain crimes not requiring specific intent or imposing strict liability. While specific intent concerns willful and knowing engagement in criminal behavior, general intent concerns willful and knowing acts. Thus, a defendant may not specifically intend to act unlawfully, but he did intend to commit the act. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 66

When a criminal statute is silent as to intent, the default is general intent. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 67

Juveniles

See also **MINORS - Juvenile Delinquency Proceedings**

DC App. Div. 1987. To try a juvenile as an adult is not a judgment of guilt or imposition of a penalty; the prosecution must still prove guilt beyond a reasonable doubt. *CNMI v. Cabrera*, 2 CR 1092.

DC App. Div. 1987. Treatment as a juvenile is not an inherent right, it is a right created by the legislature and may be restricted in any way not arbitrary or discriminatory. *CNMI v. Cabrera*, 2 CR 1092.

DC App. Div. 1987. The protection provided juveniles in criminal proceedings under NMI Constitutional provision centers on shielding them from the harsh glare of publicity, helping them to avoid the life-long stigma of a criminal record, minimizing their contact with adult criminals, and rehabilitation. NMI Const., Art.1, §4. *CNMI v. Cabrera*, 2 CR 1092.

DC App. Div. 1987. Statute required juveniles over the age of 16 to be treated as adults where accused of certain crimes was constitutional. 6 CMC §5103(a). *CNMI v. Cabrera*, 2 CR 1092.

DC App. Div. 1987. Court is not required under statute to hold a hearing before treating juvenile over the age of 16 as an adult where they are accused of certain crimes. 6 CMC §5103(a). *CNMI v. Cabrera*, 2 CR 1092.

DC App. Div. 1987. There is no requirement that a juvenile defendant be apprised, in addition to Miranda rights, that statements made while in the juvenile system may be used against him or her in an adult proceeding. *CNMI v. Cabrera*, 2 CR 1092.

DC App. Div. 1987. During the pre-judicial stages, there is no constitutional or statutory requirement under the laws of the Commonwealth of the Northern Mariana Islands that a parent be present, be separately advised of the child's constitutional rights, or participate in the waiver of those rights. *CNMI v. Cabrera*, 2 CR 1092.

DC App. Div. 1987. Where the defendant and his father were both present when the officer first informed the defendant of his rights, and the officer testified that the father appeared to understand the rights given his son, and the father took no steps to stop the questioning, defendant was not denied his right to be informed of his constitutional rights. *CNMI v. Cabrera*, 2 CR 1092.

CTC 1986. The juvenile court has no jurisdiction over a case where the alleged offense occurred while the offender was under the age of 18, but where juvenile charges were filed after the offender reached the age of 18. 6 CMC §§5101 et sec. *In Re Matter Suda*, 3 CR 15.

Kidnapping

—Jurisdiction

The N.M.I. Supreme Court has jurisdiction, pursuant to 1 CMC § 3102(a), over the appeal of a criminal conviction by jury trial. 1 CMC § 3102(a). *Commonwealth v. Reyes*, 2001 MP 14 ¶ 1

—Particular Cases

NMI Supreme Court had jurisdiction, pursuant to Article IV, § 3 of the Commonwealth Constitution, over appeal from a post-trial judgment and commitment order sentencing defendant to life imprisonment for the crime of kidnaping, pursuant to 6 CMC § 1421(c)(2). N.M.I. Const. art. IV, § 3 (1997). *Commonwealth v. Taisacan*, 1999 MP 8 ¶17

—Sentencing

Since 6 CMC § 1421(c) is not ambiguous and clearly provides the trial court judge with the discretion to impose an appropriate sentence by using the discretionary word "may," trial court erred in concluding that it was powerless to impose any other sentence. 6 CMC § 1421(c). *Commonwealth v. Taisacan*, 1999 MP 8 ¶23

Lesser Included Offense

—Assault

See **Assault**, this topic.

—Generally

An offense is a lesser included offense if its elements are a subset of the charged offense. This determination is accomplished by a textual comparison of the pertinent statutes. *Commonwealth v. Crisostomo*, 2007 MP 7 ¶ 17

An offense is a lesser included offense if its elements are a subset of the charged offense. This determination is accomplished by a textual comparison of the pertinent statutes. *Commonwealth v. Manila*, 2005 MP 17 ¶ 40

The elements of child abuse are not a subset of second degree murder. The *actus reus* and the *mens rea* of child abuse differ from that of second degree murder. Therefore, child abuse is not a lesser included offense of second degree murder. *Commonwealth v. Manila*, 2005 MP 17 ¶ 41

An offense is a lesser included offense if its elements are a subset of the charged offense. This determination is accomplished by a textual comparison of the pertinent statutes. *Commonwealth v. Taisacan*, 2005 MP 9 ¶ 35

The elements of assault are not a subset of the elements of disturbing the peace. Nor are the elements of assault and battery a subset of the elements of disturbing the peace. Therefore, neither assault nor assault and battery are lesser included offenses of the offense of disturbing the peace. 6 CMC § 1201; 6 CMC § 1202; 6 CMC § 3101. *Commonwealth v. Taisacan*, 2005 MP 9 ¶ 38

Where offenses have totally different aggrieved parties, e.g. assault and assault and battery which aggrieve an individual and disturbing the peace which aggrieves the public, the former cannot be lesser included offenses of the later. *Commonwealth v. Taisacan*, 2005 MP 9 ¶ 41

The proper inquiry to determine whether an offense is a lesser-included offense of another offense is if its elements are a subset of the charged offense. It does not matter the gravity of the penalty of each offense, and thus is possible that a more serious offense could be a lesser included offense of a less serious offense. *Commonwealth v. Taisacan*, 2005 MP 9 ¶ 42

An offense is a lesser included offense if its elements are a subset of the charged offense. *Commonwealth v. Repeki*, 2004 MP 19 ¶ 11

A conviction will not be reversed due to minor and technical deficiencies which do not prejudice the accused. Accordingly, where a defendant is put on notice before trial that he was subject to conviction of a lesser included offense not specifically set forth in the information, and defendant does not request an opportunity to present evidence regarding such offense, his conviction on that lesser included offense will be upheld. *Commonwealth v. Martinez*, 2000 MP 5 ¶ 15

One offense is necessarily included in another if it is impossible to commit the greater without also having committed the lesser. *Commonwealth v. Mitchell*, 1997 MP 4 ¶9

An offense is a lesser included offense of a charged offense if its elements are a subset of the charged offense. This determination is accomplished by a textual comparison of the pertinent statutes. *Commonwealth v. Kaipat*, 4 N.M.I. 300 (1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996).

—Jury Instructions

Each count on a criminal information notifies a defendant not only that he is to be tried for the offense explicitly charged, but also that the jury may be instructed as to lesser included offenses. *Commonwealth v. Repeki,* 2004 MP 19 ¶ 10

Whether trial court has abused its discretion in not submitting a requested instruction to jury regarding a lesser included offense within a charged offense depends on (1) whether offense requested in instruction is, in fact, a lesser included offense of charged offense and, if so, (2) whether defendant has demonstrated that a rational jury could find defendant guilty of lesser included offense but not greater offense. To prove latter point, requested instruction must, viewed in context of entire trial, have some foundation in evidence. *Commonwealth v. Kaipat*, 4 N.M.I. 300 (1995), aff'd, 91 F.3d 151 (9th Cir. 1996).

—Particular Cases

In prosecution for assault with a dangerous weapon, trial court did not abuse its discretion in refusing to submit defendant's requested instruction to jury regarding lesser offenses of assault and assault and battery. Defendant's argument that a rational jury could find him guilty of assault and not assault with a dangerous weapon was inconsistent with evidence that defendant had attacked victim with an axe. *Commonwealth v. Kaipat*, 4 N.M.I. 300 (1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996).

Misconduct in Public Office

—Generally

See also **PUBLIC OFFICERS AND EMPLOYEES - Misconduct in Office**

Illegal acts may be committed "under the color of office" in violation of 6 CMC § 3202, Misconduct in Public Office, where: the illegal acts occurred while the accused and the victim were on official travel; the accused obtained a hotel room for the victim separate from her colleagues; and the accused was the boss of the victim and remained so during the course of the illegal acts, among other things. 6 CMC § 3202. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 52

—Jurisdiction

Pursuant to Article IV, Section 3 of the Constitution of the Northern Mariana Islands and pursuant to 1 CMC § 3102(a), the N.M.I. Supreme Court has jurisdiction over the appeal of a bench trial resulting in a criminal conviction for misconduct in public office and assault and battery. N.M.I. Const. art. IV, § 3, 1 CMC § 3102(a). *Commonwealth v. Seman*, 2001 MP 20 ¶ 1

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, and pursuant to 1 CMC § 3103, the N.M.I. Supreme Court has jurisdiction over the appeal of a trial court order finding defendant guilty of criminal offenses of assault and battery, disturbing the peace, and misconduct in public office, and over the trial court's sentencing order. N.M.I. Const. art. IV, § 3, 1 CMC § 3103. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 1

Motor Vehicle Traffic Offenses

The owner of a motor vehicle must obtain the registration card while the driver of the vehicle bears the burden of ensuring that the registration card is in the vehicle. *Commonwealth v. Yao*, 2007 MP 12 ¶ 17

—Generally

Common law crimes generally require intent or guilty knowledge, even if the statute at issue is silent, however, traffic safety statutes are statutory crimes or regulatory offenses, as opposed to common law crimes. *Commonwealth v. Abuy*, 2001 MP 8 ¶ 12

Public welfare offenses, like traffic offenses, do not necessarily require proof of any mental element. *Commonwealth v. Abuy*, 2001 MP 8 ¶ 12

The words "unless and until the movement can be made with reasonable safety," contained in 9 CMC § 5503, provide the required mental state, similar to the civil standard of negligence. A violation of section 5503 is predicated upon a reasonableness standard. 9 CMC § 5503. *Commonwealth v. Abuy*, 2001 MP 8 ¶ 14

Where a juvenile, 16 years of age or older, is accused of a traffic offense, murder, or rape, the juvenile court is automatically divested of jurisdiction and the accused juvenile is thereby subject to the original jurisdiction of the adult criminal court. 6 CMC § 5103(a). *Commonwealth v. Camacho*, 2002 MP 6 ¶ 29

—Driving Under Influence of Alcohol or Other Drug

See **Driving Under Influence of Alcohol or Other Drug**, this topic.

—Jurisdiction

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, and pursuant to 1 CMC § 3102(a), the N.M.I. Supreme Court has jurisdiction over an appeal from the Superior Court's decision on the right of a third party to restitution from a defendant convicted of a Title 9 traffic offense. N.M.I. Const. art. IV, § 3, 1 CMC § 3102(a). *Commonwealth v. Saburo*, 2002 MP 3 ¶ 1

—Particular Cases

NMI Supreme Court had jurisdiction, pursuant to general jurisdictional statute, over appeal from trial court order denying motor vehicle traffic offender's motion to reconsider fine. 1 CMC § 3102. *Commonwealth v. Kaipat*, 4 N.M.I. 292 (1995), *aff'd*, 94 F.3d 574 (9th Cir. 1996).

—Restitution

The provisions requiring restitution to a third party in criminal cases pursuant to Title 6 are inapplicable to a charge under Title 9 for a traffic offense. *Commonwealth v. Saburo*, 2002 MP 3 ¶ 10

Article I, Section 11 of the Constitution of the Northern Mariana Islands, which provides that restitution to the crime victim shall be a condition of probation and parole, pertains only to the person or entity against whom a crime was committed, the direct target of the criminal activity. N.M.I. Const. art. I, §11. *Commonwealth v. Saburo*, 2002 MP 3 ¶ 15

Unlike Title 6 of the Commonwealth Code, Title 9 has no statutory language mandating restitution. *Commonwealth v. Saburo*, 2002 MP 3 ¶ 18

Article I, Section 11 of the Constitution of the Commonwealth of the Northern Mariana Islands constitutes a broad recognition of victims' rights and conditions probation and parole upon restitution to the direct victim of crime. A more expansive application can exist only at the discretion of the legislature, not through speculative conjecture by the judicial branch. N.M.I. Const. art. I, §11. *Commonwealth v. Saburo*, 2002 MP 3 ¶ 20

Restitution is a criminal sanction, not a civil remedy, thus it cannot establish civil liability for anything beyond the matter it concludes. For this reason, disposing of civil claims cannot be a function of restitution in a criminal case. *Commonwealth v. Saburo*, 2002 MP 3 ¶ 21

Absent any legislative intent to the contrary, only direct victims of traffic offenses are entitled to restitution under Article I, Section 11 of the Constitution of the Commonwealth of the Northern Mariana Islands. This does not preclude third-parties the freedom to seek a remedy by civil tort action. N.M.I. Const. art. I, §11. *Commonwealth v. Saburo*, 2002 MP 3 ¶ 22

As long as the causal nexus between the injury or loss and the criminal activity is not too attenuated, requiring restitution to third-party victims in no way diminishes a defendant's due process rights. *Commonwealth v. Saburo*, 2002 MP 3 ¶ 29

—Vehicular Homicide

See **Vehicular Homicide**, this topic.

Murder

Where a juvenile, 16 years of age or older, is accused of a traffic offense, murder, or rape, the juvenile court is automatically divested of jurisdiction and the accused juvenile is thereby subject to the original jurisdiction of the adult criminal court. 6 CMC § 5103(a). *Commonwealth v. Camacho*, 2002 MP 6 ¶ 29

Juvenile court certification is not required in a criminal case involving an offender, who is between sixteen and eighteen years of age and is charged with the crime of murder. A juvenile court is automatically divested of jurisdiction under such circumstances, thereby subjecting the offender to the trial court's original jurisdiction. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 40

—Jurisdiction

The N.M.I. Supreme Court has jurisdiction, pursuant to 1 CMC § 3102(a), over the appeal of a criminal conviction by jury trial. 1 CMC § 3102(a). *Commonwealth v. Reyes*, 2001 MP 14 ¶ 1

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, and pursuant to 1 CMC § 3102(a), the N.M.I. Supreme Court has jurisdiction over an appeal of the trial court's judgment of conviction of first degree murder and the sentence imposed. N.M.I.

Const. art. IV, § 3, 1 CMC § 3102(a). *Commonwealth v. Camacho*, 2002 MP 6 ¶ 1

Necessity, Defense of

—Generally

A defendant establishes the affirmative defense of necessity where he or she shows, by a preponderance of the evidence, that: (1) the act charged was done to prevent a significant evil; (2) there was no adequate alternative; and (3) the harm caused was not disproportionate to the harm avoided. In the NMI, necessity is not a statutory defense, but may be invoked as a defense available at common law. *Commonwealth v. Delos Reyes*, 4 N.M.I. 340 (1996).

Obstruction of Justice

—Jurisdiction

——Particular Cases

NMI Supreme Court had jurisdiction under 1 CMC § 3102(a) over appeal from conviction for obstructing justice in violation of 6 CMC § 3302. *Commonwealth v. Kaipat*, 1996 MP 20 ¶1

Offenses Against the Commonwealth

—Generally

In the common law, bribery has been defined as: the voluntary giving or receiving of anything of value in corrupt payment for an official act done or to be done. The C.N.M.I. bribery statute, 6 CMC § 3201, clearly mirrors this common law definition. 6 CMC § 3201. *Commonwealth v. Jong Hun Lee*, 2005 MP 19 ¶ 13

The C.N.M.I. bribery statute, 6 CMC § 3201, does not provide a definition for the key term: corrupt. As such, it is instructive to turn to common law definitions of bribery and specifically of the term corrupt as an aid to interpreting our statute. 6 CMC § 3201. *Commonwealth v. Jong Hun Lee*, 2005 MP 19 ¶ 13

The actual meaning of the word corrupt at common law is elusive, but generally, conduct is corrupt if it's an improper way for a public official to benefit from his job. *Commonwealth v. Jong Hun Lee*, 2005 MP 19 ¶ 14

The term corrupt refers to a wrongful desire for pecuniary gain or other advantage. Black's Law Dictionary 348 (7th ed. 1999). *Commonwealth v. Jong Hun Lee*, 2005 MP 19 ¶ 14

A plain reading of the C.N.M.I. bribery statute, 6 CMC § 3201, suggests that giving or receiving are each separate crimes. Accordingly, it is proper for the trial court to examine an accused's intent or mens rea in providing money separately from a government official's intent or mens rea in receiving it, to determine whether the accused is guilty of bribery. *Commonwealth v. Jong Hun Lee*, 2005 MP 19 ¶ 16

The essential elements of bribery, under 6 CMC § 3201, are: whether the accused knew that the person they gave something to was a public officer, whether the accused unlawfully and voluntarily gave something of value to the public officer, whether the accused's intent or *mens rea* in doing so was wrongful and corrupt, and whether the accused did so to obtain an official act by the public officer. *Commonwealth v. Jong Hun Lee*, 2005 MP 19 ¶ 17

In order to make a finding of bribery, it is not necessary to have proof of an explicit promise to perform certain acts. The court can make an inference regarding the purpose of a payment by an examination of the relevant facts surrounding the circumstances. *Commonwealth v. Jong Hun Lee*, 2005 MP 19 ¶ 18

While the word influence is not part of the C.N.M.I. bribery statute, 6 CMC § 3201, the idea of influence is inherent in the common law definition of bribery which encompasses pecuniary gain or other advantage. *Commonwealth v. Jong Hun Lee*, 2005 MP 19 ¶ 19

Penal Statutes

In every criminal trial, the prosecution must prove beyond a reasonable doubt that a crime was committed. *Commonwealth v. Li*, 2007 MP 21 ¶ 6

—Constitutional Questions

A penal statute is unconstitutional and violates due process guarantees if its terms are vague. Statutes must give a person of ordinary intelligence a reasonable opportunity to know what conduct is prohibited so that he or she may choose between lawful and unlawful conduct. *Commonwealth v. Minto*, 2011 MP 14 ¶ 29 (2011).

The lower court's use of PSS regulations in a criminal law analysis gives the appearance of a heightened legal standard for teachers, which

presents an equal protection problem. *Commonwealth v. Perez,* 2006 MP 24 ¶ 21

It is improper to use a defendant's status as a teacher to make it easier to convict him of a crime. *Commonwealth v. Perez,* 2006 MP 24 ¶ 23

Due process of law requires that a penal statute state with reasonable clarity the act it proscribes and provide fixed standards for adjudging guilt, otherwise it is void for vagueness. *Commonwealth v. Mundo*, 2004 MP 13 ¶ 16

Penal statutes must give a person of ordinary intelligence a reasonable opportunity to know what conduct prohibited so that he or she may choose between lawful and unlawful conduct. *Commonwealth v. Mundo,* 2004 MP 13 ¶ 16

A due process objection based on vagueness depends on whether or not the individual had adequate notice, and may be overcome where a reasonable person would know that their conduct is at risk of being unlawful. *Commonwealth v. Mundo,* 2004 MP 13 ¶ 17

A reasonable person of ordinary intelligence would know that intoxicated harassment of others constitutes disturbing the peace in violation of 6 CMC § 3101(a). *Commonwealth v. Mundo,* 2004 MP 13 ¶ 20

For a statutory penalty scheme to constitute an unconstitutional deprivation of a defendant's due process right to a fair trial, it must offend some principle of justice so rooted in the tradition and conscience of the people as to be ranked as fundamental. U.S. Const. amend. XIV. *Commonwealth v. Kaipat*, 4 N.M.I. 292 (1995), *aff'd*, 94 F.3d 574 (9th Cir. 1996).

Rule that court has no jurisdiction to pronounce any statute constitutionally void except as it is called upon to adjudge the legal rights of litigants in actual controversies is subject to exception that may be granted to a person who is criminally prosecuted under a statute which is so overbroad that it impairs right to freedom of expression guaranteed under First Amendment to the U.S. Constitution. *Commonwealth v. Oden,* 3 N.M.I. 186 (1992), *aff'd*, 19 F.3d 26 (9th Cir. 1994).

Due process of law requires that a penal statute or ordinance state with reasonable clarity the act it proscribes and provide fixed standards for adjudging guilt, or it is void for vagueness. Penal statutes must give a person of ordinary intelligence reasonable opportunity to know what conduct is prohibited so that he or she may choose between lawful and unlawful conduct. *N.M.I. Const. art. I, § 5. Commonwealth* v. Bergonia, 3 N.M.I. 22 (1992).

A clear and precise enactment may nevertheless be "overbroad" if in its reach it prohibits constitutionally protected conduct. In an overbreadth challenge, a party must necessarily demonstrate that constitutionally protected conduct has been prohibited; absent such showing, the challenge fails. N.M.I. Const. art. I, § 5. *Commonwealth v. Bergonia*, 3 N.M.I. 22 (1992).

—Due Process

See **Penal Statutes - Constitutional Questions**, this topic.

—Interpretation and Construction

Under the common law rule of lenity, courts must strictly construe penal statutes in order to avoid a violation of the due process rights of the accused. Thus, in criminal cases where two reasonable interpretations of a penal statute exist, one inculpating and the other exculpating a defendant, a court must employ the less harsh reading. *Commonwealth v. Manglona*, 1997 MP 28 ¶4

In considering a criminal statute which is ambiguous, a reviewing court must construe the statute strictly against the government. *Commonwealth v. Manglona*, 1997 MP 28 ¶5

—Particular Cases

Under Commonwealth law, deadly force is not allowed against an unarmed person. *Commonwealth v. Taitano*, 2005 MP 20 ¶ 11

The killing of another person in self-defense is justifiable homicide if an individual honestly and reasonably believes that his life is in imminent danger or that there is a threat of serious bodily harm. An act, however, committed in self-defense, but with excessive force, or in which the defendant was the initial aggressor, does not meet the elements of lawful self-defense. *Commonwealth v. Taitano,* 2005 MP 20 ¶ 13

The crime of disturbing the peace requires willful conduct. 6 CMC § 3101 *Commonwealth v. Taisacan,* 2005 MP 9 ¶ 40

Specific intent involves the willful and knowing engagement in criminal behavior while the general intent concerns the willful and knowing acts. *Commonwealth v. Palacios*, 2004 MP 23 ¶ 12

When a statute is silent on the issue of intent, default to a general intent analysis is required. *Commonwealth v. Palacios*, 2004 MP 23 ¶ 13

Extortion occurs where a there is a threat that the speaker will say or do something unpleasant unless one takes or refrains from taking certain actions. *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22 ¶26

6 CMC § 1311, prohibiting sexual contact with any child under the age of six years who is not the spouse of the perpetrator, requires proof of specific intent of contact "for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purposes." Given this requirement, the statute is not unconstitutionally vague; it gives adequate notice of the prohibited conduct. N.M.I. Const. art. I, § 5. *Commonwealth v. Bergonia*, 3 N.M.I. 22 (1992).

Although defendant, in appeal of conviction, did not raise issue concerning ambiguity of 6 CMC § 3302, prohibiting unlawful tampering with witnesses, NMI Supreme Court would sua sponte determine whether statute provided sufficient notice of unlawful conduct, necessary under due process standards. 6 CMC § 3302. *Commonwealth v. Kaipat*, 2 N.M.I. 322 (1991).

Despite codification error in 6 CMC § 3302, prohibiting unlawful tampering with witnesses, language was unambiguous and gave sufficient notice of prohibited conduct. *Commonwealth v. Kaipat*, 2 N.M.I. 322 (1991).

See **STATUTES - Interpretation and Construction - Penal Statutes**

Plain Error

DC App. Div. 1987. Plain error is highly prejudicial error effecting substantial rights. *CNMI v. Magofna*, 3 CR 181, aff'd, 855 F.2d 860 (9th Cir. 1988).

Possession

—Constructive

DC App. Div. 1989. Constructive possession exists where the defendant exercises, or has the power to exercise, dominion and control over an item. *CNMI v. Delos Santos*, 3 CR 661.

DC App. Div. 1989. Constructive possession may be established by a showing of dominion and control over the premises on which the contraband was concealed. *CNMI v. Delos Santos*, 3 CR 661.

—Possession Knowledge

DC App. Div. 1989. A reasonable trier of fact could conclude that when an unemployed relative places $10,000 worth of goods in a persons's home, some of which are clearly identified as belonging to someone other than the relative, that that person knows that the goods are stolen. *CNMI v. Tenorio*, 3 CR 679.

Prisoner

DC App. Div. 1989. A prisoner is defined as a person deprived of his liberty and kept under involuntary restraint, confinement or custody. 6 CMC §3202. *CNMI v. Delos Santos*, 3 CR 661.

Prostitution

—Civil Penalties

The mandatory fee imposed under 6 CMC § 1346(e), for conviction of prostitution-related offenses, is a civil penalty. 6 CMC § 1346(e). *Commonwealth v. Yi Xiou Zhen*, 2004 MP 4 ¶ 16

The C.N.M.I. Legislature intended to impose a civil penalty by the mandatory fee outlined in 6 CMC § 1346(e)(2). 6 CMC § 1346(e)(2). *Commonwealth v. Yi Xiou Zhen*, 2004 MP 4 ¶ 20

A mere assertion that the penalty imposed under 6 CMC § 1346(e)(2), for conviction of prostitution-related offenses, is a fine, is insufficient proof that the statutory scheme is so punitive either in purpose or effect as to negate the legislative intention to impose a civil penalty. 6 CMC § 1346(e)(2). *Commonwealth v. Yi Xiou Zhen*, 2004 MP 4 ¶ 24

A defendant, charged with promoting prostitution in the second degree, in violation of 6 CMC § 1344(a) and 6 CMC § 1344(d)(2) is charged with a felony punishable by less than five years imprisonment and by less than a $2,000 fine, and therefore is not entitled to a jury trial under 7 CMC § 3101(a). This is so, although the defendant is subject to a fine of up to $1,000 under 6 CMC § 1346(c) and a "mandatory fee" of $2,000 under 6 CMC § 1346(e)(2), because the "mandatory fee" is a civil rather than a criminal

penalty. 6 CMC § 1344(a), 6 CMC § 1344(d)(2), 7 CMC § 3101(a), 6 CMC § 1346(c). *Commonwealth v. Yi Xiou Zhen*, 2004 MP 4 ¶ 26

—Jurisdiction

The N.M.I. Supreme Court has jurisdiction, pursuant to Article IV, § 3 of the Commonwealth Constitution and pursuant to 1 CMC § 3108(a), over the appeal of conviction and sentence for Promoting Prostitution in the Second Degree in violation of 6 CMC § 1344(a) and 6 CMC § 1344(d)(2). N.M.I. Const., art. IV, § 3, 1 CMC § 3108(a), 6 CMC § 1344. *Commonwealth v. Yi Xiou Zhen*, 2004 MP 4 ¶ 1

Public Welfare Offenses

Public welfare offenses, like traffic offenses, do not necessarily require proof of any mental element. *Commonwealth v. Abuy*, 2001 MP 8 ¶ 12

Rape

—Generally

Where a juvenile, 16 years of age or older, is accused of a traffic offense, murder, or rape, the juvenile court is automatically divested of jurisdiction and the accused juvenile is thereby subject to the original jurisdiction of the adult criminal court. 6 CMC § 5103(a). *Commonwealth v. Camacho*, 2002 MP 6 ¶ 29

Within statute providing criminal penalty for person who causes penetration of genital or anal opening of another person by foreign object against the other person's will, "any foreign object, substance, instrument, or device" does not include the perpetrator's finger. 6 CMC § 1309(a). *Commonwealth v. Nethon*, 1 N.M.I. 458 (1990).

Reckless Driving

To convict under 9 CMC § 7104(a), the Commonwealth must prove, beyond a reasonable doubt, every element of the offense including that Wu drove in a willful or wanton disregard for the safety of persons or property. *Commonwealth v. Wu*, 2007 MP 29 ¶ 7 (2007).

Willful or wanton disregard for the safety of persons or property means conscious and intentional driving which the driver knows, or should know, creates an unreasonable risk of harm to others. The driver does not need to be personally conscious of his wrongdoing, it is sufficient that the driver ought to realize it. To sustain a conviction for reckless driving it is only necessary to establish that the defendant drove the vehicle in willful or wanton disregard for the safety of others, under circumstances that show a realization of the imminence of danger and a reckless disregard or complete indifference for the probable consequence of such conduct. *Commonwealth v. Wu*, 2007 MP 29 ¶ 8 (2007).

Willful conduct implies an act done intentionally, designedly, knowingly, or purposely, without justifiable excuse. *Commonwealth v. Yao*, 2007 MP 12 ¶ 9

A wanton act is an act done in reckless disregard of the rights of others which evinces a reckless indifference of the consequences to the life, limb, health, reputation, or property of others. Similarly, when the operator of a vehicle, with full knowledge of the surrounding circumstances, recklessly and inexcusably disregards the rights of other motorists, his conduct may be characterized as wanton. *Commonwealth v. Yao*, 2007 MP 12 ¶ 9

Willful or wanton disregard for the safety of persons or property means conscious and intentional driving which the driver knows, or should know, creates an unreasonable risk of harm to others. By this is not meant that the driver must be personally conscious of his wrongdoing; it is sufficient that he ought to realize the fact. Thus, to obtain a conviction for reckless driving it is only necessary to establish that the vehicle was driven in willful or wanton disregard for the safety of others; in other words, under circumstances that show a realization of the imminence of danger and a reckless disregard or complete indifference for the probable consequences of such conduct. *Commonwealth v. Yao*, 2007 MP 12 ¶ 10

In determining whether a defendant is guilty of reckless driving, it is clearly appropriate to consider all of the facts and circumstances concerning a defendant's conduct, including the manner and degree of other violations of the law. *Commonwealth v. Yao*, 2007 MP 12 ¶ 12

Although drinking by itself might be insufficient evidence to prove reckless driving, it is certainly a factor to be considered. *Commonwealth v. Yao*, 2007 MP 12 ¶ 13

Speed alone is sufficient evidence for a fact finder to infer that defendant drove in a manner evincing a willful or wanton disregard for the safety of persons

or property. *Commonwealth v. Yao*, 2007 MP 12 ¶ 14

An automobile is a dangerous instrument, thus traffic laws are necessary for the safety of the public and must be strictly enforced. We need not wait for a serious injury to occur before finding a defendant's driving willful and wanton. *Commonwealth v. Yao*, 2007 MP 12 ¶ 15

—Jurisdiction

—Particular Cases

A reckless driving conviction cannot be sustained without identifying a particular person as the operator. *Commonwealth v. Li*, 2007 MP 21 ¶ 6

A conviction cannot stand when the only evidence of identity is the detective's assumption that the person seated next to the public defender in the courtroom must be the same person he cited two-and-a-half-years earlier. *Commonwealth v. Li*, 2007 MP 21 ¶ 7

NMI Supreme Court had jurisdiction, pursuant to general jurisdictional statute, over appeal from vehicular homicide and reckless driving convictions. 1 CMC § 3102(a). *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

Representation Of Counsel

CTC 1987. The failure to comply with requirements of the court rule allowing representation by a legal intern constitutes a prima facie showing of lack of counsel and, therefore, is a denial of the defendant's constitutional right to counsel. C.Tr.C.R. Legal Intern 3. *CNMI v. Hiriochi*, 3 CR 24.

Robbery

The offense of robbery is committed if a person "takes property from the person of another, or from the immediate control of another, by use or threatened use of immediate force or violence." 6 CMC § 1411. *Commonwealth v. Pua*, 2009 MP 21 ¶ 25 (2009).

—Sentencing

——Particular Cases

While the Commonwealth robbery statute lacks an express mens rea requirement, the offense of robbery is not necessarily void of such an element. The existence of a mens rea is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence. *Commonwealth v. Cepeda*, 2009 MP 15 ¶ 32 (2009).

Given the absence of legislative history guidance, 7 CMC § 3401 directs the Supreme Court to look to the rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed as generally understood and applied in the United States. Accordingly, we have examined the Model Penal Code and conducted a fifty-state survey to determine how other jurisdictions have determined the requisite mens rea for robbery in their respective jurisdictions. Relying on the Model Penal Code and other jurisdictions as authorities, the Supreme Court concludes that specific intent is required to secure a robbery conviction. *Commonwealth v. Cepeda*, 2009 MP 15 ¶ 34 (2009).

Although not technically a Restatement, the Model Penal Code ("MPC") is prepared by the American Law Institute and has generally been treated as possessing the same authority in criminal law matters as the Restatements have in civil matters. The MPC supports a finding that robbery is a specific intent crime. *Commonwealth v. Cepeda*, 2009 MP 15 ¶ 35 (2009).

The basis for the Commonwealth specific intent definition is grounded in Commonwealth law. Specifically, the Commonwealth Criminal Code expressly states that theft requires intent to permanently deprive the owner of his or her rights to the property or services. 6 CMC § 1601(a). *Commonwealth v. Cepeda*, 2009 MP 15 ¶ 38 (2009).

An element of robbery is the specific intent to permanently deprive a person of his or her property. General intent is insufficient to sustain a guilty verdict. *Commonwealth v. Cepeda*, 2009 MP 15 ¶ 39 (2009).

Where the defendant and Office of the Attorney General entered into a plea agreement under which defendant would plead guilty to robbery (6 CMC § 1411) and was free to argue for alternative to OAG sentence recommendation, Superior Court imposition

of restitution as one of the conditions for suspending part of the imprisonment sentence, which was within the guidelines of 6 CMC § 1411, was pursuant to the terms of the plea agreement and not pursuant to 6 CMC § 4113. *Commonwealth v. Sablan*, 1996 MP 22 ¶7

Self-Defense, Defense of

— Generally

Whether a person has a duty to retreat before acting in self-defense is an issue of first impression in the Commonwealth, as both our statutory law and case law are silent on the issue. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 15 (2008).

The doctrine of self-defense arose to prevent punishment for actions that are necessary under the circumstances and generally allows individuals to use force to protect themselves, or others, from the use of force by a third party. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 16 (2008).

The most universal and long-standing requirements of justified self-defense are the following: (1) the defendant must have a reasonable fear of imminent danger; (2) the defendant may only use force against an unlawful aggressor; (3) the defendant's use of force must be necessary; and (4) the defendant's use of force must be proportional to the aggressor's use of force. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 16 (2008).

Most states have enacted statutes requiring a defendant to have a reasonable fear of imminent danger in order to successfully claim self-defense; certain states have typified this principle by stating that a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person. However, implicit in the principle of reasonable fear of imminent danger is the assumption that those acting in self-defense are engaged in a legal activity in a place where they are legally authorized to be. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 17 (2008).

A commonly-held principle of self-defense dictates that a person may only use force against an unlawful aggressor. Initial aggressors generally may not claim self-defense. Additionally, if undisputed evidence establishes that the defendant was the initial aggressor, a court may properly deny a self-defense instruction. Initial aggressors do not have a self-defense claim unless they abandon the attack and give the initial victim reasonable notice of their intention to withdraw from the conflict. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 18 (2008).

Self-defense requires the use of force to be necessary. One common formulation of the necessity requirement gives a person the right to act when such force is necessary to defend himself. Thus, a person acting in self-defense is not permitted to use force when such force would be equally effective at a later time and the person would suffer no harm or risk by waiting. As such, once a victim reasonably believes an original attack has ceased, the victim's use of force must also cease. Additionally, persons acting in self-defense are not permitted to use more force than is necessary to defend themselves. In evaluating the necessity of a defendant's force, physical characteristics, such as special skills and attributes or special handicaps, are typically considered. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 19 (2008).

Self-defense also requires proportionality. Once a reasonable justification for the use of force is established, a person may use a degree of force which he reasonably believes to be necessary for such purpose. Thus, the amount of force exerted in self-defense must be proportional to the force being threatened. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 20 (2008).

The terms necessity and reasonableness vary according to the jurisdiction but are often shaped by a jurisdiction's stance on the duty to retreat. In general terms, duty to retreat laws impose an obligation to retreat before exercising physical force in self-defense, so long as retreating would not impose a reasonable risk of harm. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 21 (2008).

Nearly all jurisdictions allow defendants to use non-deadly force without imposing a duty to retreat. In fact, it seems everywhere agreed that one who can safely retreat need not do so before using non-deadly force. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 22 (2008).

With regard to the duty to retreat before using deadly force, under the English common law, before defendants could claim that their use of deadly force was justified, they had to show (1) they retreated "to the wall," and (2) they were threatened with death or serious bodily injury. Twenty jurisdictions in the United States similarly impose a retreat requirement before a defendant may justifiably use deadly force in

self-defense, along with the Model Penal Code, which also requires defendants to prove that they could not have safely retreated before using deadly force against an aggressor. Model Penal Code § 3.04(2)(b)(ii) (1985). *Commonwealth v. Demapan*, 2008 MP 16 ¶ 23 (2008).

The duty to retreat is generally required only where non-aggressors can attempt escape without increasing their own risk of harm. This subjective standard focuses on what a person knew at the time of the attack, rather than whether a person, with the benefit of hindsight, could have retreated with complete safety. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 24 (2008).

The duty to retreat is rarely, if ever, required when a person is threatened with a firearm. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 24 (2008).

The majority of jurisdictions in the United States follow the "castle doctrine" exception, which allows a person in his or her own home to use deadly force in self-defense without first retreating, even if a reasonably safe means of escape exists. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 24 (2008).

In light of the Supreme Court's review of the law of self-defense within other United States jurisdictions, the Court adopts the majority view that defendants are not required to retreat before using reasonable deadly or non-deadly force to defend against unlawful aggressors. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 29 (2008).

In the Commonwealth, in order to justifiably claim self-defense in exercising physical force, the following factors must be satisfied: (1) the defendant must have a reasonable fear of imminent danger; (2) the defendant may only use force against an unlawful aggressor; (3) the defendant's use of force must be necessary; and (4) the defendant's use of force must be proportional to the aggressor's use of force. In so holding, the Court brings Commonwealth law into conformity with the United States Supreme Court's decision in *Brown v. United States*. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 29 (2008).

Commonwealth residents have no duty to retreat before using reasonable force in defending against unlawful aggressors. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 30 (2008).

The law is well-settled that there is no duty to retreat when a person is assaulted in a place where he or she has a right to be. An instruction should be given to this effect when sufficient evidence is presented to support it. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 32 (2008).

Sentencing

—Enhanced Penalties

Read in their entirety, the plain language of 6 CMC 2142(a) through (d), means that a defendant who has been convicted under subsection 2142(a) shall be sentenced under subsection 2142(b). However, if the defendant's conviction is for possession of methamphetamine, cocaine, or heroine, then in addition to the penalties imposed under subsection (b), the court may also impose the applicable penalties under subsection (d). Should the judge choose to impose the additional applicable penalties under 6 CMC § 2142(d), he or she is to do so in addition to a fine of $2,000.00 and the sentence shall not be subject to suspension, parole or probation. *Commonwealth v. Lin*, 2010 MP 2 ¶ 7 (2010).

Under 6 CMC § 2142(b), the $2,000.00 fine is compulsory, as is the imprisonment component, however minimal it may be. Subsection (b) also mandates that any term of imprisonment imposed not be subject to suspension, parole or probation. *Commonwealth v. Lin*, 2010 MP 2 ¶ 12 (2010).

An individual found guilty of possession of a controlled substance in violation of 6 CMC § 2142(a) is not subject to a greater punishment than an individual found guilty of trafficking a controlled substance in violation of 6 CMC § 2141(a). *Commonwealth v. Lin*, 2010 MP 2 ¶ 19 (2010).

CTC 1987. Under the Commonwealth's statutory scheme, once a defendant is convicted of a DUI offense, the court is obligated to apply the enhanced statutory penalty. 9 CMC §7109(b). *CNMI v. Hiroichi*, 2 CR 1080.

—Pre-sentence Report

DC App. Div. 1987. Although it is now considered the better practice to order that a report be prepared before sentencing, and the court should state for the record its reasons for foregoing a presentence report when the court does not order a presentence investigation and report, the defendant has the burden of showing an abuse of discretion by the court or actual prejudice to defendant from the lack of the investigation report. Com.Tr.C.R.Crim.P. 32(c)(l). *CNMI v. Ahn*, 3 CR 35.

DC App. Div. 1987. Court did not abuse its discretion in refusing to order a presentence report where the court had previously heard evidence regarding defendant's criminal record, the circumstances surrounding the event, defendant's behavior, the impact on the victims, and evidence regarding defendant's character. *CNMI v. Ahn*, 3 CR 35

—Reduction

CTC 1986. A one month period from filing to a hearing, where the hearing is two weeks after the expiration of the 120-day period, is within the parameters of "a reasonable time" as set forth in Rule setting time limit for motion to reduce sentence. Com.R.Crim. Pro. 35. *CNMI v. Aquino*, 2 CR 899.

CTC 1986. Rule governing motions to reduce a sentence is essentially a plea for leniency and, as such, the trial court has almost unlimited discretion. Com.R.Crim.Pro. 35. *CNMI v. Aquino*, 2 CR 899.

CTC 1986. Increased hardship since sentencing is a factor a court can consider for a reduction of sentence. Com.R.Crim.Pro. 35. *CNMI v. Aquino*, 2 CR 899.

CTC 1986. A defendant's asserted exemplary conduct while he is incarcerated is to be commended but is hardly sufficient evidence of rehabilitation and true remorse justifying a reduction in sentencing. Com.R.Crim. Proc. 35. *CNMI v. Aquino*, 2 CR 899.

CTC 1986. Where work release program allowed the defendant to enjoy much less hardship than his family expected at the time of sentencing, that defendant had not made a showing sufficient to justify a reduction in sentence. Com.R.Crim.Proc. 35. *CNMI v. Aquino*, 2 CR 899.

Sexual Abuse of Child

—Constitutional Questions

6 CMC § 1311, prohibiting sexual contact with any child under the age of six years who is not the spouse of the perpetrator, requires proof of specific intent of contact "for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purposes." Given this requirement, the statute is not unconstitutionally vague; it gives adequate notice of the prohibited conduct. N.M.I. Const. art. I, § 5. *Commonwealth v. Bergonia*, 3 N.M.I. 22 (1992).

—Evidence

Proof of the requisite specific intent for sexual abuse of a child may be shown by direct or circumstantial evidence. 6 CMC § 1311. *Commonwealth v. Bergonia*, 3 N.M.I. 22 (1992).

—Generally

In prosecution for sexual abuse of child in violation of 6 CMC § 1311(a), government or special prosecutor must prove beyond a reasonable doubt, as an element of the crime, that the child is not the spouse of the perpetrator. *Commonwealth v. Oden*, 3 N.M.I. 186 (1992), *aff'd*, 19 F.3d 26 (9th Cir. 1994).

—Particular Cases

In prosecution for sexual abuse of child in violation of 6 CMC § 1311(a), record indicated that reasonable trier of fact could reasonably infer from evidence (despite absence of direct proof) that eleven-year-old victim was not defendant's spouse (an element of the crime). *Commonwealth v. Oden*, 3 N.M.I. 186 (1992), aff'd, 19 F.3d 26 (9th Cir. 1994).

—Sentencing

The Commonwealth Code provides that sexual abuse of a minor in the first degree is punishable by imprisonment for not more than 30 years, a fine of not more than $50,000, or both, and the mandatory sentencing provisions of 6 CMC § 4102. 6 CMC § 1306(b). *Commonwealth v. Camacho*, 2009 MP 1 ¶ 39 (2009).

——Particular Cases

Sentence imposed by trial court in prosecution for sexual abuse of child in violation of 6 CMC § 1311(a), punishable by up to five years imprisonment and/or a $2,000 fine, was not illegal. Five-year probation period imposed by trial court was within the maximum permissible sentence. 6 CMC § 1311(c). *Commonwealth v. Oden*, 3 N.M.I. 186 (1992), *aff'd*, 19 F.3d 26 (9th Cir. 1994).

Sexual Offenses (Misc.)

Conviction under the 6 CMC § 1202(a) for assault and battery by sexual contact requires: sexual contact with another person; without that person's consent; for the purpose of arousing or gratifying the sexual desire of either party. *Commonwealth v. Palacios*, 2004 MP 23 ¶ 15

Establishing the issue of a defendant's intent under the element of sexual contact in an assault and battery charge is a question of fact, and the trier of fact may infer intent from a defendant's behavior. *Commonwealth v. Palacios*, 2004 MP 23 ¶ 15
It is within the discretion of the trier of fact to find a defendant's behavior was done for the purpose of arousing or gratifying his sexual desire. *Commonwealth v. Palacios*, 2004 MP 23 ¶ 16

The specific intent requirement for sexual contact to constitute an assault and battery is intended to distinguish an innocent, inadvertent or accidental touching of another's sexual or other intimate part from one done with conscious thought and motive, thus distinguishing sexual imposition from ordinary assault and from non-criminal touching. *Commonwealth v. Palacios*, 2004 MP 23 ¶ 17

The Court will weigh the totality of the evidence and motivation for sexual contact in determining whether the touching constitutes sexual contact. The evidence must prove that defendant's conduct was sexually motivated and intended to be the source of sexual arousal or gratification for victim or defendant. *Commonwealth v. Palacios*, 2004 MP 23 ¶ 18

An overly narrow reading of the term sexual contact in 6 CMC 1202(a) would place many examples of inappropriate sexual touching under simple assault and battery. The term assault and battery by unlawful sexual contact, although charged and prosecuted under the identical section of the assault and battery statute, serves as an added stigma and potent deterrent to such unacceptable contact. *Commonwealth v. Palacios*, 2004 MP 23 ¶ 18

Sexual arousal and gratification are quite amorphous and defy a narrow definition. A showing of arousal or gratification may be found from less obvious evidentiary displays or from the type, nature, and circumstances surrounding the act itself. *Commonwealth v. Palacios*, 2004 MP 23 ¶ 20

Individuals do not routinely go around touching the vaginas of the hostesses that greet them at dining establishments. Where a defendant deliberately touched an intimate and sexual part of a dining room hostess' body, and where the record supports a finding that the touching resulted in obvious embarrassment, humiliation and degradation to the victim, this displayed an unmistakable sexual motive for gratification, no matter how brief the contact or how unpleasant the contact may have been for the victim. *Commonwealth v. Palacios*, 2004 MP 23 ¶ 21

Sexual contact pursuant to 6 CMC § 1202(a) encompasses all intentional, non-consensual sexual touching, including touching that is done to embarrass, degrade, humiliate or harass a person. When such purposeful conduct intentionally targets the sexual spheres of a person's body, it cannot be said that sexual gratification does not motivate the conduct. *Commonwealth v. Palacios*, 2004 MP 23 ¶ 22

—Abuse of Child

See **Sexual Abuse of Child**, this topic.

—Rape

See **Rape**, this topic.

—Sentencing

——Particular Cases

Trial court erred in sentencing criminal oral copulation offender to three years imprisonment followed by five years probation. Sentence exceeded maximum punishment term of five years (including probation) for offense. 6 CMC § 1307(b). *Commonwealth v. Oden*, 3 N.M.I. 186 (1992), *aff'd*, 19 F.3d 26 (9th Cir. 1994).

Because trial court erred in sentencing criminal oral copulation offender to three years imprisonment followed by five years probation, exceeding maximum punishment term of five years imprisonment (including probation) for offense, 6 CMC § 1307(b), appellate court had no recourse but to set aside sentence and remand for resentencing. *Commonwealth v. Oden*, 3 N.M.I. 186 (1992), *aff'd*, 19 F.3d 26 (9th Cir. 1994).

Solicitation

— Generally

The solicitation statute has two elements. First, the person must have intent to promote or facilitate the commission of an offense. The intent element is equivalent to the intent required for conspiracy. The second element contains two independent clauses. A person commits solicitation if that person commands, encourages, or requests another person to engage in the acts or cause the result. Alternatively, a person commits solicitation if that person engages in conduct which would establish complicity in the specified

conduct or result. *Commonwealth v. Minto*, 2011 MP 14 ¶ 47 (2011).

Sufficiency Of The Evidence

A short declarative statement, without a single supporting reference, is insufficient to convince the court that the defendant's argument has merit. *Commonwealth v. Hossain*, 2010 MP 21 ¶ 25 (2010).

The United States Supreme Court has stated that if the evidence given at trial was sufficient to sustain the introduction of the proffered evidence, it is immaterial that there was an inadequacy of evidence when application was made for its return. A conviction on adequate and admissible evidence should not be set aside on such a ground. *Commonwealth v. Pua*, 2009 MP 21 ¶ 13 (2009).

Sufficiency-of-the-evidence review involves assessment by the courts of whether the evidence adduced at trial could support any rational determination of guilty beyond a reasonable doubt. This review should be independent of the jury's determination that evidence on another count was insufficient. *Commonwealth v. Pua*, 2009 MP 21 ¶ 30 (2009).

A conviction for felony murder can be sustained by sufficient evidence of either a perpetration or an attempted perpetration of one of the enumerated felonies. 6 CMC § 1101. *Commonwealth v. Pua*, 2009 MP 21 ¶ 37 (2009).

The Commonwealth felony murder statute does not mandate a conviction of a predicate felony. An accused does not have to be convicted of an underlying felony in order for the jury to find him guilty of felony murder, so long as the evidence was sufficient to support such a finding. In other words, while the Commonwealth must prove beyond a reasonable doubt all the elements of the underlying felony, a conviction of the underlying felony is not necessary. *Commonwealth v. Pua*, 2009 MP 21 ¶ 38 (2009).

Testimonial inconsistencies do not undermine the sufficiency of the evidence. While there may be inconsistencies in the evidence, those inconsistencies affect the witness' credibility rather than the legal sufficiency of the evidence. Challenges to the credibility of a witness are not challenges to the sufficiency of the evidence. Issues of witness credibility are left to the trier of fact. *Commonwealth v. Zhang*, 2009 MP 6 ¶ 14 (2009).

DC App. Div. 1989. Sufficiency of evidence review involves an assessment of whether the evidence adduced at trial could support any rational determination of guilt beyond a reasonable doubt. *CNMI v. Delos Santos*, 3 CR 661.

Theft

—Evidence

——Particular Cases

In prosecution for theft of hotel towel, evidence failed to show that towel was in fact owned by purported owner, laundry establishment indicated on towel tag, where: (1) evidence that towel was not with defendant's other poolside possessions was not probative of issue of ownership; (2) record was devoid of testimony from laundry that towel belonged to laundry at time of defendant's arrest; (3) evidence indicated that laundry sold towels, still bearing laundry tag, to public after towels were deemed "used"; (4) prosecution witnesses based their belief that laundry owned towel on towel tag and towel's appearance; and (5) prosecution witnesses acknowledged that towel in defendant's possession resembled used towel purchased from laundry. 6 CMC § 1601(a). *Commonwealth v. Yan*, 4 N.M.I. 334 (1996).

—Jurisdiction

——Particular Cases

NMI Supreme Court had jurisdiction, pursuant to Article IV, § 2 of the Commonwealth Constitution, over appeal from verdict and judgment of conviction for burglary and theft, sentencing order, denial of proposed jury instructions, and denial of oral motion for judgment of acquittal. N.M.I. Const., art. IV, § 2 (as amended by Legislative Initiative 10-3, ratified by the voters on November 1, 1997, and certified by the Board of Elections on December 13, 1997). *Commonwealth v. Santos*, 1998 MP 6 ¶1

Where jury found witness's testimony credible that he observed defendant and other party outside home of victim, that other party was carrying small appliances out of victim's house and defendant was walking back and forth to the car with other party and drove the car away with other party as a passenger, and that witness had a clear and unobstructed view of defendant during this entire scenario and was able to provide an in-court identification of defendant, and where there was also testimony that defendant

showed a walkman, that was later identified by the victim as her property, to several individuals a few days after the burglary, there was sufficient evidence for a jury to find defendant guilty of theft and burglary. *Commonwealth v. Santos*, 1998 MP 6 ¶15

NMI Supreme Court had jurisdiction, pursuant to general jurisdictional statute, over appeal from prosecution for theft. 1 CMC § 3102(a). *Commonwealth v. Yan*, 4 N.M.I. 334 (1996).

Vehicular Homicide

—Evidence

——Particular Cases

Trial court did not err in ruling that evidence of manner of defendant's driving one to one-and-one-half miles from collision scene was relevant in prosecution for vehicular homicide. 9 CMC § 7110. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

In criminal prosecution for vehicular homicide, trial court did not abuse its discretion in denying defendant's motion to exclude evidence of manner of defendant's driving one to one-and-one-half miles from collision based on finding that relevance and probative value of evidence outweighed its prejudicial effect. 9 CMC § 7110. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

Trial court did not err in denying vehicular homicide defendant's post-trial motion for acquittal, based on contention that government failed to present evidence that defendant was driving recklessly and that such recklessness caused bicyclist's death, where government offered evidence that defendant's speed on impact with bicyclist was at least forty-nine miles per hour in area with posted speed limit of thirty-five miles per hour and defendant nearly collided with another vehicle one to one-and-one-half miles from scene of accident. Viewing evidence in light most favorable to government, reasonable fact finder could have concluded beyond a reasonable doubt that defendant committed offense of reckless driving, and that such driving was a proximate cause of bicyclist's death. 9 CMC § 7110; Com. R. Crim. P. 29(a). *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

—Jurisdiction

——Particular Cases

NMI Supreme Court had jurisdiction, pursuant to general jurisdictional statute, over appeal from vehicular homicide and reckless driving convictions. 1 CMC § 3102(a). *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

—Jury Instructions

——Particular Cases

Claimed duplicitous vehicular homicide count in criminal information, based on inclusion of predicate offenses of speeding and reckless driving, did not, combined with trial court's failure to give jury specific unanimity of verdict instruction as to each predicate offense, deny defendant his rights to fair trial and unanimous verdict where: (1) court provided jury with general unanimity instruction augmented with special interrogatories in verdict form separately addressing predicate offenses by ascertaining whether defendant committed predicate offense, and if so whether offense was cause of victim's death, and if so whether defendant was guilty of the vehicular homicide charge; (2) nothing in record indicated that jurors were confused or disagreed about factual basis of defendant's guilt; and (3) instructions were straightforward and easily understood. 6 CMC § 7110; Com. R. Crim. P. 31(a). *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

In prosecution for vehicular homicide, trial court did not commit reversible error by failing to use the term "public highway" in instructions to jury on essential element of offense where (1) court used the term "highway" five times in instructions concerning underlying predicate offenses of reckless driving and speeding, and (2) vehicular homicide statute did not include term "public highway." Instructions as a whole were neither misleading nor inadequate. 9 CMC § 7110. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

Warrants

—Demand To Enter

CTC 1989. Where under the circumstances of this case, the officer found no need to either demand entrance in a loud voice or break down the door because the security guard suggested that he go ahead and enter, there was no grounds to quash search warrant. 6 CMC §6203. *CNMI v. Lee*, 3 CR 643.

—Night

CTC 1989. Night-time endorsement on search warrant is of no significance and not a basis to quash warrant where the search warrant was executed

during the daytime. Com.R.Crim. Pro. 41(h). *CNMI v. Lee*, 3 CR 643.

—Overbroad

CTC 1989. Where an affidavit of probable cause specifically states that the item to be sought is contained in the offices of the company, and the officers did not physically search any part of the office or the factory, even if there is no probable cause to search other places in the factory, by applying the doctrine of severability, the search warrant can be found to be within constitutional limits. *CNMI v. Lee*, 3 CR 643.

Witness Corroboration

DC App. Div. 1981. In absence of legislative enactment, court will not apply witness corroboration rule requiring that some independent fact or circumstance corroborate the testimony of an accomplice. *CNMI v. Buekis*, 1 CR 126.

—Informant Testimony

CTC 1987. The protection of confidential informant may provide occasion for the court to review the informant's sealed affidavit in camera and provide defendants with only a summary of the informant's affidavit, provided that a police officer who was given the information by the informant testifies as to the accuracy and reliability of the informant who provided the information, and further that questioning by the defense does not delve into trying to obtain the identity of the informant or witnesses sought to be protected, either directly or by a line of questioning that would reveal such identity through a process of elimination. *CNMI v. Santos*, 3 CR 132.

Witness Tampering

—Constitutional Questions

Despite codification error in 6 CMC § 3302, prohibiting unlawful tampering with witnesses, language was unambiguous and gave sufficient notice of prohibited conduct. *Commonwealth v. Kaipat*, 2 N.M.I. 322 (1991).

——Particular Cases

Although defendant, in appeal of conviction, did not raise issue concerning ambiguity of 6 CMC § 3302, prohibiting unlawful tampering with witnesses, NMI Supreme Court would sua sponte determine whether statute provided sufficient notice of unlawful conduct, necessary under due process standards. 6 CMC § 3302. *Commonwealth v. Kaipat*, 2 N.M.I. 322 (1991).

—Generally

Because of absence of definition of "witness" in 6 CMC § 3302, prohibiting unlawful tampering with witnesses, NMI Supreme Court would apply the common meaning of term: in general, one who, being present, personally sees or perceives a thing. A witness is also a person called to testify before a court. *Commonwealth v. Kaipat*, 2 N.M.I. 322 (1991).

—Particular Cases

Although defendant did not raise question of whether victim of assault was "witness" within meaning of 6 CMC § 3302, prohibiting unlawful tampering with witnesses in appeal of conviction, NMI Supreme Court would sua sponte determine whether victim was a witness within the meaning of statute. *Commonwealth v. Kaipat*, 2 N.M.I. 322 (1991).

Victim of assault, who had first-hand knowledge of incident and was called to testify, was a witness within the meaning of 6 CMC § 3302, prohibiting unlawful tampering with witnesses. *Commonwealth v. Kaipat*, 2 N.M.I. 322 (1991).

CRIMINAL PROCEDURE

Appeal by Government

—Generally

Any right of the government to appeal in criminal cases must be narrowly construed. *Commonwealth v. Pua*, 2006 MP 19 ¶ 10

A criminal statute providing the government with a limited right to appeal is to be strictly construed. *Commonwealth v. Crisostimo*, 2005 MP 18 ¶ 13

Because a dismissal without prejudice based on a finding of no probable cause is not a final judgment, it does not fit within the meaning of section 8101(b) of Title 6 of the Commonwealth Code, which allows appellate jurisdiction over a decision, judgment or order of the Superior Court dismissing an information. 6 CMC § 8101(b) *Commonwealth v. Crisostimo*, 2005 MP 18 ¶ 13

A dismissal with prejudice operates as an adjudication upon the merits, unless it is for either

lack of jurisdiction, improper venue, or for failure to join a party, and thus has the finality required to support appellate jurisdiction. *Commonwealth v. Crisostimo*, 2005 MP 18 ¶ 13

A writ of prohibition was not warranted where the Commonwealth could appeal the trial court's determination regarding the inclusion of the attorney general's name in the criminal information, and thus did not involve special circumstances where a direct appeal would be ineffective in obtaining relief such that the Court must take the extraordinary step of issuing a writ. *Commonwealth v. Superior Court (Ada)*, 2004 MP 14 ¶ 9

A criminal statute providing the government with a limited right to appeal is to be strictly construed. *Commonwealth v. Arriola*, 2002 MP 8 ¶ 9

A criminal statue providing the government with a limited right to appeal is to be strictly construed. *Commonwealth v. Sibetang*, 2002 MP 9 ¶ 12

When a trial court's orders relating to the Patient's Rights Act, 3 CMC §§ 2551-2564, and the Involuntary Commitment Act of 1993, 6 CMC §§ 6601-6612 arise in the context of a criminal prosecution, the government has no right to appeal those orders. *Commonwealth v. Sibetang*, 2002 MP 9 ¶ 14

A criminal statute providing the government with a limited right to appeal is to be strictly construed. 6 CMC § 8101(a). *Commonwealth v. Nethon*, 1 N.M.I. 458 (1990).

—Jurisdiction

A court lacks jurisdiction to decide an appeal if the notice of appeal is not timely filed because the timely filing of notice of appeal is mandatory and jurisdictional. *Commonwealth v. Arriola*, 2002 MP 8 ¶ 11

—Particular Cases

NMI Supreme Court had jurisdiction, pursuant to 1 CMC § 3102(a), over appeal by the government of Superior Court decision granting motion to dismiss under Com. R. Civ. Pro. 12(b)(2). *Commonwealth v. Manglona*, 1997 MP 28 ¶1

NMI Supreme Court had jurisdiction, pursuant 1 CMC § 3102, over appeal by government of order dismissing prosecution for driving under the influence of alcohol or other drug. 9 CMC § 7105. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), aff'd, 42 F.3d 546 (9th Cir. 1994).

Bail

In section 6402(b) of Title 6 of the Commonwealth Code, the term "after conviction" must, by necessity when read in tandem with the Commonwealth Rules of Criminal Procedure 46(c), include the period between the time a guilty verdict has been announced and the time the defendant is sentenced. 6 CMC § 6402(a); Com. R. Crim. P. 46(c). *Commonwealth v. Camacho*, 2002 MP 14 ¶ 21

The trial court has the constitutional authority to set bail at all stages of a criminal proceeding. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 22

Together, Rule 46(c) of the Commonwealth Rules of Criminal Procedure and 6 CMC § 6402(b) provide the trial court with the authority to reconsider its prior bail decisions, taking into account a guilty verdict, in situations where, for whatever reason, a verdict has been returned but a sentence has not yet been announced. 6 CMC § 6402(a); Com. R. Crim. P. 46(c). *Commonwealth v. Camacho*, 2002 MP 14 ¶ 22

In making a decision regarding bail, the court is to exercise its own discretion tempered with its knowledge of the Commonwealth Rules of Criminal Procedure and the Commonwealth Criminal Code. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 22

CTC 1987. A statement to the effect that defendant wanted to kill someone whom he believed to be responsible for his incarceration which: (1) was made in public; (2) appeared not to have been made in anger, but in a laughing manner; and (3) was made to someone at the police front desk who had come to file an accident report, did not constitute an actual threat to the life of a government informant or others for the purpose of modifying bail order. *CNMI v. Santos*, 3 CR 132.

CTC 1987. The basis for revocation of bail or the imposition of a high cash bail, must rest on allegations which appear to be reasonably objective, rather than mere suspicion. *CNMI v. Santos*, 3 CR 132.

CTC 1987. Trial courts have the inherent power to revoke or modify the bail set for a defendant to ensure an orderly trial process, as for example where there is intimidation or threats to witnesses by a defendant directly or indirectly through others. *CNMI v. Santos*, 3 CR 132.

CTC 1987. Dangerousness is a factor that the court has to consider in setting or revoking bail, but such factor must be real, not speculative. *CNMI v. Santos*, 3 CR 132.

—Co-Defendants

——Particular Cases

The immediate constitutional obligation of the State and its representatives upon discovery of a letter in a defendant's cell, which indicated the strong possibility that the witnesses in the case agreed to testify falsely against a co-defendant in order to extract the writer of the letter from the center of blame, was to collect potentially exculpatory evidence, to prevent fraud upon the court, and to elicit the truth by promptly investigating the letter and interrogating the State's witnesses about the letter. *Commonwealth v. Reyes*, 2001 MP 14 ¶ 8

Competency Hearing

—Generally

A trial court must order a hearing sua sponte whenever it doubts a defendant's competency to stand trial based on the evaluation of all available pertinent evidence. The pertinent standard is whether the evidence as a whole raises a bona fide doubt as to the defendant's competence to stand trial. *Commonwealth v. Camacho*, 2002 MP 22 ¶ 9

A bona fide doubt as to a defendant's competence to stand trial exists when there is substantial evidence that the defendant lacks sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding. *Commonwealth v. Camacho*, 2002 MP 22 ¶ 10

—Jurisdiction

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, and pursuant to 1 CMC § 3102(a), the N.M.I. Supreme Court has jurisdiction over the appeal of a trial court's decision not to order a competency hearing prior to conviction and the appeal of the trial court's denial of a motion to disqualify the trial court judge. N.M.I. Const. art. IV, § 3, 1 CMC § 3102(a). *Commonwealth v. Camacho*, 2002 MP 22 ¶ 1

Confessions, Voluntariness of

—Burden of Proof

For a confession to the police to be admissible, the government has the burden of establishing, based on the totality of the circumstances, that the defendant intelligently, knowingly, and voluntarily waived his or her procedural due process rights. *Commonwealth v. Shoiter*, 2007 MP 20 ¶ 8

In assessing voluntariness of confession in criminal prosecution, government has burden of establishing, based on totality of circumstances, that defendant intelligently, knowingly, and voluntarily waived his or her procedural due process rights. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

—Evidence

Evidence of coercive police activity rendering confession involuntary includes physical threats of harm, deprivation of sleep or food, lengthy questioning, and psychological persuasion. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

—Generally

A defendant has a constitutional right to a reliable and clear-cut determination of the voluntariness of the confession. Voluntariness hearings are designed to safeguard the right of an individual, entirely apart from his guilt or innocence, not to be compelled to condemn himself by his own utterances. Voluntariness hearings ensure that both the underlying factual issues and the voluntariness of the defendant's confession are fairly determined. If the trial judge finds the confession involuntary, it may be suppressed. *Commonwealth v. Mettao*, 2008 MP 7 ¶ 10 (2008).

It is unnecessary for a trial judge in a non-jury trial to conduct a separate hearing on voluntariness. We presume that a trial judge, sitting as fact finder, can put aside the irrelevant considerations of a confession's truthfulness when considering the confession's voluntariness. *Commonwealth v. Mettao*, 2008 MP 7 ¶ 13 (2008).

Due process requirements exist to prevent fundamental unfairness in the use of evidence. The Fifth Amendment of the United States Constitution ensures that defendants are protected against self-incrimination and the inherently coercive effects of custodial interrogations. A defendant in a criminal case is deprived of due process when a conviction is founded, in whole or in part, upon an involuntary confession. A motion to suppress evidence is used to remove involuntary confessions from consideration,

as well as other evidence in a criminal trial that is secured coercively or in an otherwise illegal manner. *Commonwealth v. Mettao*, 2008 MP 7 ¶ 16 (2008).

Statements stemming from a custodial interrogation are inadmissible unless the defendant is first apprised of his or her constitutional right to silence and assistance of counsel. Defendants are in "custody" when they are formally arrested or otherwise deprived of their freedom of action in any significant way. Additionally, "interrogation" under *Miranda* refers not only to express questioning, but also any words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response from the suspect. *Commonwealth v. Mettao*, 2008 MP 7 ¶ 17 (2008).

The Commonwealth has the burden of establishing that a defendant intelligently, knowingly, and voluntarily waived his or her procedural due process rights. Where Miranda safeguards apply, the prosecution may not introduce evidence procured without the protection afforded by both proper warnings and a valid waiver of those warnings. In assessing whether a defendant validly waived his or her Miranda rights, we examine the totality of the circumstances. Relevant circumstances include "the characteristics of the defendant and the details of questioning by the government. Additionally, we examine whether a defendant endured physical threats of harm, deprivation of sleep or food, lengthy questioning, and psychological persuasion. We also examine whether the police knew that the respondent was unusually disoriented or upset at the time of the arrest. Absent coercive police activity, a confession will not be considered involuntary. *Commonwealth v. Mettao*, 2008 MP 7 ¶ 19 (2008).

The United States Supreme does not require that police officers specifically ask defendants whether they understand their constitutional rights. However, a valid waiver will not be presumed simply from the silence of the accused after warnings are given or simply from the fact that a confession was in fact eventually obtained. *Commonwealth v. Mettao*, 2008 MP 7 ¶ 20 (2008).

Whether a criminal defendant's confession was voluntary is a mixed question of fact and law. Mixed questions of fact and law are reviewed *de novo*. *Commonwealth v. Shoiter*, 2007 MP 20 ¶ 6

Whether due process requires a voluntariness hearing for confessions to private individuals is thus reviewed *de novo*. *Commonwealth v. Shoiter*, 2007 MP 20 ¶ 6

When there is an assertion that the defendant has been subjected to coercive state action, a voluntariness hearing must be conducted. *Commonwealth v. Shoiter*, 2007 MP 20 ¶ 7

Evidence of coercive police activity rendering a confession involuntary includes physical threats of harm, deprivation of sleep or food, lengthy questioning, and psychological persuasion. Absent coercive police activity, a confession will not be deemed involuntary. *Commonwealth v. Shoiter*, 2007 MP 20 ¶ 8

Where there is no state action, the confession is not subject to a constitutional due process analysis. The United States Supreme Court, however, left the states to determine the reliability of confessions not involving coercive police activity. *Commonwealth v. Shoiter*, 2007 MP 20 ¶ 8

Whether the coercive conduct of a private individual is sufficient to render a confession involuntary is a matter of first impression in the Commonwealth. *Commonwealth v. Shoiter*, 2007 MP 20 ¶ 8

The CNMI Constitution generally does not protect defendants against involuntary confessions in the absence of state action. However, we recognize there might be instances when due process requires that an involuntary confession a private party obtains should be excluded. *Commonwealth v. Shoiter*, 2007 MP 20 ¶ 14

The purpose of excluding evidence seized in violation of the Constitution is to substantially deter future violations of the Constitution. *Commonwealth v. Shoiter*, 2007 MP 20 ¶ 15

For a confession to be admissible, government must establish that criminal defendant voluntarily waived his or her constitutional procedural due process rights. *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

Absent coercion on the part of the police, a confession will not be deemed involuntary. *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

Whether a criminal defendant's confession was voluntary is a mixed question of fact and law. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

In absence of coercive police activity, a confession will not be deemed involuntary. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

—Particular Cases

Circumstances under which criminal defendant was interrogated did not, in their totality, reveal police coercion or that defendant was unable to comprehend, or rationally respond to, spoken and written warnings, information and questions posed by police where: (1) although defendant was upset and thinking about his family when rights were read to him, he was not rendered incapable of knowingly waiving his rights; (2) although rights form was in English and defendant spoke Chamorro as primary language, defendant understood English, interrogating officer spoke both English and Chamorro, and parts of rights form were translated into Chamorro for defendant; (3) although defendant was not offered food or drink during the interrogation, he did not request them, nor did officers deny him food or drink as coercive measure, and interrogation was not prolonged; and (4) defendant's claim that he was promised release and freedom from prosecution if he cooperated was adequately refuted by government witnesses. Trial court did not err in admitting confession into evidence. *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

—Requirement of Corroboration

The corpus delicti rule provides that an accused's confession or admission must be corroborated by independent evidence in order to serve as the basis for a conviction. The corroboration requirement is two-pronged: the government must introduce sufficient evidence to establish that the criminal conduct at the core of the offense has occurred, and the government must introduce independent evidence tending to establish the trustworthiness of the admissions, unless the confession is, by virtue of special circumstances, inherently reliable. *Commonwealth v. Caja*, 2001 MP 6 ¶ 26

—Waiver of Due Process Rights

See **Due Process Rights, Advisement of - Waiver**, this topic.

Confrontation, Right of

—Generally

Because NMI Constitution's confrontation clause (N.M.I. Const. art. I, § 4(b)) is patterned after U.S. Constitution's Confrontation Clause in Sixth Amendment, NMI Supreme Court would resort to U.S. Supreme Court's interpretation of federal provision in interpreting NMI provision. *Commonwealth v. Condino*, 3 N.M.I. 501 (1993), aff'd, 33 F.3d 58 (9th Cir. 1994), cert. denied, 514 U.S. 1021, 115 S. Ct. 1368, 131 L. Ed. 2d 224 (1995).

A criminal defendant must be allowed to be present at each stage of his trial. This right derives from Com. R. Crim. P. 43 and the Confrontation and Due Process Clauses of the U.S. Constitution (Sixth and Fourteenth Amendments). *Commonwealth v. Esteves*, 3 N.M.I. 447 (1993).

—Hearsay Evidence

A hearsay statement is an out-of-court statement offered in evidence to prove the truth of the matter asserted. *Commonwealth v. Taitano*, 2005 MP 20 ¶ 16

The Confrontation Clause allows for a challenge of the admission of a hearsay statement that lacks adequate indicia of reliability and is made by an out-of-court declarant, and a statement does not bear adequate indicia of reliability if it does not fall within a firmly rooted hearsay exception or have some other particularized guarantee of trustworthiness. *Commonwealth v. Taitano*, 2005 MP 20 ¶ 16

A police report containing a witness' prior statements is not hearsay under Commonwealth Rule of Evidence 803(6), however, statements contained in the report may be hearsay. Com. R. of Evid. 803(6). *Commonwealth v. Taitano*, 2005 MP 20 ¶ 23

An officer's testimony, based on a report of a witness' prior statements, comes under numerous exemptions to the hearsay rule. Com. R. Evid. 803(1); 803(2); and 803(3). *Commonwealth v. Taitano*, 2005 MP 20 ¶ 23

Prior statements by a witness offered for the purpose of rehabilitation are not hearsay. Com. R. Evid. 801(d)(1)(B). *Commonwealth v. Taitano*, 2005 MP 20 ¶ 23

The Confrontation Clause bars hearsay testimony in criminal cases, absent adequate indicia of reliability. N.M.I. Const. art. I, § 4(b) and U.S. Const. amend. VI. *Commonwealth v. O'Connor*, 2000 MP 11 ¶ 17

The Confrontation Clause does not always require a showing of unavailability. *Commonwealth v. O'Connor*, 2000 MP 11 ¶ 18

The Confrontation Clause bars hearsay testimony in criminal cases, absent adequate indicia of reliability. N.M.I. Const. art. I, § 4(b) and U.S. Const. amend. VI. *Commonwealth v. O'Connor*, 2000 MP 11 ¶ 17

The Confrontation Clause does not always require a showing of unavailability. *Commonwealth v. O'Connor*, 2000 MP 11 ¶ 18

Once a witness is shown to be unavailable, his or her statement may be admitted into evidence only if it bears adequate indicia of reliability. Reliability can be inferred, without more, in a case where the hearsay statement falls within a firmly-rooted hearsay exception. If it does not fall within a firmly-rooted hearsay exception, then the evidence must show particularized guarantees of trustworthiness to satisfy confrontation clause. N.M.I. Const. art. I, § 4(b). *Commonwealth v. Condino*, 3 N.M.I. 501 (1993), *aff'd*, 33 F.3d 58 (9th Cir. 1994), cert. denied, 514 U.S. 1021, 115 S. Ct. 1368, 131 L. Ed. 2d 224 (1995).

Out-of-court statements made by children regarding sexual abuse arise in wide variety of circumstances. Confrontation clause, N.M.I. Const. art. I, § 4(b), does not impose a fixed set of procedural prerequisites for admission of such statements when child is unable to testify in court. Instead, particularized guarantees of trustworthiness must be shown from the totality of the circumstances—i.e., circumstances surrounding the making of the statement that renders the declarant particularly worthy of belief. *Commonwealth v. Condino*, 3 N.M.I. 501 (1993), *aff'd*, 33 F.3d 58 (9th Cir. 1994), cert. denied, 514 U.S. 1021, 115 S. Ct. 1368, 131 L. Ed. 2d 224 (1995).

A number of factors relate to whether hearsay statements made by a child witness in child sexual abuse cases are reliable and therefore admissible: child's spontaneity and consistency in giving statement, child's mental state, use of terminology unexpected of child of similar age, and lack of motive to fabricate. However, these factors are not exclusive and courts have considerable leeway in considering other appropriate factors. N.M.I. Const. art. I, § 4(b). *Commonwealth v. Condino*, 3 N.M.I. 501 (1993), *aff'd*, 33 F.3d 58 (9th Cir. 1994), cert. denied, 514 U.S. 1021, 115 S. Ct. 1368, 131 L. Ed. 2d 224 (1995).

To be admissible under confrontation clause, hearsay evidence used to convict a defendant must possess indicia of reliability by virtue of its inherent trustworthiness, not by reference to other evidence at trial. Corroborating evidence which is not part of the totality of the circumstances may not be considered in determining reliability. *Commonwealth v. Condino*, 3 N.M.I. 501 (1993), *aff'd*, 33 F.3d 58 (9th Cir. 1994), cert. denied, 514 U.S. 1021, 115 S. Ct. 1368, 131 L. Ed. 2d 224 (1995).

— In Camera Inspection

CNMI law restricts disclosure of school records subject to certain exceptions. School records are exempt from general disclosure pursuant to the CNMI Open Government Act. *Commonwealth v. Hossain*, 2010 MP 21 ¶ 11 (2010).

While 1 CMC § 9918(a) places limits on public disclosure of school records, it does not prohibit in camera review by a trial court. *Commonwealth v. Hossain*, 2010 MP 21 ¶ 12 (2010).

A defendant seeking in camera review of privileged documents must at least make some plausible showing that the records sought are both material and favorable to his defense. *Commonwealth v. Hossain*, 2010 MP 21 ¶ 13 (2010).

A defendant's right to a fair trial is a fundamental right which must be weighed against the Commonwealth's compelling interest in protecting the privacy of its citizens. The *Ritchie* "plausible materiality" test, which the Supreme Court now adopts, balances these interests and requires a lower evidentiary burden in order to obtain in camera review. *Commonwealth v. Hossain*, 2010 MP 21 ¶ 17 (2010).

—Particular Cases

In prosecution for child sexual abuse, admission of child victim's hearsay statements into evidence did not violate defendant's right, under confrontation clause, to be confronted by adverse witness. Statements had sufficient indicia of reliability for admission into evidence, given particularized guarantees of trustworthiness from totality of circumstances: victim (1) was found alone in parked car with defendant, (2) had red marks on neck and thighs, (3) told police officer that she was sixteen years old (although appearing younger), apparently to cover up wrongdoing, (4) told officer that she and defendant loved each other and planned to marry, and (5) told officer that she and defendant had had sexual intercourse in defendant's bed a week earlier, and that she had received red marks then. Circumstances were such that victim had no reason to lie, statements appeared to be spontaneous, and victim lacked

motive to fabricate statements incriminating person she apparently loved and cared for. N.M.I. Const. art. I, § 4(b). *Commonwealth v. Condino*, 3 N.M.I. 501 (1993), *aff'd*, 33 F.3d 58 (9th Cir. 1994), cert. denied, 514 U.S. 1021, 115 S. Ct. 1368, 131 L. Ed. 2d 224 (1995).

Contempt of Court

See **COURTS - Contempt - Criminal**

Continuance

—Generally

Appellate courts do not apply a mechanical test for deciding when denial of a requested continuance by an accused is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reason presented to the trial judge at the time the request is denied. Other facts and circumstances to be considered include the complexity of the proceeding for which the continuance was requested and the preparation time counsel might reasonably be expected to need. *Commonwealth v. Cristobal*, 4 N.M.I. 345 (1996).

Trial court's wide latitude in determining manner of conducting trials includes the granting of continuances necessary to the furtherance of justice. *Commonwealth v. Delos Reyes*, 4 N.M.I. 340 (1996).

—Particular Cases

Trial court did not abuse its discretion or violate DUI probationer's right to due process by denying probationer's request for continuance of probation revocation hearing where record indicated that probationer's arguments against revocation were not complex and evidence probationer proposed to present concerning his rehabilitation would have been irrelevant to trial court's decision to revoke probation. *Commonwealth v. Cristobal*, 4 N.M.I. 345 (1996).

Corpus Delicti

The corpus delicti, i.e., the body or substance of the offense, is commonly understood to involve two elements: the fact of the injury, and the unlawfulness or criminality of some person's conduct as the cause of the injury. The accused's identity, although necessary for a conviction, is not an element of the corpus delicti. *Commonwealth v. Caja*, 2001 MP 6 ¶ 32

The corpus delicti cannot be proved by an accused's confession or admission alone. *Commonwealth v. Caja*, 2001 MP 6 ¶ 33

It is well settled that the corpus delicti may be proved by circumstantial evidence. *Commonwealth v. Caja*, 2001 MP 6 ¶ 35

Counsel, Effective Assistance of

The Sixth Amendment of the United States Constitution states that in all criminal prosecutions, the accused shall enjoy the right to have the Assistance of Counsel for his defense. U.S. Const. amend. VI. However, assistance of counsel does not have to be perfect or free from error. Rather, "he right to counsel is the right to the effective assistance of counsel. *Commonwealth v. Taivero*, 2009 MP 10 ¶ 8 (2009).

Ineffective assistance of counsel occurs when a trial counsel's performance falls below that of a "reasonably competent attorney." *Commonwealth v. Taivero*, 2009 MP 10 ¶ 8 (2009).

The U.S. Supreme Court determined that the purpose of the Sixth Amendment right to counsel is to ensure a fair trial. Based on this purpose, the Court stated that the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. *Commonwealth v. Taivero*, 2009 MP 10 ¶ 9 (2009).

In determining whether a criminal defendant has been deprived of effective assistance of counsel, the United States Supreme Court set forth a two-pronged test. First, the defendant must show that the counsel's performance was deficient. Second, the defendant must show that the deficient performance prejudiced the defense. Under the first prong, or the performance prong, a defendant must show that the defense counsel's performance fell below an objective standard of reasonableness. In determining whether a defense counsel's advice is reasonable, a court must determine whether it is within the range of competence demanded of attorneys in criminal cases. Furthermore, the reasonableness of counsel's conduct must be assessed according to the facts of the particular case, viewed as of the time of counsel's conduct. Under the second prong, or the prejudice prong, the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding

would have been different. Therefore, the defendant must show with reasonable probability that the attorney's error caused the defendant to lose the case. *Commonwealth v. Taivero*, 2009 MP 10 ¶ 10 (2009).

The United States Supreme Court held that the two-part test applies to challenges arising from the plea process. When a defendant challenges a guilty plea based on ineffective assistance of counsel, the defendant essentially alleges that the plea was involuntary due to counsel's deficient performance and its subsequent effects on the plea. However, to satisfy the prejudice prong, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Thus, the Court found that guilty pleas can be considered involuntary due to ineffective assistance of counsel when counsel's advice falls outside the range of competence demanded of attorneys in criminal cases, and when counsel's constitutionally ineffective performance affects the outcome of the plea process. *Commonwealth v. Taivero*, 2009 MP 10 ¶ 11 (2009).

Trial counsel, like a trial judge, has no duty to inform a criminal defendant of the potential federal immigration consequences of his or her guilty plea because deportation is a collateral consequence. Because deportation is a collateral consequence of a guilty plea, defense counsel has no duty to inform defendants of the collateral consequences of their guilty pleas. Moreover, failure to advise a defendant of a collateral penalty is not objectively unreasonable under the U.S. Supreme Court's performance prong and therefore does not amount to ineffective assistance of counsel. *Commonwealth v. Taivero*, 2009 MP 10 ¶ 14 (2009).

Because trial counsel has no duty to inform a criminal defendant of the collateral consequences associated with his or her plea, a trial counsel's failure to advise a non-citizen criminal defendant of the immigration consequences of his or her plea is not objectively unreasonable under the U.S. Supreme Court's performance prong. Consequently, such a claim does not amount to ineffective assistance of counsel. *Commonwealth v. Taivero*, 2009 MP 10 ¶ 18 (2009).

An affirmative misrepresentation by counsel as to the deportation consequences of a guilty plea is objectionably unreasonable and, therefore, satisfies the first prong of the U.S. Supreme Court test. Thus, if the defendant can also establish that there is a reasonable probability that, but for counsel's errors, he or she would not have pleaded guilty and would have insisted on going to trial, then the guilty plea is invalid. *Commonwealth v. Taivero*, 2009 MP 10 ¶ 20 (2009).

Judicial scrutiny of a defense counsel's performance under the U.S. Supreme Court two-prong test is highly deferential. A fair assessment of trial counsel's performance requires the Supreme Court to eliminate the distorting effects of hindsight. The Court must also indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. In so doing, the Court recognizes that there are countless ways to provide effective assistance in any given case. *Commonwealth v. Taivero*, 2009 MP 10 ¶ 21 (2009).

—Generally

The Sixth Amendment affords defendants the assistance of counsel. The right to counsel is the right to the effective assistance of counsel, and the right to effective assistance of counsel includes the right to expert testimony if the testimony is the gravamen of the defense. *Commonwealth v. Perez,* 2006 MP 24 ¶ 11

Under the due process clause of the Fourteenth Amendment, in a prosecution against an indigent defendant the state must take steps to assure that the defendant has a fair opportunity to present his defense. *Commonwealth v. Perez,* 2006 MP 24 ¶ 12

Due process requires that an indigent defendant be provided with effective assistance of counsel. Effective assistance of counsel includes furnishing the indigent defendant's counsel with all the basic tools of an adequate defense. *Commonwealth v. Perez,* 2006 MP 24 ¶ 12

A state-funded psychiatric expert is a basic tool for a defendant's case. The right to a psychiatric expert has been expanded to private investigators, mitigation experts, and other types of experts. *Commonwealth v. Perez,* 2006 MP 24 ¶ 12

In determining whether to appoint an expert, courts have sought to balance the defendant's rights against those of the taxpayers. *Commonwealth v. Perez,* 2006 MP 24 ¶ 12

The United States Supreme Court has not specifically stated what threshold showing must be made by the indigent defendant with regard to the need for an expert, but the Court refused to require the state to pay for certain experts when the indigent defendant offered little more than undeveloped assertions that

the requested assistance would be beneficial. *Commonwealth v. Perez,* 2006 MP 24 ¶ 13

For the court to grant an indigent defendant the services of an expert at the expense of the state, he must establish a reasonable probability that: (1) an expert would be of assistance to the defense; and (2) the denial of expert assistance would result in a fundamentally unfair trial. *Commonwealth v. Perez,* 2006 MP 24 ¶ 14

The issue of ineffective assistance of counsel at trial ordinarily is raised by collateral attack upon the conviction, and not on direct appeal. The appellate court may, however, review the issue on direct appeal, but only where the record is sufficiently complete to decide the issue. *Commonwealth v. Diaz,* 2003 MP 14 ¶ 9

Criminal defendant claiming ineffective assistance of counsel must show that the representation he or she was afforded fell below an objective standard of reasonableness. In doing so, defendant must allege sufficient facts to enable appellate court to infer that competent counsel would have acted otherwise. Finally, defendant must establish that his or her counsel's lack of competence prejudiced him or her. *Commonwealth v. Cristobal*, 4 N.M.I. 345 (1996).

Party alleging ineffective assistance of counsel in criminal prosecution must (1) point to errors or omission in record which establish that the defendant did not receive adequate representation, and (2) show that there is a reasonable likelihood that counsel's errors or omissions prejudiced the defendant's right to a fair trial. *Commonwealth v. Esteves,* 3 N.M.I. 447 (1993).

Issue of ineffective assistance of counsel at trial is ordinarily raised by collateral attack upon the conviction, not on direct appeal. This is so because usually such a claim cannot be advanced without development of facts outside the original record. Appellate court may, however, review the issue on direct appeal, but only where the record is sufficiently complete to decide the issue. *Commonwealth v. Esteves*, 3 N.M.I. 447 (1993).

—Particular Cases

An affidavit supporting the request for a government-funded expert stating that there were "legal issues as to whether the alleged striking was unlawful in the context of special education instruction and whether the alleged striking was reasonable corporal punishment" generally will not qualify under this court's rule. In this rare instance, however, it does because of the different standards of behavior required of the defendant. *Commonwealth v. Perez,* 2006 MP 24 ¶ 15

Record was insufficient for appellate court to determine whether defendant in prosecution for assault with dangerous weapon and unlawful possession of firearm had been denied effective assistance of counsel at trial. Arguments concerning trial counsel's strategy were mere allegations; they had first to be proven for appellate court to make a proper determination. *Commonwealth v. Esteves*, 3 N.M.I. 447 (1993).

Counsel, Right to Assistance of

—Generally

In order for the statutory right to counsel, provided in 6 CMC § 6105 (a) to come into play, a person seeking to assert the right must have been subject to a temporary detention that meets the specific requirements of 6 CMC § 6103(d). 6 CMC § 6105 (a); 6 CMC § 6103(d). *Commonwealth v. Suda*, 1999 MP 17 ¶ 31

The plain language of 6 CMC § 6105(a) provides that the right to counsel attaches, in the case of temporary detention for examination, only where a person is temporarily detained on suspicion that they have committed or intend to commit a felony. 6 CMC § 6105(a). *Commonwealth v. Suda*, 1999 MP 17 ¶ 32

Section 6105 of Title 6 of the Commonwealth Code indicates that the rights of an arrested person are violated only where such rights are denied prior to interrogation. 6 CMC § 6105. *Commonwealth v. Suda,* 1999 MP 17 ¶ 34

It is unlawful for those having custody of an arrested individual to fail to inform that individual of his or her rights and obligations under the law, before questioning the arrested individual about participation in any crime. 6 CMC 6 CMC § 6105(a)(4). *Commonwealth v. Suda*, 1999 MP 17 ¶ 34

—Effective Assistance

See **Counsel, Effective Assistance of**, this topic.

—Probation Hearings

Indigent prisoners do not have a right, under the U.S. or NMI Constitutions, to appointed counsel for

probation revocation hearings unless the trial court deems such appointment necessary as a matter of fundamental fairness. *Commonwealth v. Cristobal*, 4 N.M.I. 345 (1996).

Cumulative Error

See **Error - Cumulative Error**, this topic.

Defenses

A defense based on defects in the institution of prosecution must be raised as a pretrial matter and the failure to raise an objection before trial results in a waiver of that objection. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 27

Detainee's Rights

—Jurisdiction

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, and pursuant to 1 CMC § 3102(a), the N.M.I. Supreme Court has jurisdiction over the appeal of the trial court ruling that individuals detained as criminal suspects are entitled to the protections of the Patient's Rights Act, 3 CMC §§ 2551-2564, and the ruling that mandated the government provide detainees with adequate treatment in a facility which complies with the requirements of the Patient's Rights Act and the Involuntary Commitment Act of 1993, 6 CMC §§ 6601-6612. N.M.I. Const. art IV, § 3; 1 CMC § 3102(a). *Commonwealth v. Sibetang*, 2002 MP 9 ¶ 2

Discovery

— Bill of Particulars

A bill of particulars is a "formal, detailed statement of the claims or charges brought by a plaintiff or prosecutor. It is a written demand for the specifics of why an action at law was brought against a defendant. *Commonwealth v. Castro*, 2008 MP 18 ¶ 11 (2008).

Rule 7(f) of the Commonwealth Rules of Criminal Procedure allows the trial court to direct the prosecution to file a bill of particulars to supplement an Information. *Commonwealth v. Castro*, 2008 MP 18 ¶ 11 (2008).

The purpose of a bill of particulars is to inform the defendant of the nature of the charges brought against him, to adequately prepare his defense, to avoid surprise during the trial and to protect him against the second prosecution for an inadequately described offense. A bill of particulars is only necessary when an Information is deficient or otherwise insufficient. Thus, the sufficiency of the Information is not a question of whether it could have been more definite and certain, but whether it contains the elements of the offense intended to be charged. *Commonwealth v. Castro*, 2008 MP 18 ¶ 12 (2008).

Generality, vagueness, or indefiniteness in an Information may entitle a defendant to a bill of particulars clarifying the charges. When an Information provides a defendant with sufficient details to defend himself or herself, or to avoid a second prosecution for the same offense, a trial court is justified in denying a motion for a bill of particulars. *Commonwealth v. Castro*, 2008 MP 18 ¶ 13 (2008).

The proper test in deciding whether a bill of particulars should be required of the government is whether the bill of particulars is necessary for the defense, not whether it would aid the defendant in his preparation. *Commonwealth v. Castro*, 2008 MP 18 ¶ 13 (2008).

— Generally

Commonwealth law clearly establishes that after a defendant makes a discovery request regarding the breathalyzer test, he is entitled to full information regarding the test. For example, a defendant is entitled to information such as who administered the test, the qualifications of the officer administering it, maintenance logbook, etc. In failing to provide requested information, the Commonwealth hinders a defendant's ability to question the credibility of the breathalyzer test result. Furthermore, the Commonwealth's failure to provide requested information calls into question the prosecuting attorney's forthrightness and professional competency. *Commonwealth v. Mettao*, 2008 MP 7 ¶ 36 (2008).

—Prosecution's Duty to Disclose Evidence

In criminal case, government must disclose evidence favorable to an accused which is material either to guilt or to punishment. *Commonwealth v. Adlaon*, 4 N.M.I. 171 (1994).

A criminal defendant is entitled to discover documents which are material to the preparation of his or her defense. Com. R. Crim. P. 16(a)(1)(C). *Commonwealth v. Adlaon*, 4 N.M.I. 171 (1994).

Generally, with regard to discovery a continuance will cure any prejudice that might result from government's delay in producing evidence material to preparation of criminal defendant's defense. *Commonwealth v. Adlaon*, 4 N.M.I. 171 (1994).

Where government's delay in producing evidence material to preparation of criminal defendant's defense is taken in bad faith, suppression of evidence may be appropriate. *Commonwealth v. Adlaon*, 4 N.M.I. 171 (1994).

Where the government's delay in producing evidence material to preparation of criminal defendant's defense is taken in bad faith, dismissal is a remedy of last resort and should be employed where defendant is prejudiced by flagrant misconduct. *Commonwealth v. Adlaon*, 4 N.M.I. 171 (1994).

A criminal defendant does not have a due process right to discover government's witness list. *Commonwealth v. Adlaon*, 4 N.M.I. 171 (1994).

Com. R. Crim. P. 16, concerning discovery in criminal prosecutions, does not grant defendant the right to discover government's witness list. *Commonwealth v. Adlaon*, 4 N.M.I. 171 (1994).

Court has inherent power to order disclosure of witnesses to promote efficient administration of criminal justice system. *Commonwealth v. Adlaon*, 4 N.M.I. 171 (1994).

The disclosure of the government's witness list in a criminal prosecution should not be ordered except upon a specific showing of need. *Commonwealth v. Adlaon*, 4 N.M.I. 171 (1994).

In criminal case, suppression by prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. Underlying policy of rule rests on the fundamental principle that the accused must be afforded a fair trial. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), *aff'd*, 42 F.3d 546 (9th Cir. 1994).

Under due process rule requiring prosecution to disclose requested evidence favorable to an accused where the evidence is material either to guilt or punishment, evidence within rule includes information bearing on the credibility of a significant witness in the case. Impeachment evidence is favorable evidence, within rule. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), *aff'd*, 42 F.3d 546 (9th Cir. 1994).

To establish violation of due process rule requiring prosecution to disclose requested evidence favorable to an accused where the evidence is material either to guilt or punishment, a defendant must show that the prosecutor failed to disclose material evidence. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), *aff'd*, 42 F.3d 546 (9th Cir. 1994).

A claimed violation of due process rule requiring prosecution to disclose requested evidence favorable to an accused where the evidence is material either to guilt or punishment has no merit where disclosure of evidence did not come too late to deprive the defendant of a fair trial. Generally, a defendant must be tried and convicted before any due process violation becomes of consequence. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), *aff'd*, 42 F.3d 546 (9th Cir. 1994).

Under due process rule requiring prosecution to disclose requested evidence favorable to an accused where the evidence is material either to guilt or punishment, prosecution should disclose exculpatory evidence to the defendant promptly upon discovery. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), *aff'd*, 42 F.3d 546 (9th Cir. 1994).

Due process rule requiring prosecution to disclose requested evidence favorable to an accused where the evidence is material either to guilt or punishment only requires that the government disclose exculpatory evidence in time for the defendant's effective use of evidence at trial. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), *aff'd*, 42 F.3d 546 (9th Cir. 1994).

Trial court has broad discretion to remedy potential violation of due process rule requiring prosecution to disclose requested evidence favorable to an accused, where the evidence is material either to guilt or punishment, before the accused is prejudiced by nondisclosure. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), *aff'd*, 42 F.3d 546 (9th Cir. 1994).

Prosecution has affirmative due process duty to disclose requested evidence favorable to an accused where the evidence is material either to guilt or punishment. A defendant is not required to seek court intervention to obtain disclosure of such material from an obstinate prosecutor. However, if the prosecution fails or refuses to turn over the material, the defendant should seek an order to

compel disclosure. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), *aff'd*, 42 F.3d 546 (9th Cir. 1994).

Under due process rule requiring prosecution to disclose requested evidence favorable to an accused where the evidence is material either to guilt or punishment, if parties disagree on applicability of rule to requested evidence, an in camera determination by the trial court is the preferred means of resolving the dispute. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), *aff'd*, 42 F.3d 546 (9th Cir. 1994).

While there is no duty to provide the defense unlimited discovery under due process rule requiring prosecution to disclose evidence favorable to an accused where the evidence is material either to guilt or punishment, if a general request by the accused is material or if a substantial basis for materiality exists, the prosecutor should provide the information or submit the issue to the trial judge for in camera determination. A prosecutor may also respond to a specific request by submitting the matter to the trial judge. Trial court may excise non-material information if it warrants protection from disclosure. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), *aff'd*, 42 F.3d 546 (9th Cir. 1994).

Questions regarding applicability of due process rule requiring prosecution to disclose evidence favorable to an accused where the evidence is material either to guilt or punishment should ordinarily be presented to court by written motion pursuant to Com. R. Prac. 8 and Com. R. Crim. P. 47. Accompanying affidavits should set forth, to the extent known, the substance, nature and materiality of the disputed evidence. In addition, the parties should submit declarations establishing their good faith attempt to resolve the matter amongst themselves before judicial intervention. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), *aff'd*, 42 F.3d 546 (9th Cir. 1994).

Remedy for violation of due process rule requiring prosecution to disclose evidence favorable to an accused where the evidence is material either to guilt or punishment is a new trial for the defendant. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), *aff'd*, 42 F.3d 546 (9th Cir. 1994).

Dismissal of indictment or information is usually not an appropriate remedy for violation of due process rule requiring prosecution to disclose evidence favorable to an accused where the evidence is material either to guilt or punishment. If there is prosecutorial misconduct, trial court should consider sanctioning counsel or imposing a remedy short of dismissing the case. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), *aff'd*, 42 F.3d 546 (9th Cir. 1994).

If government files sought by defense in criminal discovery are relevant, trial court should allow defense to review files, hear arguments concerning admissibility of files, then make a ruling. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

——Particular Cases

Trial court erred in dismissing criminal case based on perceived violation of defendant's due process right to fair trial due to government's untimely production of requested documents; court failed to inquire into nature of documents to determine whether they were exculpatory. *Commonwealth v. Adlaon*, 4 N.M.I. 171 (1994).

Trial court abused its discretion in dismissing criminal case due to government's untimely production of requested documents where: (1) court did not examine documents to determine whether they were material to preparation of defendant's defense, (2) defendant rejected court's offer of continuance to cure prejudice and (3) court made no specific finding that prosecutor engaged in flagrant misconduct. Court should have imposed sanction short of dismissal. *Commonwealth v. Adlaon*, 4 N.M.I. 171 (1994).

Where government failed to produce witness list in response to criminal defendant's discovery request, trial court erred in dismissing case based on perceived due process right on part of defendant to discover list or on government's failure to comply with order in previous, unrelated case. Government was not required to disclose witness list to defendant. *Commonwealth v. Adlaon*, 4 N.M.I. 171 (1994).

To extent that court orders were based on due process grounds, trial court erred in granting criminal defendant's pretrial motion to suppress evidence withheld by prosecution and in subsequently dismissing case. Court did not consider whether evidence was exculpatory within meaning of due process rule requiring prosecution to disclose requested evidence favorable to an accused where the evidence is material either to guilt or punishment. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), *aff'd*, 42 F.3d 546 (9th Cir. 1994).

Criminal defendant's failure to timely move to compel production of evidence withheld by prosecution did not excuse prosecution from failing to comply with due process rule requiring disclosure

of requested evidence favorable to an accused where the evidence is material either to guilt or punishment. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), *aff'd*, 42 F.3d 546 (9th Cir. 1994).

Trial court had power to cure prosecution's discovery violation improperly raised by defendant's motion in limine under rule granting court discretion to fashion remedy for party's noncompliance with discovery obligations at any time during course of proceedings. Com. R. Crim. P. 16(d)(2). *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), *aff'd*, 42 F.3d 546 (9th Cir. 1994).

Trial court abused its discretion in granting criminal defendant's motion to suppress evidence and in dismissing case sua sponte based on alleged violation of due process rule requiring prosecution to disclose requested evidence favorable to an accused where the evidence is material either to guilt or punishment. Since defendant made no showing that requested evidence was within rule, and government made no showing that requested evidence did not include exculpatory evidence, court lacked factual predicate from which to assess the motion. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), *aff'd*, 42 F.3d 546 (9th Cir. 1994).

Since NMI Department of Public Safety files sought by defendant in prosecution for murder were neither relevant nor admissible, disclosure to defendant was not required. Trial court did not err in sealing portions of files, preventing disclosure. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

Dismissal, Involuntary

A court may dismiss a case for want of prosecution even if the delay does not rise to the level of a violation of the defendant's right to a speedy trial, however, a judge does not enjoy unfettered discretion to dismiss cases. Dismissal should be imposed only in extreme circumstances, especially when a dismissal is with prejudice, because such dismissal is a harsh remedy. *Commonwealth v. Palacios*, 2003 MP 6 ¶ 10

Dismissal with prejudice should be used sparingly, for in dismissing with prejudice the court allows its interest in the orderly administration of justice to override the interests of victims and the public interest in the enforcement of the criminal law. *Commonwealth v. Palacios*, 2003 MP 6 ¶ 12

A court abuses its discretion if it imposes the sanction of dismissal under Commonwealth Rule of Criminal Procedure 48(b) without first satisfying the requirements of caution and forewarning. The requirement of caution is satisfied where the reason for dismissal is prosecutorial misconduct and a demonstrable prejudice or substantial evidence thereof. Dismissal with prejudice is proper only after a forewarning of the consequences of further delay. *Commonwealth v. Palacios*, 2003 MP 6 ¶ 13

Commonwealth Rule of Criminal Procedure 48(b) is a restatement of the court's inherent authority to dismiss cases for want of prosecution. A court abuses its discretion when it dismisses, without prior notice to the Commonwealth that the charge will be dismissed with prejudice if the case does not proceed as scheduled, a criminal charge with prejudice on non-constitutional grounds when the Commonwealth, in good faith, appears in court and seeks a continuance of the trial because the Commonwealth is unable to proceed, and the defendant is not thereby prejudiced. *Commonwealth v. Palacios*, 2003 MP 6 ¶ 15

The prohibition in our criminal justice system against unnecessary delay is designed to protect against undue and oppressive incarceration prior to trial; to minimize anxiety and concern accompanying public accusation; and to protect the ability of an accused to defend himself. *Commonwealth v. Palacios*, 2003 MP 6 ¶ 19

Certain powers have been conceded to courts because they are courts. Such powers have been conceded because without them courts could neither maintain their dignity, transact their business, nor accomplish the purposes of their existence. These powers are called inherent powers. *Commonwealth v. Palacios*, 2003 MP 6 ¶ 20

The failure of the prosecution to appear on the day and time set for a trial is nothing less than an affront to the dignity of the court. Likewise, the ability of the court to transact its business and accomplish the purposes of its existence is also dealt a blow by the prosecution's failure to appear for trial. As such, a trial court's dismissal of the charges against a defendant in such a case is appropriate. *Commonwealth v. Palacios*, 2003 MP 6 ¶ 20

It is well within the trial court's inherent supervisory authority to dismiss a case when the prosecutor fails to appear for trial. However, dismissals are disfavored in general as they contravene public policy, which favors full and final decision on the merits. A dismissal with prejudice is an extraordinarily harsh remedy and should be used

sparingly in rare cases when extreme circumstances warrant it. *Commonwealth v. Palacios*, 2003 MP 6 ¶ 27

A court abuses its discretion if it imposes the sanction of dismissal without first considering the impact of the sanction and the adequacy of less drastic sanctions. *Commonwealth v. Palacios*, 2003 MP 6 ¶ 28

—Jurisdiction

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, and pursuant to 1 CMC § 3102(a), the N.M.I. Supreme Court has jurisdiction over an appeal from the trial court's dismissal with prejudice of criminal charges against a defendant on the day of trial when the prosecution failed to appear. N.M.I. Const. art. IV, § 3, 1 CMC § 3102(a). *Commonwealth v. Palacios*, 2003 MP 6 ¶ 1

Double Jeopardy

—Generally

Because the Commonwealth Constitution's double jeopardy provision is based upon the federal double jeopardy clause, we turn to federal case law for guidance. *Commonwealth v. Eguia*, 2008 MP 17 ¶ 8 (2008).

The federal Double Jeopardy Clause has been construed to protect a person against (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense. *Commonwealth v. Eguia*, 2008 MP 17 ¶ 8 (2008).

Double jeopardy and collateral estoppel are related yet analytically distinct, and it is important to note the distinction between the two. Double jeopardy prohibits the reprosecution of the same offense while collateral estoppel deals with the relitigation of the same factual issue. *Commonwealth v. Crisostomo*, 2007 MP 7 ¶ 13

The triers of fact in a Commonwealth dual trial (jury and judge) are not bound to each other in that the bench trial does not have to mirror the jury's decision. *Commonwealth v. Crisostomo*, 2007 MP 7 ¶ 14

The federal double jeopardy clause is construed to protect a person against: (1) a second prosecution for the same offense after acquittal; (2) a second prosecution for the same offense after conviction; and (3) multiple punishments for the same offense. *Commonwealth v. Milliondaga*, 2007 MP 6 ¶ 5

In addition to examining the statutory elements of each offense, proper analysis of a double jeopardy claim requires the court to examine the specific charges against the defendant. *Commonwealth v. Milliondaga*, 2007 MP 6 ¶ 6

Given the continuing nature of the assault, the same victim, at the same time and place, we discern that the defendant's actions derived from a single impulse. The defendant should not have been subjected to punishment on both counts of assault and battery when the evidence presented showed that both counts related to an uninterrupted attack on the victim. *Commonwealth v. Milliondaga*, 2007 MP 6 ¶ 9

To conduct an adult proceeding for a murder charge and a separate juvenile proceeding for a lesser included offense of the murder charge violates the Double Jeopardy Clause of the Commonwealth Constitution. N.M.I. Const. art. I, § 4(e). *Commonwealth v.Repeki*, 2004 MP 19 ¶ 15

For purposes of the Double Jeopardy Clause, the lesser included offense and the greater offense are the same offense. *Commonwealth v.Repeki*, 2004 MP 19 ¶ 15

The Double Jeopardy Clause of the 5th Amendment to the United States Constitution is replicated in Article 1, § 4(e) of the Commonwealth Constitution. This provision protects against three types of abuses: (1) a second prosecution for the same offense after acquittal; (2) a second prosecution for the same offense after conviction; and (3) multiple punishments for the same offense. *Commonwealth v. Cabrera*, 1997 MP 18 ¶7

The Double Jeopardy Clause of the Fifth Amendment to the Constitution of the United States is parallel to Article I, § 4(e) of the Commonwealth Constitution. This provision protects against three types of abuses: (1) a second prosecution for the same offense after acquittal; (2) a second prosecution for the same offense after conviction; and (3) multiple punishments for the same offense. *Commonwealth v. Aguon*, 1997 MP 22 ¶8

—Inapplicable to Traffic Infractions

The double jeopardy clause, contained at Article I, Section 4(e) of the Constitution of the Northern Mariana Islands, bars the N.M.I. Supreme Court from entertaining an appeal of a judgment of acquittal in criminal prosecutions but does not bar consideration of an appeal of a judgment of acquittal for a traffic infraction. N.M.I. Const. art. I, § 4(e). *Commonwealth v. Abuy*, 2001 MP 8 ¶ 1

—Jurisdiction

——Particular Cases

NMI Supreme Court had jurisdiction, pursuant to 1 CMC § 3102 (a), over appeal from Superior Court order dismissing petition for a writ of habeas corpus. *Commonwealth v. Cabrera*, 1997 MP 18 ¶1

NMI Supreme Court had jurisdiction, pursuant to 1 CMC § 3102(a), over appeal by the Commonwealth of Superior Court judgment dismissing its case for violating defendant's rights against double jeopardy. *Commonwealth v. Aguon*, 1997 MP 22 ¶1

Double jeopardy clause in NMI Constitution is patterned after the Double Jeopardy Clause of the U.S. Constitution. N.M.I. Const. art. I, § 4(e). *Commonwealth v. Oden*, 3 N.M.I. 186 (1992), *aff'd*, 19 F.3d 26 (9th Cir. 1994).

Double Jeopardy Clause of Fifth Amendment to the U.S. Constitution, providing that no person shall be subject for the same offence to be twice put in jeopardy of life or limb, is applicable to the Commonwealth. Covenant § 501(a). *Commonwealth v. Oden*, 3 N.M.I. 186 (1992), *aff'd*, 19 F.3d 26 (9th Cir. 1994).

Because double jeopardy clause in the NMI Constitution is patterned after the Double Jeopardy Clause of the U.S. Constitution, NMI Supreme Court would resort to federal case law interpreting U.S. Constitution's Double Jeopardy Clause to ensure that NMI Constitution's double jeopardy clause provided at least the same protection granted criminal defendants under federal provision. *Commonwealth v. Oden*, 3 N.M.I. 186 (1992), *aff'd*, 19 F.3d 26 (9th Cir. 1994).

Double Jeopardy Clause of U.S. Constitution has been construed to protect a person against (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense. U.S. Const. Fifth Amend. *Commonwealth v. Oden*, 3 N.M.I. 186 (1992), *aff'd*, 19 F.3d 26 (9th Cir. 1994).

—Multiple Punishments for Same Offense

There is no violation of the Commonwealth or U.S. Constitution's Double Jeopardy Clause when consecutive sentences are imposed for a single course of conduct that violates an order for protection through actual or threatened physical injury and another provision of the Commonwealth Code, such as 6 CMC § 1202(a), because the legislature intended to impose multiple sentences on such defendants. *Commonwealth v. Peter*, 2010 MP 15 ¶ 14 (2010).

When asked to determine whether an individual is subject to multiple punishments for the same offense during a single proceeding, we first determine whether the legislature intended to impose multiple sanctions for the same conduct, and if not, we then apply the test enunciated in *Blockburger v. United States*. *Commonwealth v. Peter*, 2010 MP 15 ¶ 5 (2010).

Under the *Blockburger* test, the applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not. When applying the test, the focus is on the proof necessary to prove the statutory elements of each offense, rather than on the actual evidence to be presented at trial. If each statute requires proof of a fact which the other does not, the *Blockburger* test is satisfied notwithstanding a substantial overlap in the proof offered to establish the crime. *Commonwealth v. Peter*, 2010 MP 15 ¶ 6 (2010).

The Supreme Court presumes that where two statutory provisions proscribe the same offense, the legislature does not intend to impose two punishments for that offense. *Commonwealth v. Peter*, 2010 MP 15 ¶ 10 (2010).

The *Blockburger* test is a rule of statutory construction, and it is not a U.S. Constitutional limitation on the legislature's authority to impose multiple sanctions for the same conduct. With respect to cumulative sentences imposed in a single trial, the Double Jeopardy Clause does no more than prevent the sentencing court from prescribing greater punishment than the legislature intended. *Commonwealth v. Peter*, 2010 MP 15 ¶ 10 (2010).

There is an assumption that Congress ordinarily does not intend to punish the same offense under two different statutes. Accordingly, where two statutory provisions proscribe the same offense, they are construed not to authorize cumulative punishments in the absence of a clear indication of contrary legislative intent. *Commonwealth v. Peter*, 2010 MP 15 ¶ 10 (2010).

The *Blockburger* test is a rule of statutory construction, and because it serves as a means of discerning congressional purpose the rule should not be controlling where, for example, there is a clear indication of contrary legislative intent. Thus, it is up to the legislature to decide whether to impose multiple punishments for the same criminal conduct, and where that intent is clear, the imposition of multiple punishments imposed in the same proceeding does not run afoul of the Double Jeopardy Clause. *Commonwealth v. Peter*, 2010 MP 15 ¶ 10 (2010).

If the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not. Two provisions are not the same offense if each contains an element not included in the other. This test focuses on the proof necessary to prove the statutory elements of each offense, rather than on the actual evidence to be presented at trial. *Commonwealth v. Milliondaga*, 2007 MP 6 ¶ 6

The Double Jeopardy Clause of the Commonwealth Constitution protects against three types of abuses: (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense. *Commonwealth v.Repeki*, 2004 MP 19 ¶ 15

Civil forfeitures do not constitute punishment for purposes of the Double Jeopardy Clause. CNMI forfeiture statute is civil in nature even though it is contained in the criminal code. U.S. Const. Fifth Amend., N.M.I. Const. art. 1, § 4(e), 6 CMC § 2150. *Commonwealth v. Cabrera*, 1997 MP 18 ¶9

Double jeopardy prevents the government from subjecting a defendant to both a criminal punishment and a civil sanction. This principle applies whether the civil penalty or criminal punishment comes first. *Commonwealth v. Aguon*, 1997 MP 22 ¶10

In most civil actions, in order for double jeopardy to attach, the government must collect the penalty or at least attempt to collect the penalty. *Commonwealth v. Aguon*, 1997 MP 22 ¶13

When a defendant contends that he has been subject to multiple punishment for the same offense in violation of Double Jeopardy Clause of U.S. Constitution, where the same act or transaction constitutes a violation of two distinct statutory provisions test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not. U.S. Const. Fifth Amend. *Commonwealth v. Oden*, 3 N.M.I. 186 (1992), *aff'd*, 19 F.3d 26 (9th Cir. 1994).

—Particular Cases

Appellant would be subject to double jeopardy by having two separate proceedings, one in juvenile court and the other in adult court, since he would face a second prosecution for the same offense arising out of the same criminal act. *Commonwealth v.Repeki*, 2004 MP 19 ¶ 16

Defendant's conviction for sexual abuse of child and criminal oral copulation did not violate double jeopardy clause's prohibition of multiple punishments for the same offense. Evidence showed that defendant not only performed oral copulation with child victim, violating 6 CMC § 1307(b), but that he engaged, for purposes of sexual arousal or gratification, in exhibitionism by both exposing his genitals and engaging in sexual acts with his girlfriend in presence of child victim, violating 6 CMC § 1311. Since record showed that each offense was based on separate acts, defendant's conviction for each offense did not constitute double jeopardy. N.M.I. Const. art. I, § 4(e). *Commonwealth v. Oden*, 3 N.M.I. 186 (1992), *aff'd*, 19 F.3d 26 (9th Cir. 1994).

Due Process Rights, Advisement of

—Custody

Whether accused was in custody for purposes of determining governmental compliance with duty to apprise accused of his or her procedural due process rights is a question of law. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

In determining whether accused was in custody, triggering government duty to advise him or her of procedural due process rights, court must decide

whether there was formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. Test to be applied is whether a reasonable person in defendant's position would believe that he or she was in police custody of the degree associated with a formal arrest. The factor of particular concern is whether the atmosphere was police-dominated. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

——Particular Cases

Questioning of vehicular homicide defendant by police officers at scene of collision was non-custodial, not requiring officers to first advise defendant of his or her procedural due process rights, where: (1) officers at scene did not arrest defendant; (2) officers asked defendant to step aside to enable them to attend to injured bicyclist; (3) officers neither arrested defendant nor attempted to restrain him or treat him harshly; and (4) officers' questions were informational, directed at assessing accident in presence of non-police bystanders. Under circumstances, reasonable person in defendant's situation would not have felt pressures of police domination. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

—Generally

The Due Process Clause of the United States Constitution protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 41 (2008).

Criminal defendants have a constitutionally guaranteed right to demand that the jury decide guilt or innocence on every issue, which includes application of law to the facts Thus, a jury instruction is unconstitutional if it removes an issue or element of a crime from the jury's consideration. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 41 (2008).

The United States Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense. In accordance with that guarantee, a defendant is entitled to a jury instruction on his or her defense theory if there is any foundation in the evidence, even though the evidence may be weak, insufficient, inconsistent, or of doubtful credibility. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 42 (2008).

When a suspect is both in custody and subject to interrogation, the suspect must be advised of procedural due process rights: (1) to remain silent; (2) that any statement he or she makes may be used as evidence against him or her; (3) that he or she has the right to the presence of an attorney; and (4) that if he or she cannot afford an attorney, one will be appointed for him or her prior to any questioning if he or she so desires. When such warnings must be given, the prosecution may not introduce evidence procured without the protection afforded by both proper warnings and a valid waiver of those warnings. U.S. Const. amend. V. *Commonwealth v. Yan*, 4 N.M.I. 334 (1996).

Under rule that suspect both in custody and subject to interrogation must be advised of procedural due process rights, interrogation refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. Absent express questioning, the court must objectively examine the knowledge of the police or any circumstances of which they were aware to determine whether they were either speaking or acting in a way that they should have known would extract such a response. This includes whether the police knew that the respondent was unusually disoriented or upset at the time of the arrest. U.S. Const. amend. V. *Commonwealth v. Yan*, 4 N.M.I. 334 (1996).

To safeguard exercise of U.S. Constitution's Fifth Amendment privilege against self-incrimination from the inherently coercive effects of a custodial interrogation, a confession obtained during custodial interrogation must have been preceded by adequate warnings advising an accused of constitutional rights: (1) to remain silent; (2) that any statement accused makes may be used as evidence against him or her; (3) that accused has right to presence of an attorney; and (4) that if accused cannot afford an attorney, one will be appointed for him or her prior to any questioning if he or she so desires. U.S. Const. amends. V, XIV. *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

When an accused is subject to police interrogation while in custody, warnings must be given concerning accused's procedural due process rights: (1) to

remain silent; (2) that any statement accused makes may be used as evidence against him or her; (3) that accused has right to presence of an attorney; and (4) that if accused cannot afford an attorney, one will be appointed for him or her prior to any questioning if he or she so desires. U.S. Const. amends. V, XIV. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

——Particular Cases

Government form advising criminal defendant that "[y]ou have a right to consult with a lawyer and to have a lawyer present with you while you are being questioned" adequately gave defendant notice of right to counsel before and during questioning. *Commonwealth v. Kaipat*, 4 N.M.I. 300 (1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996).

Although one portion of government form advising criminal defendant of constitutional procedural due process rights was misleading because it suggested that defendant could contact attorney only if government did not thereby incur expense, warnings in form were nonetheless adequate, when considered as a whole. *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

Circumstances under which criminal defendant was interrogated did not, in their totality, reveal police coercion or that defendant was unable to comprehend, or rationally respond to, spoken and written warnings, information and questions posed by police where: (1) although defendant was upset and thinking about his family when rights were read to him, he was not rendered incapable of knowingly waiving his rights; (2) although rights form was in English and defendant spoke Chamorro as primary language, defendant understood English, interrogating officer spoke both English and Chamorro, and parts of rights form were translated into Chamorro for defendant; (3) although defendant was not offered food or drink during the interrogation, he did not request them, nor did officers deny him food or drink as coercive measure, and interrogation was not prolonged; and (4) defendant's claim that he was promised release and freedom from prosecution if he cooperated was adequately refuted by government witnesses. Trial court did not err in admitting confession into evidence. *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

—Waiver

In assessing issue of voluntariness of waiver of constitutional procedural due process rights, court examines the totality of circumstances surrounding waiver, including defendant's characteristics and details of questioning by government. *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

The totality of circumstances court must consider in determining whether criminal defendant validly waived procedural due process rights includes defendant's characteristics and details of custodial questioning. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

——Particular Cases

Vehicular homicide defendant's assertion that he was concentrating on collision and not on waiver of procedural due process rights form provided by police officers did not render defendant's subsequent statements inadmissible where: (1) defendant did not establish that he was incapable of making reasoned decisions; (2) defendant's level of concentration was sufficient to enable him to listen to police officer read him his rights in both English and Chamorro, initial each statement of right and sign form to acknowledge his understanding, and (3) defendant answered officer's questions in coherent manner. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

Criminal defendant's claim that, during questioning by police, he did not voluntarily waive procedural due process right to counsel and to remain silent lacked merit where defendant was: (1) not threatened with harm or deprived of food or water; (2) expressly advised that he was not under arrest; (3) allowed to leave building unaccompanied to get drink of water; and (3) not detained after questioning. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

Error

—Constitutional Error

There is no automatic reversal of conviction for constitutional errors which, in the setting of a particular case, are of such unimportance that they may be deemed harmless. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 19

—Cumulative Error

In some cases, although no single trial error examined in isolation is sufficiently prejudicial to warrant reversal, the cumulative effect of multiple errors may still prejudice a defendant. Cumulative error analysis considers all errors and instances of prosecutorial misconduct, including errors preserved

for appeal and plain errors. Reversal is required under the cumulative error doctrine if it is more probable than not that, taken together, the errors materially affected the verdict. *Commonwealth v. Cepeda*, 2009 MP 15 ¶ 46 (2009).

Under a cumulative error analysis, we determine whether the overall effect of multiple errors amounts to prejudice. In some cases, although no single trial error examined in isolation is sufficiently prejudicial to warrant reversal, the cumulative effect of multiple errors may still prejudice a defendant. In such instances, we determined that a balkanized, issue-by-issue harmless error review is far less effective than analyzing the overall effect of all the errors in the context of the evidence introduced at trial against the defendant. *Commonwealth v. Mettao*, 2008 MP 7 ¶ 43 (2008).

On appeal, the N.M.I. Supreme Court reviews the cumulative errors in a trial to determine whether the overall effect amounts to prejudice requiring reversal of the defendant's conviction. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 23

In some cases, although no single trial error examined in isolation is sufficiently prejudicial to warrant reversal, the cumulative effect of multiple errors may still prejudice a defendant. The appellate court must analyze the overall effect of all the errors in the context of the evidence introduced at trial against the defendant. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 120

Cumulative error analysis considers all errors and instances of prosecutorial misconduct, including errors preserved for appeal and plain errors. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 121

A critical review of cumulative error is necessary in cases where the conviction rests on uncorroborated accomplice testimony. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 121

Reversal is warranted in close cases, such as in the face of a veritable avalanche of errors, where the testimony of the only direct witness is riddled with inconsistency and contradictions, or where prosecutorial misconduct which is never corrected during trial, calls into question the jury's ability to weigh conflicting testimony. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 125

When a review of the record discloses no prejudicial error, there is no reasonable probability that, had the errors been avoided, the result of the trial would have been different. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 130

Cumulative error in criminal prosecution may, in certain cases, require reversal of conviction. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

—Generally

The use of an uninvestigated letter provided by the prosecution, by a co-defendant at a joint trial was a fatal due process error committed by the prosecution, which fatally contaminated everything that followed. *Commonwealth v. Reyes*, 2001 MP 14 ¶ 10

Even if a particular error is cured by an instruction, the court should consider whether any traces of prejudice may remain. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 121

—Harmless Error

See aslo **APPEAL AND ERROR - Harmless Error**

In defining harmless error, the Commonwealth Rules of Criminal Procedure state that any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded. *Commonwealth v. Hossain*, 2010 MP 21 ¶ 18 (2010).

The test for harmless error is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained. *Commonwealth v. Hossain*, 2010 MP 21 ¶ 18 (2010).

Under the harmless error standard of review, the aim is to determine whether allegedly improper behavior, considered in the context of the entire trial affected the jury's ability to judge the evidence fairly. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 19

—Plain Error

Plain error is a highly prejudicial error, which affects the defendant's substantial rights. Failure to instruct on an essential element of a crime is plain error. *Commonwealth v. Cepeda*, 2009 MP 15 ¶ 44 (2009).

Failure to instruct the jury on the applicable mens rea for robbery constitutes plain error. The jury must be instructed that robbery is a specific intent crime. Failing to provide this necessary instruction compromises the integrity of the judicial process by not providing the jury with adequate guidance for

their deliberations. *Commonwealth v. Cepeda*, 2009 MP 15 ¶ 45 (2009).

Reversing a trial court decision under the plain error rule is appropriate only when necessary to safeguard the integrity and reputation of the judicial process or to forestall a miscarriage of justice. *Commonwealth v. Mettao*, 2008 MP 7 ¶ 25 (2008).

Courts are cautious when noticing plain error and do not invoke the power to notice it lightly. *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 23

Appeals should be based on questions and objections raised at trial, not after a review of the transcript. *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 23

The plain error exception to the contemporaneous-objection rule is to be used sparingly, and only in circumstances in which a miscarriage of justice would otherwise result. Com. R. Crim. P. 52(b). The CNMI Rule is analogous to the Federal Rule. *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 24

Plain error is a stringent standard that is difficult to overcome. Under this standard, the Court will correct only particularly egregious errors that seriously affect the fairness, integrity, or public reputation of judicial proceedings. *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 38

Reversal under the plain error standard requires that the misconduct be so pronounced and persistent as to permeate the entire atmosphere of the trial. *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 39

A plain error is one affecting substantial rights. Plain error doctrine of Com. R. Crim. P. 52(b) tempers the blow of a rigid application of the contemporaneous-objection requirement. The rule authorizes appellate court to correct only particularly egregious errors, those errors that seriously affect the fairness, integrity or public reputation of judicial proceedings. In other words, the plain error exception to the contemporaneous-objection rule is to be used sparingly, solely in those circumstances in which a miscarriage of justice would otherwise result. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

When appellate court invokes its power to review a particular statement for plain error, it reviews the statement against the entire record and strives to relive the whole trial imaginatively and not to extract from episodes in isolation abstract questions of evidence and procedure. This broad scope of review is important because reversal on the basis of prosecutorial misconduct requires that the misconduct be so pronounced and persistent that it permeates the entire atmosphere of the trial. Com. R. Crim. P. 52(b). *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

Exclusion Of Witnesses

DC NMI 1988. Federal agents, who investigated case for the government, are within exception to procedural rule requiring exclusion of witnesses from trial except during their testimony. Fed.R.Evid. 615. *United States of America v. Mafnas*, 3 CR 421.

Extradition

— Generally

Pursuant to the Commonwealth's extradition statute, all persons facing extradition from the Commonwealth have the right to challenge extradition in the trial court, and such persons cannot be handed over to the agent of the demanding state prior to appearing before a judge of the Commonwealth trial court and being apprised both of the crime for which they are accused and their rights. *Commonwealth v. Miura*, 2010 MP 12 ¶ 11 (2010).

Extradition is intended to be a summary and mandatory executive proceeding in which the role and discretion of the reviewing court is strictly limited. As such, the issuance and execution of a governor's arrest warrant is prima facie evidence that the constitutional and statutory requirements have been met. *Commonwealth v. Miura*, 2010 MP 12 ¶ 12 (2010).

Once the governor authorizes extradition via a governor's warrant, a court considering release on habeas corpus can do no more than decide (a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive. *Commonwealth v. Miura*, 2010 MP 12 ¶ 12 (2010).

Commonwealth law requires that the governor shall have arrested and delivered up to the executive authority of any state any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in the Commonwealth. The governor may make no inquiry into the guilt or innocence of the accused as to the crime of which he or she is charged, nor may any such inquiry be made

in any proceeding after presentation to the Governor of the demand for extradition. The demanding state must include a copy of any pertinent documents, such as the indictment, information, affidavit, or judgment, and these documents must substantially charge the individual with a crime. *Commonwealth v. Miura*, 2010 MP 12 ¶ 16 (2010).

The asylum state may make no inquiry into the validity of the charges; it may only determine if the person is charged with a crime and if the extradition papers are in order. If the indictment lists every element of the crime charged then the asylum state's inquiry into the validity of the extradition request ends. *Commonwealth v. Miura*, 2010 MP 12 ¶ 17 (2010).

Similar to the Constitutional requirements, the CNMI extradition statute provides that the governor cannot inquire into the guilt or innocence of the accused, nor can a subsequent proceeding make such an inquiry. All that the statute requires is that the extradition request includes all pertinent papers and substantially charges the individual with a crime. *Commonwealth v. Miura*, 2010 MP 12 ¶ 17 (2010).

While 6 CMC § 6908 states that an individual must be substantially charged with a crime, substantially charged means that every element of the offense is listed by the demanding state. *Commonwealth v. Miura*, 2010 MP 12 ¶ 17 (2010).

Fair Trial, Right to

Defendants are entitled to a fair trial, not a perfect one. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 126

Filing and Service

—Generally

——Particular Cases

Because probationer was served with copy of probation order through his attorney in accordance with Com. R. Crim. P. 49(b), probationer received notice of condition in order. *Commonwealth v. Santos*, 4 N.M.I. 348 (1996).

Final Judgment

See aslo **Interlocutory Appeal**, this topic.

—Appealable Orders

Pursuant to 6 CMC § 8101(b), an appeal shall lie with the Supreme Court from a decision or order of the Superior Court suppressing or excluding evidence in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an information. 1(b). This section of 6 CMC § 8101(b) is not applicable once the jury has been sworn, as jeopardy has already attached. *Commonwealth v. Namauleg*, 2009 MP 13 ¶ 4 (2009).

Under the collateral order exception, a party may appeal an order which conclusively determines the disputed question, resolves an important issue completely separate from the merits of the action, and is effectively unreviewable on appeal from a final judgment. *Commonwealth v. Sibetang*, 2002 MP 9 ¶ 2

—Interlocutory Orders

In the absence of a writ of mandamus, the final judgment rule normally denies the N.M.I. Supreme Court appellate jurisdiction over interlocutory orders. *Commonwealth v. Sibetang*, 2002 MP 9 ¶ 2

The collateral order doctrine holds that an interlocutory order warrants immediate appeal when: the order constitutes a complete, formal, and in trial court, final rejection of the claim the order addresses; the claim is collateral to, and separable from the principal issue of whether or not the accused is guilty of the offense charged; and the order involves rights that would be significantly undermined if appellate review were postponed until after conviction and sentence. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 1

A trial court's order denying bail is subject to the collateral order doctrine where: the trial court's ruling on the issue of bail constitutes a complete, formal and final rejection of a criminal defendant's claimed right; the bail decision is collateral to, and separate from, the guilt or innocence of an accused; and the question of a bail order for the time period between verdict and sentence is such that it would become moot if review awaited an appeal of the entire case. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 1

Findings of Fact by Court

Pursuant to Rule 23(c) of the NMI Rule of Criminal Procedure, in a case tried without a jury the court shall make a general finding and shall in addition, on request made before the general finding, find the facts specially. Such findings may be oral. If an

opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein. The "general finding" refers to the trial court's determination of the defendant's guilt or innocence. *Commonwealth v. Sebuu*, 2011 MP 15 ¶ 7 (2011).

Pursuant to the plain language of Rule 23(c) of the NMI Rule of Criminal Procedure, the trial court is only required to enter specific findings if the defendant requests those findings before the trial court finds the defendant guilty or not guilty. *Commonwealth v. Sebuu*, 2011 MP 15 ¶ 7 (2011).

Rule 23(c) of the NMI Rule of Criminal Procedure explicitly permits the trial court to enter its findings orally. *Commonwealth v. Sebuu*, 2011 MP 15 ¶ 8 (2011).

—Witness Credibility

An appellate court resolves issues of witness credibility in favor of the prosecution because it is the exclusive function of the jury to determine the credibility of witnesses, resolve evidentiary conflicts, and draw reasonable inference from proven facts. *Commonwealth v. Taitano*, 2005 MP 20 ¶ 15

Questions of credibility are for the trier of fact to decide and are generally immune from appellate review. *Commonwealth v. Seman*, 2001 MP 20 ¶ 10

Accomplice testimony, although suspect, can support a conviction. Even though an accomplice is in a position to gain from the government by his testimony and even though there are inconsistencies in his story, an appellate court may not disregard the witness' testimony unless it is inherently implausible. *Commonwealth v. Seman*, 2001 MP 20 ¶ 10

Challenges to the credibility of a witness are not challenges to the sufficiency of the evidence and issues of witnesses' credibility are for the trier of fact to decide. *Commonwealth v. Seman*, 2001 MP 20 ¶ 12

The trier of fact has a wide latitude in which to decide which witnesses to believe or disbelieve. *Commonwealth v. Seman*, 2001 MP 20 ¶ 13

Appellate court is not at liberty to disturb factual findings which hinge on trial court's assessment of a witness's credibility. *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

Habeas Corpus

—Generally

The Supreme Court exercises jurisdiction over denials of writs of habeas corpus pursuant to Supreme Court Rule 22 which provides that an application for a writ of habeas corpus must be made to the Superior Court. If made to the Supreme Court, the application must be transferred to the Superior Court. If a Superior Court judge denies an application made or transferred to it, renewal of the application before this Court is not permitted. The applicant may, under 6 CMC § 7107, appeal to the Supreme Court from the Superior Court's order denying the application. *Commonwealth v. Miura*, 2010 MP 12 ¶ 5 (2010).

The CNMI Supreme Court Rules require judicial authorization before an official may transfer a prisoner whose habeas corpus proceeding is pending review outside of this Court's jurisdiction. *Commonwealth v. Miura*, 2010 MP 12 ¶ 7 (2010).

An individual can challenge extradition by petitioning for a writ of habeas corpus. *Commonwealth v. Miura*, 2010 MP 12 ¶ 11 (2010).

Commonwealth law expressly recognizes writs of habeas corpus. Habeas corpus furnishes an extraordinary remedy, namely securing the release of prisoners who are restrained of their liberty. In the Commonwealth, a writ of habeas corpus is the proper procedural mechanism to challenge a prisoner's post-conviction sentence or the computation of parole eligibility. *Commonwealth v. Appleby*, 2007 MP 19 ¶ 9

When a defendant challenges the lawfulness of a parole board's actions, as opposed to the lawfulness of a sentence a court imposes, the defendant must file a petition for writ of habeas corpus. Prior to challenging a parole decision by seeking habeas corpus relief, a defendant must exhaust all available administrative remedies. After exhausting all available remedies, a judicial review of a parole board's decision may then be brought by a habeas corpus petition. *Commonwealth v. Appleby*, 2007 MP 19 ¶ 9

In applying for a writ of habeas corpus in the Commonwealth, a defendant must comply with several requirements. The defendant must apply for the writ of habeas corpus to the court, and set forth facts concerning the imprisonment. The application

for the writ must also name the defendant's custodian, usually either the warden of the facility or the parole board, who is administering the unlawful confinement. 6 CMC § 7102. *Commonwealth v. Appleby*, 2007 MP 19 ¶ 10

The trial court lacks jurisdiction to entertain actions or appeals to clarify a sentence unless such action is brought as a writ of habeas corpus. *Commonwealth v. Appleby*, 2007 MP 19 ¶ 11

— Stay of Extradition

In order for a court to consider an appeal from a denial of habeas corpus in an extradition context, the legality of the extradition must be tested in the asylum state prior to extradition, not afterwards. *Commonwealth v. Miura*, 2010 MP 12 ¶ 6 (2010).

Since the Supreme Court has the power to review orders from the trial court denying habeas corpus and allowing for extradition, the Court also has the power to stay extradition because as soon as the petitioner leaves the Commonwealth, it is unable to grant relief. *Commonwealth v. Miura*, 2010 MP 12 ¶ 6 (2010).

A stay of extradition pending appeal allows petitioners to exercise their right to attempt to obtain habeas corpus relief. A stay of extradition is proper when it prevents an extradition from denying persons the right of appeal by rendering it moot, and frustrating a petitioner's right to appeal to this Court. *Commonwealth v. Miura*, 2010 MP 12 ¶ 8 (2010).

Inconsistent Verdicts

See **Juries: Verdicts - Inconsistent Verdicts**, this topic.

Indictment and Information

A traffic citation issued for a violation of the CNMI traffic code operates as a charging document or information. Com. R. Traff. P. 3(a) *Commonwealth v. Jai Hoon Yoo*, 2004 MP 5 ¶ 6

—Date of Crime

See **Indictment and Information - Specificity**, this topic.

—Dismissal, Involuntary

Dismissal of an indictment is an extraordinary remedy. While a trial court has the power to dismiss an indictment pursuant to its supervisory powers, it is a disfavored remedy. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), *aff'd*, 42 F.3d 546 (9th Cir. 1994).

In order to warrant dismissal of an indictment or information, the government's misconduct must not only be flagrant, but must also have prejudiced the defendant. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), *aff'd*, 42 F.3d 546 (9th Cir. 1994).

Dismissal of indictment or information is usually not an appropriate remedy for violation of due process rule requiring prosecution to disclose evidence favorable to an accused where the evidence is material either to guilt or punishment. If there is prosecutorial misconduct, trial court should consider sanctioning counsel or imposing a remedy short of dismissing the case. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), *aff'd*, 42 F.3d 546 (9th Cir. 1994).

—Dismissal, Voluntary

——Particular Cases

In criminal prosecution for aggravated assault and battery, trial court's dismissal of original information without prejudice at prosecution's request pursuant to Com. R. Crim. P. 48(a) was reasonable and neither in bad faith nor contrary to public interest where: (1) prosecution timely informed court that impending trial could not go forward due to absence of complaining witness; (2) prosecution moved to dismiss on day set for trial prior to empaneling of jury; (3) complaining witness had been undergoing medical treatment and recuperation outside NMI for injuries from date of incident until shortly before trial; (4) typhoon prevented return of complaining witness to NMI in time for trial; and (5) court limited the period for refiling of information to three months rather than the six months requested by prosecution. Court did not abuse its discretion in dismissing information without prejudice. *Commonwealth v. Brel*, 4 N.M.I. 200 (1994).

—Duplicity of Charge

——Particular Cases

Claimed duplicitous vehicular homicide count in criminal information, based on inclusion of predicate offenses of speeding and reckless driving, did not, combined with trial court's failure to give jury specific unanimity of verdict instruction as to each predicate offense, deny defendant his rights to fair trial and unanimous verdict where: (1) court provided jury with general unanimity instruction augmented with special interrogatories in verdict form separately

addressing predicate offenses by ascertaining whether defendant committed predicate offense, and if so whether offense was cause of victim's death, and if so whether defendant was guilty of the vehicular homicide charge; (2) nothing in record indicated that jurors were confused or disagreed about factual basis of defendant's guilt; and (3) instructions were straightforward and easily understood. 6 CMC § 7110; Com. R. Crim. P. 31(a). *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

—Lesser Included Offense

See **CRIMINAL LAW - Lesser Included Offense**

—Objections

An objection to the validity or regularity of a traffic complaint or process must be made before trial. Com. R. Traff. P. 6(d) *Commonwealth v. Jai Hoon Yoo,* 2004 MP 5 ¶ 6

Objections to the form of an information, including a traffic citation, must be made prior to trial. *Commonwealth v. Jai Hoon Yoo,* 2004 MP 5 ¶ 8

The rule prescribing mandatory pre-trial motions based on a defect in the institution of the prosecution or on a defective citation allows the parties to cure any defects prior to trial and prevents the parties from raising untimely motions at trial for tactical considerations. *Commonwealth v. Jai Hoon Yoo,* 2004 MP 5 ¶ 12

A defective citation shall not be grounds for dismissal of the information or reversal of the conviction where the defect did not mislead the defendant to his prejudice. Com. R. Crim. P. 7(c)(3). The fact that a citation date is deficient goes to the form rather than the substance of the charges and is not dispositive of the case. *Commonwealth v. Jai Hoon Yoo,* 2004 MP 5 ¶ 14

Objections to the form of an information must be made prior to trial. Com. R. Crim. P. 12(b). *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

—Particular Cases

Defendant's failure to raise duplicity objection to vehicular homicide count in information prior to trial constituted waiver of issue on appeal. Com. R. Crim. P. 12(b). *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

—Specificity

Pursuant to Rule 7(c)(1) of the Commonwealth Rules of Criminal Procedure, an information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged and shall state for each count the citation of the statute, rule, regulation or other provision of law which the defendant is alleged to have violated. *Commonwealth v. Pua*, 2009 MP 21 ¶ 36 (2009).

The sufficiency of an indictment should be judged by practical, and not by technical, considerations. It is nothing but the formal charge upon which an accused is brought to trial. The test is whether the information contained the elements of the offense intended to be charged and was sufficient enough to apprise the accused of the nature of the offense so that he may adequately prepare a defense. Furthermore, error in the citation or its omission shall not be ground for dismissal of the information or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice. *Commonwealth v. Pua*, 2009 MP 21 ¶ 36 (2009).

A criminal information need only provide the defendant with an adequate notice of when the crime allegedly occurred. Where 'on or about' language is used, the government is not required to prove the exact date, if a date reasonably near is established. This is especially true where the exact time when an offense was committed is not an essential element of the offense charged. *Commonwealth v. Attao,* 2005 MP 8 ¶ 28

Although the attorney general has the power to prosecute violations of Commonwealth law under the Constitution, the issue of whether the attorney general's name is required on the criminal information sheet has yet to be decided by the court; currently there is no statutory law on point. *Commonwealth v. Superior Court (Ada)*, 2004 MP 14 ¶ 10

The right, guaranteed by the Sixth Amendment to the United States Constitution, to be informed of the nature and cause of the accusation in all criminal prosecutions is satisfied when the information is specific enough to advise the defendant of the charge against him, to enable him to prepare for trial, and to plead the result in bar of a subsequent prosecution for the same offense. U.S. Const. amend. VI. *Commonwealth v. Babauta,* 2001 MP 10 ¶ 12

Notice is ordinarily given by the language of the accusatory pleading. A charging document serves two purposes: it enables the defendant to adequately

prepare his defense and it enables him to plead double jeopardy against a second prosecution. Charging documents are tested by whether they apprize the defendant of what evidence he must be prepared to meet. *Commonwealth v. Martinez*, 2000 MP 5 ¶ 13

In the Ninth Circuit, a defendant may not be convicted of an offense different from that specifically charged by the grand jury. A court may not amend the indictment by changing the offense charged to conform with the proof adduced at trial, nor may it substantially amend the indictment through its instructions to the jury. *Commonwealth v. Martinez*, 2000 MP 5 ¶ 13

A defendant is entitled to notice of what conduct supports the government's claim against him. *Commonwealth v. Martinez*, 2000 MP 5 ¶ 14

A conviction will not be reversed due to minor and technical deficiencies which do not prejudice the accused. Accordingly, where a defendant is put on notice before trial that he was subject to conviction of a lesser included offense not specifically set forth in the information, and defendant does not request an opportunity to present evidence regarding such offense, his conviction on that lesser included offense will be upheld. *Commonwealth v. Martinez*, 2000 MP 5 ¶ 15

Where the alleged facts suggested a violation of one subsection of a statute, and the defendant's conduct could only have violated another subsection, the defendant's conviction will be upheld where the indictment was sufficient to adequately apprise defendant of the crime with which he was being charged. *Commonwealth v. Martinez*, 2000 MP 5 ¶ 16

The omission of a subsection indication in a traffic citation is critical where the traffic citation failed to put the defendant on notice of the conduct for which he was charged and convicted. It is of no consequence that the evidence presented at trial supported a conviction under one or both subsections. If the lack of notice provided by the citation failed to put the defendant on notice of the conduct for which he was charged and convicted, and prevented him from adequately defending himself, then the conviction must be reversed. *Commonwealth v. Martinez*, 2000 MP 5 ¶ 17

The relevant inquiry in determining which subsection of 9 CMC § 5351 should have been included in the indictment does not revolve around whether the defendant's conduct fell within the catchall subsection of 9 CMC § 5351(d) or fell under other subsections. The relevant inquiry is whether the defendant received adequate notice of the charge against him. 9 CMC § 5351; 9 CMC § 5351(d). *Commonwealth v. Martinez*, 2000 MP 5 ¶ 19

Each subsection of 9 CMC § 5351 provides a different description of how a driver can fail to yield. It is clear that a charge under this section places a defendant on notice that he is being charged with failure to yield the right of way, regardless of the specific subsection violated. Consequently, the same evidence is used to prove or defend against a conviction under any subsection. In preparing a defense to the charge of violating subsection (d), a defendant necessarily prepares a defense to subsections (a) through (c) because the issue is ultimately the same for each subsection: whether the defendant failed to yield the right of way to another car. 9 CMC § 5351(a)-(d). *Commonwealth v. Martinez*, 2000 MP 5 ¶ 20

The fact that the victim cannot set a date for the crime should not be fatal to the state's case, thus making the defendant virtually immune from prosecution. *Commonwealth v. Oden*, 3 N.M.I. 186 (1992), *aff'd*, 19 F.3d 26 (9th Cir. 1994).

—Violations of Vehicle Code

A citation is not the sole way of instituting a traffic case, traffic offenses, even minor offenses, can be brought by filing an information. Com. R. Traff. P. 2 & 3. *Commonwealth v. Babauta*, 2001 MP 10 ¶ 11

Initial Appearance

—Generally

As a matter of due process under the Fifth and Fourteenth Amendments to the U.S. Constitution, a suspect must be brought, without unreasonable delay, before a judge for an initial appearance following arrest. The purpose of this appearance is to advise the arrestee of the charges against her or him, and of her or his rights. *Babauta v. Superior Ct.*, 4 N.M.I. 309 (1995), *aff'd*, 106 F.3d 406 (9th Cir. 1997).

Interlocutory Appeal

—Appealable Orders

See other subheadings under **Interlocutory Appeals**, this topic.

—Collateral Order Doctrine

The only appeals we may hear other than final judgments and orders are interlocutory appeals, which we may hear under the collateral order doctrine. To fall within the doctrine, the appealed order must: (1) have conclusively determined the disputed questions; (2) have resolved an important issue completely separate from the merits of the action; and (3) be effectively unreviewable on appeal from a final judgment. *Commonwealth v. Appleby*, 2007 MP 19 ¶ 6

Collateral order exception to final judgment rule allows appeal only from an order which (1) conclusively determines the disputed question, (2) resolves an important issue completely separate from the merits of the action, and (3) is effectively unreviewable on appeal from a final judgment. *Commonwealth v. Guerrero*, 3 N.M.I. 479 (1993).

A narrow exception to the rule prohibiting appeals from interlocutory orders unless they are expressly allowed by statute, rule or constitutional provision is the common law "collateral order doctrine," which permits appeals from orders collateral to the principal litigation, touching matters that will not affect or be affected by decision of the merits of the case. At a minimum, to come within the doctrine, the order sought to be appealed must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal. *Commonwealth v. Hasinto*, 1 N.M.I. 377 (1990).

—Common Law

See **Interlocutory Appeal - Generally**, this topic.

—Disqualification of Attorney

A trial court's pretrial disqualification of defense counsel in a criminal case is not final for purposes of an immediate appeal. Appellate court has no jurisdiction to review the disqualification prior to entry of final judgment. *Commonwealth v. Guerrero*, 3 N.M.I. 479 (1993).

Nothing about an order disqualifying counsel from representing a defendant in a criminal prosecution distinguishes it from the run of pretrial judicial decisions that affect the rights of criminal defendants yet must await completion of trial court proceedings for review. Such an order fails to satisfy the stringent conditions for qualification as an immediately appealable collateral order, and the overriding policies against interlocutory review in criminal cases apply in full. The exceptions to the final judgment rule in criminal cases are rare. An order disqualifying counsel is not one. *Commonwealth v. Guerrero*, 3 N.M.I. 479 (1993).

——Particular Cases

Trial court order disqualifying NMI Attorney General from representing defendant government official in criminal prosecution was not appealable under narrow collateral order exception to rule permitting appeals only from final judgments. Order did not meet third requirement of exception: it was not effectively unreviewable on appeal from a final judgment. *Commonwealth v. Guerrero*, 3 N.M.I. 479 (1993).

—Evidence, Suppression of

Common law principle prohibiting appeals from interlocutory orders unless they are expressly allowed by statute, rule or constitutional provision is applicable to orders granting or denying motions to suppress evidence, which are viewed as interlocutory in nature. *Commonwealth v. Hasinto*, 1 N.M.I. 377 (1990).

——Particular Cases

Although Com. R. App. P. 28(l)(2), referring to judgments or orders that are "otherwise appealable," relates to appeals from interlocutory orders, rule did not permit appeal from orders denying motions to suppress evidence because no statute or rule expressly permitted such appeals. *Commonwealth v. Hasinto*, 1 N.M.I. 377 (1990).

Since 1 CMC § 3102(a) did not expressly permit appeals from interlocutory orders, orders denying defendants' motions to suppress breathalyzer evidence were not immediately appealable. *Commonwealth v. Hasinto*, 1 N.M.I. 377 (1990).

—Generally

Final judgment rule prevents piecemeal litigation by allowing interlocutory appeals in only limited circumstances. *Commonwealth v. Guerrero*, 3 N.M.I. 479 (1993).

The common law allows an appeal only after a final decision, i.e., after the last of all possible decisions in the progress of an action. This principle is based on the policy that litigation should not proceed piecemeal, that intermediate appeals would unduly

delay the final disposition of litigation, and that a complete disposition of the matter in the trial court may make an appeal moot. *Commonwealth v. Hasinto*, 1 N.M.I. 377 (1990).

The courts generally do not permit appeals from interlocutory orders unless they are expressly allowed by statute, rule or constitutional provision. *Commonwealth v. Hasinto*, 1 N.M.I. 377 (1990).

—Particular Cases

In the absence of a clear indication that the NMI Legislature sought to supplant the common law concerning the appealability of interlocutory orders, NMI Supreme Court was not persuaded that it intended to do so. 1 CMC § 3102(a). *Commonwealth v. Hasinto*, 1 N.M.I. 377 (1990).

—Interlocutory Orders

See other subheadings under **Interlocutory Appeal**, this topic.

—Jurisdiction

In the absence of a writ of mandamus, the final judgment rule normally denies the N.M.I. Supreme Court appellate jurisdiction over interlocutory orders. *Commonwealth v. Sibetang*, 2002 MP 9 ¶ 2

Juries: Instructions

Instructions concerning particular offenses and defenses, see entries pertaining to specific offenses and defenses in **CRIMINAL LAW**

—Generally

The trial court has a duty to instruct the jury in all essential questions of law whether requested or not. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 12 (2008).

A defendant is entitled to a jury instruction on the defense theory if there is any foundation in the evidence, even though the evidence may be weak, insufficient, inconsistent, or of doubtful credibility. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 33 (2008).

Criminal defendants have a constitutionally guaranteed right to demand that the jury decide guilt or innocence on every issue, which includes application of law to the facts Thus, a jury instruction is unconstitutional if it removes an issue or element of a crime from the jury's consideration. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 41 (2008).

The United States Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense. In accordance with that guarantee, a defendant is entitled to a jury instruction on his or her defense theory if there is any foundation in the evidence, even though the evidence may be weak, insufficient, inconsistent, or of doubtful credibility. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 42 (2008).

When a single crime can be committed in various ways, jurors need not agree upon the exact mode of commission in order to convict. *Commonwealth v. Manila*, 2005 MP 17 ¶ 15

A specific unanimity jury instruction with regard to the cause of death is unnecessary where there is only one killing and thus only one offense submitted to the jury. *Commonwealth v. Manila*, 2005 MP 17 ¶ 20

When the facts show two or more criminal acts which could constitute the crime charged, the jury must unanimously agree on the same act to convict the defendant. The state must elect the specific criminal act on which it is relying for conviction, or the trial court must instruct the jury that all the jurors must agree that the same underlying criminal act was proven beyond a reasonable doubt, unless an exception applies, such as: the evidence shows the defendant was engaged in a continuing course of conduct. *Commonwealth v. Manila*, 2005 MP 17 ¶ 32

Courts are not expected to instruct sua sponte regarding all possible defenses, as this would place upon them an undue burden. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 63

Due process dictates that the portion of Commonwealth Rules of Criminal Procedure 30, which provides that a party may not assign as error any portion of the charge or omission therefrom unless that party objects thereto before the jury retires to consider the verdict is inapplicable to the extent that it is inconsistent with the duty of the court to instruct sua sponte regarding lesser included offenses. Com. R. Crim. P. 30. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 63

The court must provide instruction on a lesser included offense supported in the record even where such an instruction is explicitly rejected by a party. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 64

The court's ultimate concern must go beyond individual parties' trial strategies and provide an instruction on a lesser included offense supported in the record, even in the face of opposition by a party. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 65

In determining whether to give a lesser included offense instruction, courts apply a two-prong test. Under the legal prong, the court must determine whether the elements of the lesser offense are such that one cannot commit the greater offense without committing the lesser. If so, then under the factual prong, the court must review the evidence to determine whether a rational jury could find the defendant guilty of the lesser offense while acquitting him of the greater. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 67

Even when both prongs of the two prong test for determining whether to give a lesser included offense instruction have been met, on appeal, the court would additionally have to determine whether the flaws amount to plain error. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 67

Trial court has discretion in formulating jury instructions as long as instructions fairly and adequately cover the issues presented. *Commonwealth v. Kaipat*, 4 N.M.I. 300 (1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996).

In reviewing sufficiency of jury instructions, appellate court must assess whether instructions as a whole were misleading or inadequate to guide jury's deliberation. *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

In criminal prosecution, trial court must instruct jury on all essential questions of law, whether requestedor not. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

In assessing adequacy of jury instructions in criminal prosecution, appellate court must consider whether instructions as a whole were misleading or inadequate to guide jury's determination. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

Trial court has duty to instruct the jury, and such instructions must not be incomplete, but should instruct in all essential questions of law, whether requested or not. In determining whether instructions were incomplete, appellate court must consider whether the instructions as a whole were misleading or inadequate to guide the jury's determination. *Commonwealth v. Esteves*, 3 N.M.I. 447 (1993).

—Lesser Included Offense

See **CRIMINAL LAW - Lesser Included Offense**

—Particular Cases

The law is well-settled that there is no duty to retreat when a person is assaulted in a place where he or she has a right to be. An instruction should be given to this effect when sufficient evidence is presented to support it. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 32 (2008).

The trial court correctly denied a jury instruction on the common law defense of not being a principal to the commission of a crime requested by a party accused of aiding and abetting because 6 CMC § 201 draws no distinction between principal and an accessory before the fact. 6 CMC § 201. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 55

In a criminal case, the trial court must instruct on the lesser included offenses where there is evidence from which a rational jury could find the defendant guilty of the lesser offense and acquit him of the greater, regardless of whether such instruction has been requested. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 63

A lesser included offense instruction is required only when warranted by the evidence, and it is warranted where there is substantial evidence from which a rational trier of fact could find beyond a reasonable doubt that the defendant committed the lesser offense, but not the greater. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 66

NMI Supreme Court had jurisdiction, pursuant to Article IV, § 2 of the Commonwealth Constitution, over appeal from verdict and judgment of conviction for burglary and theft, sentencing order, denial of proposed jury instructions, and denial of oral motion for judgment of acquittal. N.M.I. Const., art. IV, § 2 (as amended by Legislative Initiative 10-3, ratified by the voters on November 1, 1997, and certified by the Board of Elections on December 13, 1997). *Commonwealth v. Santos*, 1998 MP 6 ¶1

In criminal prosecution for aggravated assault and battery, trial court's failure to give limiting

instruction to jury as to purpose for which cross-examination testimony by defendant's wife suggesting bias and motive to testify untruthfully in defendant's favor was admitted did not constitute reversible error because defendant failed to request such instruction. *Commonwealth v. Brel*, 4 N.M.I. 200 (1994).

—Standard of Appellate Review

See **APPEAL AND ERROR - Standard of Review - Jury Instructions: Criminal Cases**

Juries: Misconduct

—Communication, Ex Parte

Once a criminal defendant shows that an ex parte communication between jury and judge has occurred, the government has the burden of establishing that the communication was harmless. The government must prove beyond a reasonable doubt that the ex parte communication did not contribute to the verdict obtained. *Commonwealth v. Esteves*, 3 N.M.I. 447 (1993).

While certain ex parte communications between a judge and a jury during a jury's deliberations are by their nature harmless, communication regarding the law to be applied must be relayed to the parties, so that they may have the opportunity to respond. *Commonwealth v. Esteves*, 3 N.M.I. 447 (1993).

——Particular Cases

Where defendant in criminal prosecution did not know of jury's ex parte communication with judge during its deliberations, and did not raise issue below, NMI Supreme Court would nonetheless consider issue of whether communication prejudiced defendant in violation of his constitutional rights. *Commonwealth v. Esteves*, 3 N.M.I. 447 (1993).

In criminal prosecution for assault with dangerous weapon and unlawful possession of firearm, jury's ex parte inquiry to trial judge during its deliberations as to whether it could return inconsistent verdict (i.e., guilty of assault with dangerous weapon but innocent of unlawful possession of firearm), to which judge reported in affirmative, denied defendant a fair trial. Question of whether inconsistent verdicts werepermissible was substantive question of law which judge should have brought to attention of parties before ruling on it. Defendant should have been accorded opportunity to review and address question. Likelihood that judge's answer to jury's question affected verdict precluded appellate court from finding harmless error on appeal. *Commonwealth v. Esteves*, 3 N.M.I. 447 (1993).

—Generally

See **Misconduct - Hearing to Consider**, this topic.

—Hearing to Consider

In considering allegations of juror misconduct, trial court maintains broad discretion. Whether to hold evidentiary hearing on alleged misconduct depends upon the content of the motion, the seriousness of the alleged misconduct, and the credibility of the source. *Commonwealth v. Hanada*, 2 N.M.I. 343 (1991).

An evidentiary hearing involving alleged juror misconduct should be avoided because it may subject jurors to harassment, increase the temptation for jury tampering, and create uncertainty in jury verdicts. A post-trial hearing should be held only when a party comes forward with clear, strong, substantial and incontrovertible evidence that a specific non-speculative impropriety has occurred. *Commonwealth v. Hanada*, 2 N.M.I. 343 (1991).

—Particular Cases

Because movants for evidentiary hearing due to alleged juror misconduct failed to present supporting facts by affidavit and failed to show sources of information concerning alleged misconduct, they failed to sufficiently establish why trial court should investigate allegation. Trial court did not abuse its discretion in denying motion. *Commonwealth v. Hanada*, 2 N.M.I. 343 (1991).

Juries: Right to Jury Trial

See **JURIES - Right to Jury Trial**

Juries: Verdicts

—Inconsistent Verdicts

Where an accused is charged with separate and distinct crimes, although of a similar character, in two or more counts, a verdict of acquittal on one or more counts and of conviction on the others is not ordinarily or necessarily inconsistent, at least where each offense requires different evidence or involves factual variations. When an accused is convicted on one count and is acquitted on another count, the test is whether the essential elements in the count wherein accused is acquitted are identical and necessary to

proof of conviction on the guilty count. Hence, where the elements of the two offenses are identical, a verdict of not guilty on one count is inconsistent with a verdict of guilty on the other count. Also, a verdict which acquits an accused of a crime which includes acts necessary to the commission of another crime for which he is found guilty is inconsistent. *Commonwealth v. Pua*, 2009 MP 21 ¶ 29 (2009).

Inconsistent verdicts, even verdicts that acquit on a predicate offense while convicting on the compound offense, should not necessarily be interpreted as a windfall to the Government at the defendant's expense. It is equally possible that the jury, convinced of guilt, properly reached its conclusion on the compound offense, and then through mistake, compromise, or lenity, arrived at an inconsistent conclusion on the lesser offense. But in such situations, the Government has no recourse if it wishes to correct the jury's error; the Government is precluded from appealing or otherwise upsetting such an acquittal by the Constitution's Double Jeopardy Clause. *Commonwealth v. Pua*, 2009 MP 21 ¶ 30 (2009).

A jury shall have the freedom to arrive at any verdict it wishes, even if inconsistent or seemingly irrational, so long as there is sufficient evidence to support the guilty verdict. *Commonwealth v. Pua*, 2009 MP 21 ¶ 31 (2009).

The test for determining whether verdicts are inconsistent is whether the essential elements in the count wherein accused is acquitted are identical and necessary to proof of conviction on the guilty count. *Commonwealth v. Pua*, 2009 MP 21 ¶ 33 (2009).

A verdict is repugnant where a defendant is convicted of a crime on which the jury actually found that the defendant did not commit an essential element, whether it be one element or all. *Commonwealth v. Pua*, 2009 MP 21 ¶ 33 (2009).

Inconsistent verdict by jury in criminal prosecution does not necessarily warrant reversal. A jury should have the freedom to arrive at any verdict it wishes, even if inconsistent or seemingly irrational, so long as there is sufficient evidence to support a guilty verdict. *Commonwealth v. Esteves*, 3 N.M.I. 447 (1993).

—Particular Cases

Where jury found witness's testimony credible that he observed defendant and other party outside home of victim, that other party was carrying small appliances out of victim's house and defendant was walking back and forth to the car with other party and drove the car away with other party as a passenger, and that witness had a clear and unobstructed view of defendant during this entire scenario and was able to provide an in-court identification of defendant, and where there was also testimony that defendant showed a walkman, that was later identified by the victim as her property, to several individuals a few days after the burglary, there was sufficient evidence for a jury to find defendant guilty of theft and burglary. *Commonwealth v. Santos*, 1998 MP 6 ¶15

In prosecution for assault with dangerous weapon and unlawful possession of firearm, jury's verdict that defendant was guilty of assault with dangerous weapon (with special finding that he was armed with firearm at time he committed assault) but innocent of charge of unlawful possession of firearm was not necessarily inconsistent. Verdict and special finding reflected determination that defendant was armed with a firearm while committing assault, but that firearm was not necessarily a handgun. *Commonwealth v. Esteves*, 3 N.M.I. 447 (1993).

—Polling of Jury

Com. R. Crim. P. 31(d) authorizes trial court to discharge jury or order it to retire for additional deliberations if jury poll reveals lack of unanimity. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

When polling jury to ascertain unanimity of verdict under Com. R. Crim. P. 31(d), trial court does not abuse its discretion merely by continuing to poll jury after one juror dissents. Reversible error occurs only when it is apparent that court coerced jurors into prematurely rendering a verdict. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

In assessing whether trial court's method of polling jury to ascertain unanimity of verdict under Com. R. Crim. P. 31(d) is coercive, the following factors are considered, applying a totality of circumstances test: (1) whether counsel objected to the polling, and did so specifically and contemporaneously; (2) whether court repeated a cautionary instruction to jurors to carefully weigh and consider the view of their fellow jurors before sending jury to deliberate further; and (3) length of time jury deliberated after being sent for further deliberation. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

——Particular Cases

In prosecution for vehicular homicide, trial court's polling of jury to ascertain unanimity of verdict under

Com. R. Crim. P. 31(d) did not coerce jury into reaching premature verdict where: (1) defendant did not contemporaneously and specifically object to further polling after fifth of six jurors voiced dissent; (2) after polling revealed dissent, court gave cautionary instruction to the effect that each juror should reach individual opinion and decide case independently, after discussing evidence and instructions; and (3) jurors thereafter spent little time reaching final, unanimous verdict. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

—Standard of Appellate Review

See **APPEAL AND ERROR - Standard of Review - Jury Verdicts: Criminal Cases**

—Unanimity

The United States Constitution requires something beyond a simple unanimous finding by the jury that the accused committed a crime. Unanimity means more than a conclusory agreement that the defendant has violated the statute in question; there is a requirement of substantial agreement as to the principal factual element underlying a specified offense. *Commonwealth v. Castro*, 2008 MP 18 ¶ 16 (2008).

A general unanimity instruction informs the jury that the verdict must be unanimous, whereas a specific unanimity instruction indicates to the jury that they must be unanimous as to which specific act constitutes the offense charged."). Fundamental fairness dictates that the trial court should specify that all jurors must agree on all underlying material facts that constitute the given criminal offense. *Commonwealth v. Castro*, 2008 MP 18 ¶ 17 (2008).

There is at least one notable exception to the specific unanimity requirement. If the evidence shows the defendant was engaged in a continuing course of conduct, then a specific unanimity instruction is not required. A continuing course of conduct is described as a series of actions intended to secure the same objective. *Commonwealth v. Castro*, 2008 MP 18 ¶ 18 (2008).

A crime involves a continuing course of conduct when it is committed over a period of time, like kidnapping, harboring a fugitive, or failing to provide support for a minor. In those instances, the jury need not agree unanimously on individual acts that occur during the ongoing crime. *Commonwealth v. Castro*, 2008 MP 18 ¶ 19 (2008).

The continuing course of conduct exception can apply to multiple acts, so long as the acts constitute one continuous event. *Commonwealth v. Castro*, 2008 MP 18 ¶ 20 (2008).

Criminal defendants have substantive right to unanimous verdict. Com. R. Crim. P. 31(a). *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

——Particular Cases

Although defendant failed to challenge criminal information prior to trial on ground that it contained duplicitous count, as required by Com. R. Crim. P. 12(b)(1), because challenge implicated substantive right to unanimous jury verdict, NMI Supreme Court was not foreclosed from review of jury unanimity question on appeal. Com. R. Crim. P. 31(a). *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

Claimed duplicitous vehicular homicide count in criminal information, based on inclusion of predicate offenses of speeding and reckless driving, did not, combined with trial court's failure to give jury specific unanimity of verdict instruction as to each predicate offense, deny defendant his rights to fair trial and unanimous verdict where: (1) court provided jury with general unanimity instruction augmented with special interrogatories in verdict form separately addressing predicate offenses by ascertaining whether defendant committed predicate offense, and if so whether offense was cause of victim's death, and if so whether defendant was guilty of the vehicular homicide charge; (2) nothing in record indicated that jurors were confused or disagreed about factual basis of defendant's guilt; and (3) instructions were straightforward and easily understood. 6 CMC § 7110; Com. R. Crim. P. 31(a). *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

Jurisdiction

—Generally

NMI Supreme Court had jurisdiction, pursuant to Article IV, § 2 of the Commonwealth Constitution, over appeal from verdict and judgment of conviction for burglary and theft, sentencing order, denial of proposed jury instructions, and denial of oral motion for judgment of acquittal. N.M.I. Const., art. IV, § 2 (as amended by Legislative Initiative 10-3, ratified by the voters on November 1, 1997, and certified by the Board of Elections on December 13, 1997). *Commonwealth v. Santos*, 1998 MP 6 ¶1

NMI Supreme Court had jurisdiction, pursuant to1 CMC § 3102(a), over appeal from conviction for possession of methamphetamine hydrochloride, denial of motion to suppress, and imposition of five year sentence pursuant to 6 CMC § 2142(d)(4). 6 CMC § 2142(a). *Commonwealth v. Aldan*, 1997 MP 31 ¶1

If a criminal defendant moves for acquittal at close of government's case in jury trial but fails to renew motion at close of all evidence, on appeal earlier objection to sufficiency of the evidence will be deemed waived. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

Rule that criminal defendant who moves for acquittal at close of government's case in jury trial but fails to renew motion at close of all evidence waives appellate challenge to sufficiency of the evidence is subject to exception where defendant made timely post-trial motion for acquittal pursuant to Com. R. Crim. P. 29(c). *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

Test applied in assessing motion for judgment of acquittal is same as that for challenge to sufficiency of the evidence: whether any rational trier of fact could have found essential elements of crime in question beyond a reasonable doubt. Review encompasses all evidence, direct or circumstantial, viewed in light most favorable to the government. Com. R. Crim. P. 29(c). *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

Trial court should deny a motion for judgment of acquittal under Com. R. Crim. P. 29(a) unless government's evidence is insufficient to sustain a conviction. Motion must be granted only if there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

In assessing motion for judgment of acquittal, court may not weigh or draw inferences from evidence, or assess witnesses' credibility; these are functions of the jury. Com. R. Crim. P. 29(a). *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

The existence of conflicting testimony does not, in itself, merit granting of motion for judgment of acquittal. Com. R. Crim. P. 29(a). *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

—Particular Cases

Where defendant failed to provide NMI Supreme Court with transcript of any testimony presented by the government, Court could not properly review the reasoning behind the Superior Court's decision to deny motion for directed verdict at conclusion of government's case and, accordingly, found no error in Superior Court's decision. *Commonwealth v. Santos*, 1998 MP 6 ¶12

Trial court did not err in denying vehicular homicide defendant's post-trial motion for acquittal, based on contention that government failed to present evidence that defendant was driving recklessly and that such recklessness caused bicyclist's death, where government offered evidence that defendant's speed on impact with bicyclist was at least forty-nine miles per hour in area with posted speed limit of thirty-five miles per hour and defendant nearly collided with another vehicle one to one-and-one-half miles from scene of accident. Viewing evidence in light most favorable to government, reasonable fact finder could have concluded beyond a reasonable doubt that defendant committed offense of reckless driving, and that such driving was a proximate cause of bicyclist's death. 9 CMC § 7110; Com. R. Crim. P. 29(a). *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

Because movants for evidentiary hearing due to alleged juror misconduct failed to present supporting facts by affidavit and failed to show sources of information concerning alleged misconduct, they failed to sufficiently establish why trial court should investigate allegation. Trial court did not abuse its discretion in denying motion. *Commonwealth v. Hanada*, 2 N.M.I. 343 (1991).

A movant should comply with the requirements of court rules and properly notice his or her motion for a hearing. Failure to comply with requirements is basis for denial of motion. *Commonwealth v. Hanada*, 2 N.M.I. 343 (1991).

Juveniles

See **MINORS - Juvenile Delinquency Proceedings**

Mistrial

DC App. Div. 1989. The decision whether or not to declare a mistrial lies within the discretion of the court and turns upon the particular facts presented. *CNMI v. Delos Santos*, 3 CR 661.

DC App. Div. 1989. Where trial court found, based on inquiries made to each of the jurors, that there was no basis for finding that the juror who was

approached by defendant's mother, or the jury as a whole, was incapable of remaining fair and impartial, and the court then admonished the jury not to consider what had happened in arriving at their verdict, the decision not to declare a mistrial was neither irrational nor unreasonable. *CNMI v. Delos Santos*, 3 CR 661.

Motions

—Acquittal

In relevant part, Rule 29(a) of the Commonwealth Rules of Criminal Procedure states that, the court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal if the evidence is insufficient to sustain a conviction of such offense or offenses. A motion for acquittal must be denied if any rational trier of fact could have found the essential elements of the crime in question beyond a reasonable doubt. This assessment takes into account all of the evidence, direct or circumstantial, viewed in the light most favorable to the government. *Commonwealth v. Pua*, 2009 MP 21 ¶ 24 (2009).

In considering trial court's denial of motion for acquittal, NMI Supreme Court considers all the evidence in the light most favorable to the government to determine whether any rational trier of fact could have found guilt beyond a reasonable doubt on the essential elements of the offense. A motion for acquittal must be granted only if there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt. *Commonwealth v. Santos*, 1998 MP 6 ¶11

—Evidence, Suppression of

See also **Motion To Suppress**, this topic.

The essence of a provision forbidding the acquisition of evidence in a certain way is not merely evidence so acquired shall not be used before the Court but that it shall not be used at all. Of course this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others. *Commonwealth v. Pua*, 2006 MP 19 ¶ 24

The exclusionary rule (or fruit of the poisonous tree doctrine) covers evidence which would not have been secured but for unlawful police conduct. *Commonwealth v. Pua*, 2006 MP 19 ¶ 25

The fruit of the poisonous tree doctrine is not without exceptions. The independent source rule exempts evidence procured by means unrelated to the constitutional violation, and the inevitable discovery rule exempts evidence when the prosecution can show by a preponderance of the evidence that its discovery by lawful means was inevitable. *Commonwealth v. Pua*, 2006 MP 19 ¶ 25

The exclusionary rule is justified only to the extent that it deters police from violations of constitutional and statutory protections and prevents the prosecution from being put in a better position than it would have been in had no illegality transpired. *Commonwealth v. Pua*, 2006 MP 19 ¶ 27

The exclusionary rule seeks only to negate advantages obtained through wrongful conduct, not punish the perpetrators for that conduct. Thus, in the absence of a causal relationship – a 'but for' relationship – between the unlawful act and obtaining the evidence, suppression is not available under the exclusionary rule. *Commonwealth v. Pua*, 2006 MP 19 ¶ 27

Motions to suppress evidence must be raised prior to trial. *Commonwealth v. Pua*, 2006 MP 19 ¶ 28

—Generally

Where a petitioner has preserved the issue that she was prosecuted at the hands of an improperly selected prosecuting authority by bringing a pretrial motion to dismiss, the petitioner has an adequate remedy at law, through appeal of her conviction. *Liu v. CNMI*, 2006 MP 5 ¶ 12

An attack on the validity of the prosecutor's authority is an appealable issue. *Liu v. CNMI*, 2006 MP 5 ¶ 13

Whether the prosecution function belongs to the Office of the Attorney General or to the Attorney General personally, is an issue that can be addressed on appeal. A ruling on this issue will not affect an underlying issue that will be repeated in successive cases, that is, whether a particular Attorney General was properly appointed. As such, the issue is not proper for writ relief. *Liu v. CNMI*, 2006 MP 5 ¶ 22

The test applied in reviewing a motion for a judgment of acquittal is the same as that for a challenge to the sufficiency of the evidence: whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt while viewing the evidence in the light most favorable to

the prosecution. *Commonwealth v. Abuy*, 2001 MP 8 ¶ 6

A challenge to the Acting Attorney General's appointment is capable of determination without a trial, pursuant to Commonwealth Rules of Criminal Procedure 12(f) or 12(b)(2), and thus this type of objection must be presented prior to trial, or at the time set by the court, or the challenge is waived. Com. R. Crim. P. 12(f), Com. R. Crim. P. 12(b)(2). *Commonwealth v. Yi Xiou Zhen*, 2004 MP 4 ¶ 38

—In Limine

The trial court need not honor any and all requests by indigent defendants in a fishing expedition with the remote hope of uncovering some justification for reasonable doubt. To ensure a hearing, a defendant should precisely explain how the expert testimony would aid her defense and how, exactly, she would be harmed by the denial of the request. Finally, she should request a hearing on the matter. *Commonwealth v. Perez,* 2006 MP 24 ¶ 25

A motion in limine is a pretrial motion requesting the court to prohibit opposing counsel from referring to or offering evidence on matters so highly prejudicial to the moving party that curative instructions cannot prevent predispositional effect on the jury. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), *aff'd*, 42 F.3d 546 (9th Cir. 1994).

—New Trial

See **New Trial**, this topic.

—Particular Cases

Where there is no distinction between defendant's motion for acquittal after the government completed its case in chief and an attempt to make an untimely objection in direct violation of Rule 12(b), the trial court granted the defendant a waiver of his right to raise a pre-trial objection without good cause. *Commonwealth v. Jai Hoon Yoo,* 2004 MP 5 ¶ 12

— Reconsideration

The standard for approving a motion for reconsideration in the criminal context is "an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Commonwealth v. Eguia*, 2008 MP 17 ¶ 7 (2008).

Motion To Suppress

—Allegations

CTC 1987. Factual allegations set forth in a motion to suppress, including any accompanying affidavits, must be sufficiently definite, specific, detailed, and nonconjectural, and not founded upon mere suspicion or conjecture, to enable the court to conclude that a substantial claim is presented. *CNMI v. Kim*, 3 CR 238.

—Generally

A motion to suppress evidence is a device used to eliminate from the trial of a criminal case evidence which has been secured illegally, generally in violation of one's constitutional rights. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), aff'd, 42 F.3d 546 (9th Cir. 1994).

——Particular Cases

Although DUI defendant mislabelled motion to suppress demeanor evidence at time of arrest (based on alleged due process violation) as motion in limine, motion was actually motion to suppress evidence and NMI Supreme Court would treat it as such on appeal. *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), *aff'd*, 42 F.3d 546 (9th Cir. 1994).

—Hearing

CTC 1987. An evidentiary hearing is required on a motion to suppress only when necessary to receive evidence on an issue of fact and the party requesting a hearing bears the burden of showing that there are disputed material facts. *CNMI v. Kim*, 3 CR 238.

CTC 1987. On a motion to suppress, an evidentiary hearing is not held as a matter of course, but is held only when the defendant alleges sufficient facts which, if proven, would justify relief. *CNMI v. Kim*, 3 CR 238.

CTC 1987. Inherent in the flexible guidelines on a motion to suppress is a judicial recognition that the determination of whether a hearing is required on a motion to suppress is necessarily dependent upon the particular facts which attend a particular request, and the court is properly left with a certain amount of discretion in this regard. *CNMI v. Kim*, 3 CR 238.

CTC 1987. On a motion to suppress, where the affidavit of the defendant fails to allege any facts which, if proven, would justify relief, the court need

not even entertain the motion. *CNMI v. Kim*, 3 CR 238.

New Trial

—Generally

While the Commonwealth Rules of Criminal Procedure are intended to provide for the just determination of every criminal proceeding, and Commonwealth Rule of Criminal Procedure 2 provides that the Rules shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay, this in no way obviates the need to file an appeal in a timely manner, as required by Commonwealth Rule of Criminal Procedure 33. Com. R. Crim. P. 2, Com. R. Crim. P. 33. *Commonwealth v. Diaz*, 2003 MP 14 ¶ 7

Pursuant to Commonwealth Rule of Criminal Procedure 33, the seven-day period for filing a motion for a new trial, based upon any ground other than newly discovered evidence, is a jurisdictional limit as it delineates the period of time in which the trial court may act. Com. R. Crim. P. 33. *Commonwealth v. Diaz*, 2003 MP 14 ¶ 12

There is nothing unfair about the seven-day limit in which to file an appeal imposed by Commonwealth Rule of Criminal Procedure 33. However, there might be an exception in the unique circumstances doctrine which holds that court may act on untimely motions when judges induce parties to rely to their detriment on erroneous extensions of time. Com. R. Crim. P. 33. *Commonwealth v. Diaz*, 2003 MP 14 ¶ 13

Trial court's denial of criminal defendant's motion for new trial after post-trial discovery of evidence was subject to review under abuse of discretion standard. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

——Particular Cases

Trial court did not err in denying criminal defendant's motion for new trial in prosecution for murder after post-trial discovery of letter written by victim containing sentence suggesting that victim would commit suicide. Content of entire letter negated implication of suicidal ideation. In addition, trial court could have reasonably determined that new evidence would have been cumulative in light of other evidence admitted in trial regarding decedent's suicidal tendencies and depression. Finally, based on record, jury's verdict was substantially supported by the evidence, and trial court could reasonably have concluded that new evidence would not likely result in acquittal. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

—Jurisdiction

Pursuant to Article IV, Section 3 of the Commonwealth Constitution and pursuant to 1 CMC § 3102(a), the N.M.I. Supreme Court has jurisdiction over the appeal of a denial of a motion for a new trial. *Commonwealth v. Diaz*, 2003 MP 14 ¶ 1

Orders Of Commitment

CTC 1981. Orders of commitment to Commonwealth penal facilities must be issued by courts of record in the Commonwealth. *CNMI v. Guerrero*, 1 CR 190.

Plain Error

See **Error - Plain Error**, this topic.

Pleas

—Alford Plea

The issue of whether a criminal defendant entered a valid Alford plea ("I'm not guilty but I plead guilty") is a legal question, reviewable de novo. *Commonwealth v. Cabrera*, 2 N.M.I. 311 (1991), *aff'd*, 979 F.2d 854 (9th Cir. 1992).

An Alford plea is somewhat similar to a plea of nolo contendere, which is expressly permitted by Com. R. Crim. P. 11. A defendant pleading nolo contendere ("I will not contest it") does not admit or deny criminal charges, but elects not to contest charges. An Alford plea, on the other hand, is a guilty plea accompanied by a protestation of innocence. A judgment of conviction may be imposed pursuant to either plea. *Commonwealth v. Cabrera*, 2 N.M.I. 311 (1991), *aff'd*, 979 F.2d 854 (9th Cir. 1992).

So long as an Alford plea (a guilty plea accompanied by a protestation of innocence) is not compelled in violation of the Fifth Amendment to the U.S. Constitution (is entered voluntarily, intelligently and knowingly), defendant is represented by competent counsel and there is factual basis for plea, it may be accepted. *Commonwealth v. Cabrera*, 2 N.M.I. 311 (1991), *aff'd*, 979 F.2d 854 (9th Cir. 1992).

——Particular Cases

Colloquy among court, counsel and defendant revealed nothing indicating that criminal defendant's Alford plea (guilty plea accompanied by a protestation of innocence) was compelled in violation of Fifth Amendment to U.S. Constitution. *Commonwealth v. Cabrera*, 2 N.M.I. 311 (1991), *aff'd*, 979 F.2d 854 (9th Cir. 1992).

Record indicated that defendant who claimed on appeal that she did not enter a guilty plea nonetheless understood her plea to be an Alford plea, i.e., a guilty plea accompanied by a protestation of innocence. Defendant acknowledged that trial court would enter a finding of guilt in response to her plea. Fact that defendant did not use the word "guilty" when entering her plea and did not say "I plead guilty" was not fatal to her guilty plea. *Commonwealth v. Cabrera*, 2 N.M.I. 311 (1991), *aff'd*, 979 F.2d 854 (9th Cir. 1992).

In entering plea "according to the Alford plea" defendant pleaded guilty while protesting her innocence of charge. Trial court did not err in finding defendant guilty where record indicated that plea was made voluntarily, intelligently, with knowledge of rights defendant was giving up, with advice of counsel whose competency was not at issue, and there was strong factual basis for plea. *Commonwealth v. Cabrera*, 2 N.M.I. 311 (1991), *aff'd*, 979 F.2d 854 (9th Cir. 1992).

—Guilty Plea

The trial court abuses its discretion when it bases its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence. Commonwealth Rule of Criminal Procedure 32(d) provides that a guilty plea may be withdrawn after imposition of a sentence only to correct "manifest injustice." This standard is significantly higher than the "fair and just" standard for withdrawing guilty pleas prior to sentencing. *Commonwealth v. Taivero*, 2009 MP 10 ¶ 26 (2009).

A plea of guilty is not compelled, within the meaning of the Fifth Amendment to the U.S. Constitution, if it represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. *Commonwealth v. Cabrera*, 2 N.M.I. 311 (1991), *aff'd*, 979 F.2d 854 (9th Cir. 1992).

—Nolo Contendere

An Alford plea is somewhat similar to a plea of nolo contendere, which is expressly permitted by Com. R. Crim. P. 11. A defendant pleading nolo contendere ("I will not contest it") does not admit or deny criminal charges, but elects not to contest charges. An Alford plea, on the other hand, is a guilty plea accompanied by a protestation of innocence. A judgment of conviction may be imposed pursuant to either plea. *Commonwealth v. Cabrera*, 2 N.M.I. 311 (1991), *aff'd*, 979 F.2d 854 (9th Cir. 1992).

A plea of nolo contendere has all the effect of a plea of guilty for purposes of the case. It is tantamount to an admission of guilt. *Commonwealth v. Cabrera*, 2 N.M.I. 311 (1991), *aff'd*, 979 F.2d 854 (9th Cir. 1992).

Com. R. Crim. P. 11(c) requires that court inform a defendant of certain rights before a guilty plea or plea of nolo contendere may be accepted. *Commonwealth v. Cabrera*, 2 N.M.I. 311 (1991), *aff'd*, 979 F.2d 854 (9th Cir. 1992).

A plea of nolo contendere has all the effect of a plea of guilty for the purposes of the case. After the plea, nothing is left but to render judgment, for the obvious reason that in the face of the plea no issue of fact exists and none can be made while the plea remains of record. *Commonwealth v. Kawai*, 1 N.M.I. 66 (1990), reh'g denied, 1 N.M.I. 93 (1990).

In order for defendant to raise any question of law on appeal after pleading nolo contendere at trial, he had to reserve the right to do so. Failure to reserve the right to do so is a waiver of the right. *Commonwealth v. Kawai*, 1 N.M.I. 66 (1990), reh'g denied, 1 N.M.I. 93 (1990).

——Particular Cases

Remedy of accused who thought he had not violated the law but who had entered a plea of nolo contendere was to withdraw the plea, by leave of court, and enter a plea of not guilty, then submit facts for determination in the usual way. *Commonwealth v. Kawai*, 1 N.M.I. 66 (1990), reh'g denied, 1 N.M.I. 93 (1990).

Defendant who entered a plea of nolo contendere at trial admitted his guilt, and could not subsequently raise issue of fact before NMI Supreme Court. *Commonwealth v. Kawai*, 1 N.M.I. 66 (1990), reh'g denied, 1 N.M.I. 93 (1990).

—Plea Agreements

Under the Due Process Clauses of the United States and Commonwealth Constitutions, a trial court must

ensure that a defendant's guilty plea is entered knowingly, voluntarily, and intelligently. A voluntary and intelligent plea is necessary because a defendant waives a number of constitutional rights when pleading guilty. In order for a guilty plea to be voluntary and intelligent, the defendant must be aware of the range of allowable punishment that will result from the plea. Trial courts are obligated to advise defendants of the consequences of their pleas. *Commonwealth v. Jindawong,* 2008 MP 3 ¶ 6 (2008).

Trial courts are only required to advise defendants of the direct, as opposed to the collateral, consequences of their pleas. Direct consequences have a definite, immediate and largely automatic effect on the range of the defendant's punishment. Conversely, collateral consequences are not automatic, but are contingent on action taken by an individual or individuals other than the sentencing court. *Commonwealth v. Jindawong,* 2008 MP 3 ¶ 7 (2008).

The only consequences considered direct are the maximum prison term and fine for the offense charged. On the other hand, a survey of United States common law provides numerous examples of collateral consequences, which include the following: ineligibility to serve on a jury, disqualification from public benefits, ineligibility to possess firearms, ineligibility for parole, revocation of parole, dishonorable discharge from the armed services, revocation of a pilot's license, loss of the right to vote and travel abroad, and revocation of a business or professional license. *Commonwealth v. Jindawong,* 2008 MP 3 ¶ 8 (2008).

The distinction between a collateral and direct consequence of a criminal conviction is obvious at the extremes and often subtle at the margin. *Commonwealth v. Jindawong,* 2008 MP 3 ¶ 9 (2008).

Collateral consequences are not automatic, but are contingent on action taken by an individual or individuals other than the sentencing court – such as another government agency or the defendant. Unlike direct consequences, collateral consequences remain beyond the control and responsibility of the trial court in which a conviction is entered. *Commonwealth v. Jindawong,* 2008 MP 3 ¶ 10 (2008).

It would be incredibly burdensome, if not impossible, to require trial courts to research and disclose every conceivable consequence of a guilty plea. Clearly, requiring the trial court to advise a defendant of every potential consequence of a guilty plea would cripple judicial efficiency and fundamentally alter the functions of the court system. If anyone has an obligation to inform a defendant of the consequences associated with a guilty plea, it is a defendant's attorney. Defense counsel is in a much better position to ascertain the personal circumstances of his client so as to determine what indirect consequences the guilty plea may trigger. *Commonwealth v. Jindawong,* 2008 MP 3 ¶ 13 (2008).

A guilty plea may be withdrawn after imposition of sentence only to correct manifest injustice. *Commonwealth v. Chen,* 2006 MP 14 ¶ 6

A lawyer's failure to inform his client of the consequences of a guilty plea does not amount to manifest injustice. *Commonwealth v. Chen,* 2006 MP 14 ¶ 6

To satisfy due process requirements in criminal matters, a guilty plea must be voluntary and intelligent. *Commonwealth v. Chen,* 2006 MP 14 ¶ 7

In order for a plea to be voluntary and intelligent, the defendant must be aware of the range of allowable punishment that will result from the plea. A trial court accepting a guilty plea has an obligation to advise a pleading defendant of consequences that flow from such a plea. *Commonwealth v. Chen,* 2006 MP 14 ¶ 7

Direct consequences are those that have a definite, immediate and largely automatic effect on the range of the defendant's punishment. *Commonwealth v. Chen,* 2006 MP 14 ¶ 8

A consequence that is not automatic, but contingent on action taken by an individual or individuals other than the sentencing court, is generally collateral. *Commonwealth v. Chen,* 2006 MP 14 ¶ 8

Immigration laws are not criminal and are never considered penal. Deportation has been consistently classified as a civil rather than a criminal procedure. *Commonwealth v. Chen,* 2006 MP 14 ¶ 9

Under federal law there is no mandatory requirement for a defendant to be advised of the immigration consequences of a guilty plea. *Commonwealth v. Chen,* 2006 MP 14 ¶ 9

Under Rule 11(e)(1) of the Commonwealth Rules of Criminal Procedure, the court may not participate in any plea agreement discussions. The purpose of such prohibition is to preserve the judge's impartiality after the negotiations are completed, as judicial involvement detracts from a judge's objectivity in three potential ways: such involvement makes it

difficult for a judge to objectively assess the voluntariness of the plea entered by the defendant; judicial participation in plea discussions resulting in failure inherently risks the loss of a judge's impartiality during trial, because he has become aware of the defendant's possible interest in pleading guilty, and because he may have viewed unfavorably the defendant's rejection of the proposed agreement; and involvement in plea negotiations diminishes the judge's objectivity in post-trial matters such as sentencing and motions for a judgment of acquittal. Com. R. Crim. P. 11(e)(1). *Commonwealth v. Attao*, 2005 MP 8 ¶ 9

Although, under Rule 11 of the Commonwealth Rules of Criminal Procedure, the court is allowed to reject a plea agreement, and a defendant whose plea has been accepted in violation of the Rule should be afforded the opportunity to plead anew, the mandate of Rule 11 is unambiguous--the participation of the judge in plea negotiations is prohibited under all circumstances, without any exceptions. Com. R. Crim. P. 11. *Commonwealth v. Attao*, 2005 MP 8 ¶ 9

The power to assess the wisdom of and review the plea agreement under Rule 11 of the Commonwealth Rules of Criminal Procedure protects against the erosion of the judicial sentencing power, and this grant of power carries with it the duty to exercise it responsibly. Courts should be wary of second-guessing prosecutorial choices, as they do not know which charges are best initiated at which time, which allocation of prosecutorial resources is most efficient, or the relative strengths of various cases and charges. Com. R. Crim. P. 11. *Commonwealth v. Attao*, 2005 MP 8 ¶ 9

No error is committed by a trial court when it declines to intervene in the plea negotiation between an accused and the Government, as such action is prohibited by Rule 11 of the Commonwealth Rules of Criminal Procedure. Com. R. Crim. P. 11. *Commonwealth v. Attao*, 2005 MP 8 ¶ 11

Commonwealth Rule of Criminal Procedure 11 provides that when the court is presented with a plea agreement under Rule 11(e)(1)(A) or (C), the court's only options are to accept a plea agreement in its entirely or reject it and allow the parties an opportunity to renegotiate the sentence. Com. R. Crim. P. 11. *Commonwealth v. Castro*, 2002 MP 13 ¶ 21

When a plea agreement is made pursuant to Federal Rules of Criminal Procedure 11(e)(1)(C), the trial court may accept or reject the agreement, but absent exceptional circumstances, it may not accept the defendant's guilty plea and impose a sentence greater, or less severe, than agreed upon. Fed. R. Crim. P. 11(e)(1)(C). *Commonwealth v. Castro*, 2002 MP 13 ¶ 22

An agreement reached between the parties regarding the disposition of a case is not sacrosanct. *Commonwealth v. Castro*, 2002 MP 13 ¶ 23

The Commonwealth Rules of Criminal Procedure were not promulgated to protect prosecutors' bargains. *Commonwealth v. Castro*, 2002 MP 13 ¶ 23

The trial court retains authority and responsibility when presented with a sentencing agreement. The court may accept or reject a guilty plea in the exercise of its sound discretion. *Commonwealth v. Castro*, 2002 MP 13 ¶ 24

Judicial power to reject plea bargains serves to modify and condition the absolute power of the prosecutor, consistent with the doctrine of separation of powers, by establishing a check on the abuse of prosecutorial (executive) prerogatives. *Commonwealth v. Castro*, 2002 MP 13 ¶ 24

Because plea agreements may not invade the traditionally judicial function of what penalty to impose, judges are given power to reject plea bargains which invade this authority. Thus, a judge must reject any plea agreement he feels is unjust. *Commonwealth v. Castro*, 2002 MP 13 ¶ 24

If the court rejects a plea agreement, each of the following omissions violates Commonwealth Rules of Criminal Procedure 11(e)(4): if the court does not allow the defendant to withdraw his plea, if the court does not inform the defendant that he or she is not bound by the plea agreement, if the court does not inform the defendant that if he or she persists in his or her guilty plea the disposition of the case might be less favorable than what he or she bargained for. Com. R. Crim. P. 11(e)(4). *Commonwealth v. Castro*, 2002 MP 13 ¶ 25

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, and pursuant to 1 CMC § 3102(a), the N.M.I. Supreme Court has jurisdiction over the appeal of a trial court grant of a motion for specific performance of a plea bargain contract. N.M.I. Const. art. IV, § 3, 1 CMC § 3102(a). *Commonwealth v. Camacho*, 2002 MP 21 ¶ 1

A criminal defendant has no constitutional right to a plea bargain. *Commonwealth v. Camacho,* 2002 MP 21 ¶ 9

The government is not obligated to enter into plea negotiations with a defendant. *Commonwealth v. Camacho*, 2002 MP 21 ¶ 9

When a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such a promise must be fulfilled. *Commonwealth v. Camacho*, 2002 MP 21 ¶ 9

Detrimental reliance on a plea agreement could trigger a defendant's due process rights violation argument. *Commonwealth v. Camacho,* 2002 MP 21 ¶ 9

A plea bargain standing alone is without constitutional significance; in itself it is a mere executory agreement which, until embodied in the judgment of a court, does not deprive an accused of liberty or any other constitutionally protected interest. It is the ensuing guilty plea that implicates the Constitution. *Commonwealth v. Camacho,* 2002 MP 21 ¶ 10

When a defendant enters a guilty plea, as part of a plea agreement, due process required that the government honor its promises. *Commonwealth v. Camacho*, 2002 MP 21 ¶ 10

The Government may withdraw its plea agreement offer prior to a defendant's entry of a guilty plea because the defendant's due process rights are not implicated until the guilty plea is entered. *Commonwealth v. Camacho*, 2002 MP 21 ¶ 11

Plea agreements are to be construed by ordinary contract standards. *Commonwealth v. Camacho*, 2002 MP 21 ¶ 13

A plea agreement is a unilateral contract where the defendant can only accept through performance. A defendant's mere promise of performance does not qualify as acceptance of the government's offer. A defendant can only accept the plea agreement offer by pleading guilty. *Commonwealth v. Camacho,* 2002 MP 21 ¶ 13

Neither the defendant nor the government is bound by a plea agreement until it is approved by the court. *Commonwealth v. Camacho,* 2002 MP 21 ¶ 14

A plea agreement is not binding on either party until the defendant has pled guilty and that plea has been accepted by the court. *Commonwealth v. Camacho,* 2002 MP 21 ¶ 14

The general rule requiring the trial court's acceptance of a plea bargain agreement for such an agreement to become enforceable is subject to a detrimental reliance exception. Even if the agreement has not been finalized by the court, a defendant's detrimental reliance on a prosecutorial promise in plea bargaining could make a plea agreement binding. *Commonwealth v. Camacho,* 2002 MP 21 ¶ 16

A defendant who can show that he took action based on a promise, made in a plea bargain situation by a qualified government agent, may be entitled to some form of relief, although there is an issue of whether the relief required accords the defendant the benefit of the bargain or merely restores the defendant to the status quo. *Commonwealth v. Camacho*, 2002 MP 21 ¶ 17

Detrimental reliance occurs when a defendant relies upon a prosecutor's plea offer by taking some substantial step or accepting serious risk of an adverse result following acceptance of the plea offer. Detrimental reliance may be demonstrated where a defendant performed some part of the bargain. For example, a defendant who provides beneficial information to law enforcement can be said to have relied to his detriment. Reliance may not be shown by the mere passage of time or where the defendant stopped preparing his defense, absent a showing of specific prejudice. *Commonwealth v. Camacho,* 2002 MP 21 ¶ 17

Rule 11(e) of the Commonwealth Rules of Criminal Procedure sets forth three types of plea agreements, under which the attorney for the government may do any of the following: move for dismissal of other charges; make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such a recommendation or request shall not be binding upon the court; or agree that a specific sentence is the appropriate disposition of the case. Com. R. Crim. P. 11(e)(1). *Commonwealth v. Ge Ai Ping*, 1999 MP 16 ¶ 7

Under Commonwealth Rules of Criminal Procedure 11(e)(2), the trial court may accept or reject agreements made pursuant to Rule 11(e)(1)(A) or 11(e)(1)(C). The court may also defer its decision until it has the opportunity to consider the presentence report. Com. R. Crim. P. 11(e)(2); Com. R. Crim. P. 11 (e)(1)(A); Com. R. Crim. P.

11(e)(1)(C). *Commonwealth v. Ge Ai Ping*, 1999 MP 16 ¶ 9

Under Commonwealth Rules of Criminal Procedure 11(e)(3), if the court accepts a plea agreement made pursuant to Rule 11(e)(1)(A) or 11(e)(1)(C), it must inform the defendant that the disposition provided for by the plea agreement will be embodied in the judgment and sentence. Com. R. Crim. P. 11(e)(3); Com. R. Crim. P. 11 (e)(1)(A); Com. R. Crim. P. 11(e)(1)(C). *Commonwealth v. Ge Ai Ping*, 1999 MP 16 ¶ 9

Under Commonwealth Rules of Criminal Procedure 11(e)(4), if the court rejects a plea agreement made pursuant to Rule 11(e)(1)(A) or 11(e)(1)(C), it must so inform the parties, advise the defendant that the court is not bound by the plea agreement, and afford the defendant the opportunity to withdraw his plea. Com. R. Crim. P. 11 (e)(4); Com. R. Crim. P. 11 (e)(1)(A); Com. R. Crim. P. 11(e)(1)(C). *Commonwealth v. Ge Ai Ping*, 1999 MP 16 ¶ 9

When the court is presented with a plea agreement made pursuant to Rule 11(e)(1)(A) or 11(e)(1)(C), the court may only accept or reject the agreement in its entirety. Com. R. Crim. P. 11 (e)(1)(A); Com. R. Crim. P. 11(e)(1)(C). *Commonwealth v. Ge Ai Ping*, 1999 MP 16 ¶ 9

While Commonwealth courts may reduce an agreed upon sentence pursuant to Com. R. Crim. P. 35(b), if the sentence was imposed pursuant to an accepted Com. R. Crim. P. 11(e)(1)(c) agreement, then the reduction of sentence can only occur in those exceptional cases based on information the court receives after initially sentencing the defendant. Com. R. Crim. P. 35(b); Com. R. Crim. P. 11(e)(1)(c). *Commonwealth v. Ge Ai Ping*, 1999 MP 16 ¶ 11

The time for a court to evaluate whether the impact of exceptional circumstances renders a plea agreement made pursuant to Com. R. Crim. P. 11(e)(1)(A) or 11(e)(1)(C) inappropriate is prior to acceptance. If a court later finds the disposition in the plea agreement objectionable, it should not reduce the sentence unilaterally, but rather should withdraw its acceptance of the plea agreement and permit the parties to renegotiate a more appropriate sentence or opt for trial. Com. R. Crim. P. 11 (e)(1)(A); Com. R. Crim. P. 11(e)(1)(C). *Commonwealth v. Ge Ai Ping*, 1999 MP 16 ¶ 12

Plea agreements are to be construed by ordinary contract standards. *Commonwealth v. Duenas*, 4 N.M.I. 377 (1996).

In interpreting the language of a plea agreement, a reviewing court looks to what the defendant reasonably understood when he or she entered the plea. *Commonwealth v. Duenas*, 4 N.M.I. 377 (1996).

When a plea rests in any significant degree upon a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled. The failure to fulfil such a promise constitutes a breach of the plea agreement, requiring remand for resentencing. *Commonwealth v. Duenas*, 4 N.M.I. 377 (1996).

The harmless error rule does not apply to the law of contractual plea agreements. *Commonwealth v. Duenas*, 4 N.M.I. 377 (1996).

——Particular Cases

We find that the Commonwealth Department of Commerce, and not the sentencing court, denied defendant's taxicab license. The Commonwealth Department of Commerce falls under the purview of the executive branch, operating independently from the trial court. *Commonwealth v. Jindawong*, 2008 MP 3 ¶ 11 (2008).

The denial of defendant's taxicab license was an administrative matter, separate and distinct from defendant's criminal proceeding for reckless driving. It is clear that the denial of defendant's taxicab license was not a punishment imposed by the trial court, but a collateral consequence of her reckless driving conviction. *Commonwealth v. Jindawong*, 2008 MP 3 ¶ 12 (2008).

Where the defendant and Office of the Attorney General entered into a plea agreement under which defendant would plead guilty to robbery (6 CMC § 1411) and was free to argue for alternative to OAG sentence recommendation, Superior Court imposition of restitution as one of the conditions for suspending part of the imprisonment sentence, which was within the guidelines of 6 CMC § 1411, was pursuant to the terms of the plea agreement and not pursuant to 6 CMC § 4113. *Commonwealth v. Sablan*, 1996 MP 22 ¶7

Where plea agreement specified that government's sentencing recommendation would depend upon defendant's cooperation, effectively constituting

promise that government would base its recommendation on defendant's cooperation and not on her prior conviction, government subsequently breached plea agreement by explicitly basing sentencing recommendation primarily on defendant's prior conviction and only secondarily upon her cooperation. *Commonwealth v. Duenas*, 4 N.M.I. 377 (1996).

To cure government's breach of plea agreement during sentencing hearing, NMI Supreme Court would vacate sentence and remand case for resentencing before different trial judge and specific performance of the literal terms of the plea agreement. *Commonwealth v. Duenas*, 4 N.M.I. 377 (1996).

Post Trial Motions

DC App. Div. 1987. Judgment notwithstanding the verdict is used only in jury trials, and not in cases tried by the court; a motion for judgment of acquittal tests the sufficiency of the evidence to sustain a conviction. Com.Tr.C.R.Crim.P. 29. *CNMI v. Ahn*, 3 CR 35.

DC App. Div. 1987. Where counsel made no mention of any grounds upon which post-mal motions would be based and no other motion was raised orally, and the trial court spoke to no other motion, there was nothing in the record to support appellant's contention that he was precluded from making other motions or that he in fact tried to make post-trial motions and was prevented from doing so. *CNMI v. Ahn*, 3 CR 35.

Preindictment Identification

—Counsel

CSC 1989. A preindictment lineup is not a critical stage of prosecution necessitating presence of counsel. *CNMI v. Ngiratebl*, 3 CR 820.

—Motion To Suppress

CSC 1989. Where in viewing the identification of police officer of defendant in the totality of the circumstances, all of the pertinent facts point to a reliable identification, the defendant's motion to suppress the police officer's identification would be denied. *CNMI v. Ngiratebl*, 3 CR 820.

—Reliability

CSC 1989. The five factors to be considered in determining the likelihood of misidentification in a preindictment identification are: (1) the opportunity of the witness to view the criminal, at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation. *CNMI v. Ngiratebl*, 3 CR 820.

Preliminary Examination

—Generally

The critical importance of the preliminary hearing is as mechanism to weed out groundless claims and thereby avoid for both defendants and the people the imposition and expense of an unnecessary criminal trial. Many an unjustifiable prosecution is stopped at the preliminary hearing, where the lack of probable cause is clearly disclosed. *Commonwealth v. Crisostimo*, 2005 MP 18 ¶ 14

A finding of no probable cause is neither a conviction nor an acquittal. *Commonwealth v. Crisostimo*, 2005 MP 18 ¶ 14

A finding of probable cause is different from most judgments and orders of the trial court. It makes no judgment on the merits of the case. Because it does not bear on the guilt or innocence of the accused, such a finding does is not final as required by the Commonwealth Constitution and common law in order to be appealable. *Commonwealth v. Crisostimo*, 2005 MP 18 ¶ 15

The burden is upon the Government to request preservation of evidence following a preliminary hearing finding no probable cause. Failure to do so does not change the order of the court finding no probable cause into a final judgment, although it may have that effect if the release of the evidence precludes the Government from gaining the additional evidence necessary to prove probably cause. *Commonwealth v. Crisostimo*, 2005 MP 18 ¶ 16

A finding of no probable cause is not a final judgment. *Commonwealth v. Crisostimo*, 2005 MP 18 ¶ 17

A court's determination that no probable cause exists to support a charge does not bar the prosecution from re-filing the charge, because such a determination has no preclusive effect, and therefore is not a final

decision. However, under the right set of circumstances, issues necessarily determined during a preliminary hearing in a criminal case may be precluded from re-litigation in a subsequent civil suit. *Commonwealth v. Crisostimo*, 2005 MP 18 ¶ 17

A hearing is usually required prior to a *Kastigar* ruling. However, the government may meet its burden of proof through submission of affidavits. *Commonwealth v. Repeki*, 2004 MP 19 ¶ 18

The purpose of a preliminary examination is to determine whether there is probable cause to believe that a crime has been committed and that the accused committed it. *Babauta v. Superior Ct.*, 4 N.M.I. 309 (1995), *aff'd*, 106 F.3d 406 (9th Cir. 1997).

The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution does not require that an accused be offered an opportunity for a preliminary examination where the government commences prosecution through the filing of an information, and arrests the accused under a warrant. *Babauta v. Superior Ct.*, 4 N.M.I. 309 (1995), *aff'd*, 106 F.3d 406 (9th Cir. 1997).

The right to a preliminary examination in a criminal prosecution has been established in the NMI by statute and rules of court. 6 CMC § 6303; Com. R. Crim. P. 5.1. *Babauta v. Superior Ct.*, 4 N.M.I. 309 (1995), *aff'd*, 106 F.3d 406 (9th Cir. 1997).

Legislative history of 6 CMC § 6303, concerning preliminary examination in a criminal prosecution, is devoid of evidence of an intent either to create a statutory right to a preliminary examination or to codify any procedural rules that might supersede the Commonwealth Rules of Civil Procedure. *Babauta v. Superior Ct.*, 4 N.M.I. 309 (1995), *aff'd*, 106 F.3d 406 (9th Cir. 1997).

Plain language of Com. R. Crim. P. 5.1 mandates that an accused be offered an opportunity for a preliminary examination if he or she is substantially deprived of his or her liberty. Incarceration constitutes a substantial deprivation of liberty. Certain conditions or combinations of conditions of pretrial release may also work a substantial deprivation of a defendant's liberty, bringing defendant within purview of Com. R. Crim. P. 5.1 and entitling him or her to a preliminary examination; determination is left to discretion of trial judge. *Babauta v. Superior Ct.*, 4 N.M.I. 309 (1995), *aff'd*, 106 F.3d 406 (9th Cir. 1997).

Due process provision in NMI Constitution does not confer a broader right than that guaranteed under U.S. Constitution to a preliminary examination in a criminal prosecution. N.M.I. Const. art. I, § 5. *Babauta v. Superior Ct.*, 4 N.M.I. 309 (1995), *aff'd*, 106 F.3d 406 (9th Cir. 1997).

N.M.I. Const. art. I, § 3, protecting individuals from illegal searches and seizures, does not guarantee a right to a preliminary examination in a criminal prosecution to all accused persons in the NMI. *Babauta v. Superior Ct.*, 4 N.M.I. 309 (1995), *aff'd*, 106 F.3d 406 (9th Cir. 1997).

Pretrial Detention

—Generally

Fourth Amendment to the U.S. Constitution requires that a determination of probable cause be made by a judicial officer if there will be a significant restraint on an accused's liberty following arrest. Such a hearing is not required, though, if a grand jury indictment or a warrant supports the defendant's arrest. *Babauta v. Superior Ct.*, 4 N.M.I. 309 (1995), *aff'd*, 106 F.3d 406 (9th Cir. 1997).

—Hearing

U.S. Const. amend. IV does not require that the suspect or counsel be present when a judicial officer makes a determination of probable cause if there will be a significant restraint on an accused's liberty following arrest. *Babauta v. Superior Ct.*, 4 N.M.I. 309 (1995), *aff'd*, 106 F.3d 406 (9th Cir. 1997).

Prosecution

The broad discretion afforded the executive regarding decisions to prosecute rests largely on the recognition that these decisions are particularly ill-suited for judicial review. Such factors as the strength of the case, the prosecution's general deterrence value, the Government's enforcement priorities, and the case's relationship to the Government's overall enforcement plan are not readily susceptible to the kind of analysis the courts are competent to undertake. *Commonwealth v. Attao*, 2005 MP 8 ¶ 14

Judicial supervision of the decision to prosecute would entail systemic costs of a particular concern. Examining the basis of a prosecution delays the criminal proceeding, threatens to chill law enforcement by subjecting the prosecutor's motives and decision-making to outside inquiry, and may undermine prosecutorial effectiveness by revealing

the Government's enforcement policy. *Commonwealth v. Attao*, 2005 MP 8 ¶ 14

The government's discretion to prosecute is not absolute and is subject to constitutional constraints. *Commonwealth v. Attao*, 2005 MP 8 ¶ 15

To challenge a prosecutor's plea bargaining or charging decision, a defendant must show both a discriminatory effect and a discriminatory intent, i.e., that: others similarly situated were not prosecuted or were given more favorable plea bargains; and the defendant's prosecution was based on an impermissible motive. *Commonwealth v. Attao*, 2005 MP 8 ¶ 18

The standard for proving selective prosecution claims is particularly demanding and requires a criminal defendant to introduce clear evidence to displace the presumption that a prosecutor has acted lawfully. *Commonwealth v. Attao*, 2005 MP 8 ¶ 18

A defendant's conclusory argument that the prosecution's action was based on a discriminatory intent does not amount to clear evidence sufficient to support a selective prosecution claim. *Commonwealth v. Attao*, 2005 MP 8 ¶ 19

—Burden of Proof

In a criminal trial the government bears the burden of proving each element of its case beyond a reasonable doubt. The defendant has no duty to prove his or her innocence. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

—Comment on Evidence or Witnesses

Improper vouching typically occurs in two situations: (1) the prosecutor places the prestige of the government behind a witness by expressing his or her personal belief in the veracity of the witness, or (2) the prosecutor indicates that information not presented to the jury supports the witness' testimony. *Commonwealth v. Shoiter*, 2007 MP 20 ¶ 20

A prosecutor in a criminal case has a special obligation to avoid improper suggestions, insinuations, and especially assertions of personal knowledge. A prosecutor may not impart to the jury his or her belief that a government witness is credible. But argument becomes impermissible vouching only if the jury could reasonably believe that the prosecutor is indicating a personal belief in the witness' veracity or is implicitly indicating that information not presented to the jury supports the witness' testimony. When the credibility of witnesses is crucial, improper vouching is particularly likely to jeopardize the fundamental fairness of the trial. *Commonwealth v. Shoiter*, 2007 MP 20 ¶ 21

A prosecutor may not denigrate the defense as a sham, vouch for his or her own credibility, express an opinion of the defendant's guilt, or implicitly vouch for a witness' credibility. *Commonwealth v. Shoiter*, 2007 MP 20 ¶ 22

The advocate-witness rule generally prohibits attorneys from taking the witness stand to testify in a case they are litigating. As with vouching, the policies underlying the application of the advocate-witness rule in a criminal case are related to the concern that jurors will be unduly influenced by the prestige and prominence of the prosecutor's office and will base their credibility determinations on improper factors. Essentially, the danger in having a prosecutor testify as a witness is that jurors will automatically presume the prosecutor to be credible and will not consider critically any evidence that may suggest otherwise. This rule may be violated when the prosecutor was involved in the investigation and the prosecutor's credibility is therefore placed before the jury, even where the prosecutor does not actually take the stand. *Commonwealth v. Shoiter*, 2007 MP 20 ¶ 23

When criminal defendant takes witness stand, his or her truthfulness and veracity become proper subject for prosecutor's closing argument. *Commonwealth v. Brel*, 4 N.M.I. 200 (1994).

A prosecutor may not express his or her personal opinion about a criminal defendant's guilt, but prosecutor may make any reasonable inference supported by the record. *Commonwealth v. Brel*, 4 N.M.I. 200 (1994). project

A prosecutor may call a criminal defendant a liar during closing argument, as long as term is not used excessively and does not inject a highly prejudicial personal opinion of defendant's credibility into evidence. *Commonwealth v. Brel*, 4 N.M.I. 200 (1994).

It is not necessarily improper for prosecutor to comment that defense counsel's characterization of the evidence is incorrect. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

A prosecutor may voice doubt about the veracity of a defendant who has taken the stand where such

comments are supported by the record. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

A prosecutor may argue reasonable inferences from the evidence, including the inference that one of the two sides is lying. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

A prosecutor may call attention to a defendant's failure to present exculpatory evidence and call witnesses so long as the comment is not phrased to call attention to the defendant's failure to testify. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

——Particular Cases

In criminal prosecution for aggravated assault and battery, prosecutor's statement to jury that defendant lied on witness stand did not constitute prosecutorial misconduct. *Commonwealth v. Brel*, 4 N.M.I. 200 (1994).

Although prosecutor improperly made statement to jury about matter that was not in evidence (comment that defendant's expert witness did not testify that he had ever seen self-inflicted gunshot wound in eye, allowing jury to infer that expert had never seen such a wound, when expert had never been asked whether he had seen such a wound), even if jury made improper inference, prosecutor's statement did not unfairly prejudice defendant and did not rise to level of plain error. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

—Duty to Disclose Evidence

See **Discovery - Prosecution's Duty to Disclose Evidence**, this topic.

—Examination of Witnesses

A trial judge has discretion to limit cross-examination to avoid prejudice, repetition, confusion, or harassment. *Commonwealth v. Yi Xiou Zhen*, 2004 MP 4 ¶ 32

The immediate constitutional obligation of the State and its representatives upon discovery of a letter in a defendant's cell, which indicated the strong possibility that the witnesses in the case agreed to testify falsely against a co-defendant in order to extract the writer of the letter from the center of blame, was to collect potentially exculpatory evidence, to prevent fraud upon the court, and to elicit the truth by promptly investigating the letter and interrogating the State's witnesses about the letter. *Commonwealth v. Reyes*, 2001 MP 14 ¶ 8

It is not improper for a prosecutor to inquire of an expert how gunshot residue could reach hands of victim of shooting. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

——Particular Cases

Defense counsel's failure to request curative efforts from court (e.g., striking the question and response and/or a jury instruction) following allegedly improper statement by prosecutor and response by prosecution witness was factor in NMI Supreme Court's decision that defendant was not prejudiced by statement and response. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

Possibility of prejudice to defendant caused by prosecutor's allegedly improper question to defendant on witness stand was eliminated by fact that: (1) objection was lodged and sustained before the defendant answered the question, and (2) jury did not hear any answer from defendant nor did it hear the prosecutor's offer of proof at sidebar. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

—Expression of Opinion

A prosecutor may not express his or her personal opinion on the defendant's guilt. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

—Misconduct

As a general rule, issues of prosecutorial conduct must be contemporaneously objected to during trial, and failure to do so generally precludes appellate review. *Commonwealth v. Hossain*, 2010 MP 21 ¶ 27 (2010).

A prosecutor may not comment or make inferences about a defendant's exercise of his or her Fifth Amendment right; however, a prosecutor may comment on statements made by defendants that are admitted into evidence. *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 31

A prosecutor may refer to statements of a defendant admitted at trial; it is only a defendant's right not to testify that is protected. *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 43

A prosecutor may respond to and rebut attacks by the defense; however, the rebuttal must be fair. *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 47

Even if prosecutors strike hard blows, they are not at liberty to strike foul ones. *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 48

In a criminal trial, defendants have a right not testify; direct reference by the a prosecutor of defendant's decision not to testify is always a violation of defendant's Fifth Amendment constitutional right against self-incrimination. *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 52

Indirect references to a defendant's failure to testify are constitutionally impermissible if the language used was manifestly intended to be or was of such character that the jury would naturally and necessarily take it to be a comment on defendant's failure to testify. *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 52

Inflammatory comments to the jury that infringe on a criminal defendant's rights will exhaust the patience of the court and undermine the reputation of the prosecutor's office. For the government, fairness in a criminal case is more important than a victory. *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 64

The government must put forth evidence in the record necessary to prove beyond a reasonable doubt that the defendant would have been convicted absent the violation by the prosecutor. *Commonwealth v. Rabauliman*, 2004 MP 16 ¶ 11

When balancing the interests of justice, the Court must consider not only whether the error was harmless, but also the trauma the victims would experience in a new trial. Justice requires that the government not violate a criminal defendant's constitutional rights while also considering the victim's rights and the right of citizens of the CNMI to live in a safe society. A balance must be struck between disciplining the prosecutor and the prompt administration of justice. *Commonwealth v. Rabauliman*, 2004 MP 16 ¶ 15

Defense counsel may enter his objection to the language and tenor of the prosecutor's closing remarks by way of a mistrial motion after the government finishes its summation. This is an acceptable mechanism by which to preserve challenges to prosecutorial conduct in a closing argument in lieu of repeated interruptions to the closing argument. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 72

Fifth amendment doctrine recognizes a general prohibition against prosecutorial comments about a defendant's post-arrest silence. U.S. Const. amend. V. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 76

To inform a person that he has the right to remain silent and then allow an unfavorable inference to be drawn from such silence at trial would be fundamentally unfair and a deprivation of due process. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 77

Presuming that even a cautionary mention of defendant's silence is error, it is the government's burden to show that this misconduct was harmless beyond a reasonable doubt. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 78

In the context of comments on silence, the test for harmless error comprises the following factors: the extent of the comments made, whether inference of guilt from silence was stressed to the jury, and the extent of other evidence implicating the defendant's guilt. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 79

Prosecutorial comments on silence are harmless error beyond a reasonable doubt where the post-arrest comments were made only twice while explaining other statements, where there was no emphasis on the post-arrest silence to establish defendant's guilt, where there was no inference that the jury relied on the statements to convict the defendant, and where the trial court issued a curative jury instruction. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 80

Although emotional language is acceptable during closing arguments, language which evokes sympathy for the victim is improper. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 81

A single call for sympathy during closing argument is harmless, particularly where evidence of guilt is strong. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 81

While improper, one lone plea for sympathy does not rise to the level of error compelling reversal of a defendant's conviction. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 83

Vouching occurs when a prosecutor places the prestige of the government behind a witness by personally assuring that person's veracity. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 84

A prosecutor may not attest to any witness's credibility. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 85

Prosecutors are given reasonable latitude to fashion closing arguments, and they may argue reasonable inferences drawn from the evidence including that one of the two sides is lying. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 86

In considering when prosecutorial vouching will result in reversal, courts consider: the form of vouching; how much the vouching implies that the prosecutor has extra-record knowledge of or the capacity to monitor the witness's trustfulness; any inference that the court is monitoring the witness's veracity; the degree of personal opinion asserted; the timing of the vouching; the extent to which the witness's credibility was attacked; the specificity and timing of a curative instruction; and the importance of the witness's testimony and the vouching to the case overall. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 87

Where the credibility of a particular witness is crucial, vouching of that witness's credibility may require reversal. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 87

Where vouching is minimal and the jury instructions were sufficient to cure any prejudice that may have resulted from the prosecutor's error, the result is harmless error. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 92

A prosecutor's statement regarding a defendant's guilt is evaluated similarly to vouching, to determine whether it constitutes improper conduct requiring reversal. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 93

It is improper for a prosecutor to refer to evidence not admitted at trial. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 97

Although counsel may comment on any matter brought to the attention of the jury, counsel may not premise arguments on evidence which has not been admitted. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 97

A trial court's quick intervention, preventing counsel from pursuing an argument predicated on evidence not admitted at trial, would make it highly unlikely that the jury's ability to determine the facts solely on the evidence would be affected. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 100

To constitute a violation of a defendant's right to due process under the Fourteenth Amendment to the United States Constitution, prosecutorial misconduct must be of sufficient significance to result in the denial of the defendant's right to a fair trial. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 104

In order to prevail on a claim that numerous improper remarks and comments during closing argument so infected the trial with unfairness as to make the resulting conviction a denial of due process, a defendant would have to show that the errors were deliberate and especially egregious or combined with a true pattern of misconduct. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 106

Reversal is warranted in close cases, such as in the face of a veritable avalanche of errors, where the testimony of the only direct witness is riddled with inconsistency and contradictions, or where prosecutorial misconduct which is never corrected during trial, calls into question the jury's ability to weigh conflicting testimony. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 125

A prosecutor cannot avoid the obligation to elicit the truth by refusing to search for the truth and remaining willfully ignorant of the facts. *Commonwealth v. Reyes*, 2001 MP 14 ¶ 10

Appellate court reviews allegation of prosecutorial misconduct for plain error only in those circumstances in which a miscarriage of justice would otherwise result. *Commonwealth v. Brel*, 4 N.M.I. 200 (1994).

A prosecutorial statement reviewed for plain error must be viewed in light of the entire record, because reversal for prosecutorial misconduct based on plain error will not be granted unless the misconduct is so pronounced and persistent that it permeates the trial's entire atmosphere. *Commonwealth v. Brel*, 4 N.M.I. 200 (1994).

If a timely objection was made at trial to an improper statement by a prosecutor, appellate court will apply a harmless error test in considering whether it is more probable than not that the prosecutor's conduct materially affected the fairness of the trial. Com. R. Crim. P. 52(a). *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

Generally, failure to object to prosecutorial misconduct at trial precludes appellate review. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

If counsel imposed no objections at trial to prosecutorial misconduct, appellate court may nonetheless look to each statement to determine whether it was improper and, if so, whether it constituted "plain error." Com. R. Crim. P. 52(b). *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

When appellate court invokes its power to review a particular statement for plain error, it reviews the statement against the entire record and strives to relive the whole trial imaginatively and not to extract from episodes in isolation abstract questions of evidence and procedure. This broad scope of review is important because reversal on the basis of prosecutorial misconduct requires that the misconduct be so pronounced and persistent that it permeates the entire atmosphere of the trial. Com. R. Crim. P. 52(b). *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

While the prosecutor may strike hard blows, he or she is not at liberty to strike foul ones. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

Where proof of a defendant's guilt is strong, challenged conduct or remark by prosecutor will not be presumed prejudicial. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

Although trial court must correct prosecutorial misconduct that is obviously prejudicial, it need not perform the essential functions of defense counsel—including duty to make appropriate objections. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

——Particular Cases

Following closing argument by defense counsel in which he stated his interpretation of jury instructions to be specified by judge, prosecutor's statements admonishing jury to listen to judge's instructions and not to instructions provided by defense counsel, and suggesting that defense counsel omitted portions of law and that jury should not be misled by omissions, were, viewed in context, permissible responses to defense counsel's closing argument. Statements were not improper and did not compromise criminal defendant's right to fair trial. *Commonwealth v. Brel*, 4 N.M.I. 200 (1994).

—Opening and Closing Statements

Emotional language is an acceptable weapon in closing argument. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

Language in closing argument which evokes sympathy for the victim is improper. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

It is not improper for prosecutor to request jury to use common experience and common observation in order to understand prosecutor's arguments. It is not improper for prosecutor to draw jury's attention to the familiar when drawing inferences from evidence. It would be improper, however, if prosecutor clearly asked jury to use their personal experiences while deliberating. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

Trial court may have affirmative obligation to intervene sua sponte in prosecutor's final argument to ensure that final argument is kept within proper bounds if prosecutor's conduct is so egregious that it constitutes plain error in proceedings. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

—Particular Cases

Prosecutor's comment that 99.99% of people prosecuted are drunk when they commit the crime was a rhetorical device, not evidence, and does not amount to prosecutorial misconduct. *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 27

Prosecutor's comment that 99.99% of people prosecuted are drunk when they commit the crime was made in anticipation of a defense that alcohol was a factor when the crime was committed, included witnesses and victims in its reference, and did not single out the defendant. Thus the defendant was not prejudiced by it. *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 28

Prosecutor's comment that defendants do not use sticky notes announcing their intent to commit a crime was an explanation of intent as an element of kidnapping, and not a reference to defendant's failure to testify. Defendant's assertion to the contrary is an argument based on "episodes in isolation" that did not consider the full context of prosecutor's argument. *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 36

Prosecutor's statement in rebuttal that defense attorney was not concerned whether defendants went out and raped a dozen more women was an unfair response to defense counsel's attack; it was a foul

blow to the role of defense counsel, it was not directed at the evidence, and it impugned the integrity of defense counsel. As such, the statement was evidence of prosecutorial misconduct. *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 50

Even if the prosecutor prefaces his statement by reminding the jury that defendants are not required to testify, a statement to the jury about what a defendant would have said had he testified alerts the jury to the fact that the defendant did not testify. *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 53

Prosecutor's comment to the jury about what defendant might have said had he taken the stand, and statement that defendant's attorney was speaking for the defendant, were improper references to defendant's right not to testify, and were in violation of the U.S. and Commonwealth Constitutions. *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 54

In closing argument during criminal prosecution, prosecutor's labeling of defense counsel's closing argument as "baloney" and "hooey" did not implicate defense counsel's veracity and personal integrity. Labeling was not improper response to defense counsel's characterization of evidence. *Commonwealth v. Brel*, 4 N.M.I. 200 (1994).

Although improper, prosecutor's call for sympathy for victim in closing argument of prosecution for murder did not rise to level of plain error. Statement did not cause defendant to suffer unfair prejudice requiring reversal of conviction. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

Prosecutor's remarks in closing argument of murder prosecution did not constitute plain error; trial court had no reason to intervene. *Commonwealth v. Saimon*, 3 N.M.I. 365 (1992).

Punishment, Cruel and Unusual

—Indefinite Sentence

Trial court did not abuse discretion in deferring fifty-day juvenile detention order due to inoperability of juvenile detention center and giving juvenile opportunity to seek reconsideration of order when detention center became operable. Order did not constitute cruel and unusual punishment due to indefinite suspension of detention. 6 CMC § 5107. *In re J.R., Jr.*, 4 N.M.I. 239 (1995).

Right of Confrontation

See **Confrontation, Right of**, this topic.

In order to use deposition testimony in the place of live testimony at trial, courts require the proponent to firmly establish actual unavailability of the declarant. The right of confrontation and cross-examination is an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal. Further, the ability to cross-examine a witness in a deposition does not satisfy the requirements of the Confrontation Clause. The right to confrontation is basically a trial right. It includes both the opportunity to cross-examine and the occasion for the jury to weigh the demeanor of the witness. For this reason, there is a stringent requirement to establish actual unavailability before depositions are admitted in lieu of live testimony. *Commonwealth v. Namauleg*, 2009 MP 13 ¶ 8 (2009).

Rules

A challenge to the Acting Attorney General's appointment is capable of determination without a trial, pursuant to Commonwealth Rules of Criminal Procedure 12(f) or 12(b)(2), and thus this type of objection must be presented prior to trial, or at the time set by the court, or the challenge is waived. Com. R. Crim. P. 12(f), Com. R. Crim. P. 12(b)(2). *Commonwealth v. Yi Xiou Zhen*, 2004 MP 4 ¶ 38

While the Commonwealth Rules of Criminal Procedure are intended to provide for the just determination of every criminal proceeding, and Commonwealth Rule of Criminal Procedure 2 provides that the Rules shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay, this in no way obviates the need to file an appeal in a timely manner, as required by Commonwealth Rule of Criminal Procedure 33. Com. R. Crim. P. 2, Com. R. Crim. P. 33. *Commonwealth v. Diaz*, 2003 MP 14 ¶ 7

There is nothing unfair about the seven-day limit in which to file an appeal imposed by Commonwealth Rule of Criminal Procedure 33. However, there might be an exception in the unique circumstances doctrine which holds that court may act on untimely motions when judges induce parties to rely to their detriment on erroneous extensions of time. Com. R. Crim. P. 33. *Commonwealth v. Diaz*, 2003 MP 14 ¶ 13

Violation of a statute which provides for punishment as a misdemeanor is a crime, and not merely an infraction, thus the Rules of Criminal Procedure

apply in that situation. *Commonwealth v. Castro*, 2002 MP 13 ¶ 17

The Commonwealth Rules of Traffic Procedure are not, and were not intended to be, the sole authority in traffic-related cases. The rules of traffic procedure exist to supplement other applicable rules. *Commonwealth v. Castro*, 2002 MP 13 ¶ 19

Commonwealth Rule of Criminal Procedure 11 provides that when the court is presented with a plea agreement under Rule 11(e)(1)(A) or (C), the court's only options are to accept a plea agreement in its entirely or reject it and allow the parties an opportunity to renegotiate the sentence. Com. R. Crim. P. 11. *Commonwealth v. Castro*, 2002 MP 13 ¶ 21

The Commonwealth Rules of Criminal Procedure were promulgated to provide for the just determination of every criminal proceeding. The rules should be read to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay. *Commonwealth v. Castro*, 2002 MP 13 ¶ 23

The Commonwealth Rules of Criminal Procedure were not promulgated to protect prosecutors' bargains. *Commonwealth v. Castro*, 2002 MP 13 ¶ 23

Rule 11(e) of the Commonwealth Rules of Criminal Procedure sets forth three types of plea agreements, under which the attorney for the government may do any of the following: move for dismissal of other charges; make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such a recommendation or request shall not be binding upon the court; or agree that a specific sentence is the appropriate disposition of the case. Com. R. Crim. P. 11(e)(1). *Commonwealth v. Ge Ai Ping*, 1999 MP 16 ¶ 7

Under Commonwealth Rules of Criminal Procedure 11(e)(2), the trial court may accept or reject agreements made pursuant to Rule 11(e)(1)(A) or 11(e)(1)(C). The court may also defer its decision until it has the opportunity to consider the presentence report. Com. R. Crim. P. 11(e)(2); Com. R. Crim. P. 11 (e)(1)(A); Com. R. Crim. P. 11(e)(1)(C). *Commonwealth v. Ge Ai Ping*, 1999 MP 16 ¶ 9

Under Commonwealth Rules of Criminal Procedure 11(e)(3), if the court accepts a plea agreement made pursuant to Rule 11(e)(1)(A) or 11(e)(1)(C), it must inform the defendant that the disposition provided for by the plea agreement will be embodied in the judgment and sentence. Com. R. Crim. P. 11(e)(3); Com. R. Crim. P. 11 (e)(1)(A); Com. R. Crim. P. 11(e)(1)(C). *Commonwealth v. Ge Ai Ping*, 1999 MP 16 ¶ 9

Under Commonwealth Rules of Criminal Procedure 11(e)(4), if the court rejects a plea agreement made pursuant to Rule 11(e)(1)(A) or 11(e)(1)(C), it must so inform the parties, advise the defendant that the court is not bound by the plea agreement, and afford the defendant the opportunity to withdraw his plea. Com. R. Crim. P. 11 (e)(4); Com. R. Crim. P. 11 (e)(1)(A); Com. R. Crim. P. 11(e)(1)(C). *Commonwealth v. Ge Ai Ping*, 1999 MP 16 ¶ 9

When the court is presented with a plea agreement made pursuant to Rule 11(e)(1)(A) or 11(e)(1)(C), the court may only accept or reject the agreement in its entirety. Com. R. Crim. P. 11 (e)(1)(A); Com. R. Crim. P. 11(e)(1)(C). *Commonwealth v. Ge Ai Ping*, 1999 MP 16 ¶ 9

While Commonwealth courts may reduce an agreed upon sentence pursuant to Com. R. Crim. P. 35(b), if the sentence was imposed pursuant to an accepted Com. R. Crim. P. 11(e)(1)(c) agreement, then the reduction of sentence can only occur in those exceptional cases based on information the court receives after initially sentencing the defendant. Com. R. Crim. P. 35(b); Com. R. Crim. P. 11(e)(1)(c). *Commonwealth v. Ge Ai Ping*, 1999 MP 16 ¶ 11

—Counterpart Federal Rules

Because the Commonwealth Rules of Criminal Procedure are patterned after the Federal Rules of Criminal Procedure, it is appropriate to consult interpretations of the federal rules when interpreting the Commonwealth Rules of Criminal Procedure. *Commonwealth v. Attao*, 2005 MP 8 ¶ 9

The plain error exception to the contemporaneous-objection rule is to be used sparingly, and only in circumstances in which a miscarriage of justice would otherwise result. Com. R. Crim. P. 52(b). The CNMI Rule is analogous to the Federal Rule. *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 24

Where Commonwealth rules are substantially similar to Federal rules, such as in the case of Commonwealth Rule of Criminal Procedure 48(b), it is appropriate to consult the interpretation of the

counterpart federal rule, but the interpretations by the federal courts of the federal procedural rule are not binding on the N.M.I. Supreme Court as it interprets Commonwealth rules. Com. R. Crim. P. 48(b). *Commonwealth v. Palacios*, 2003 MP 6 ¶ 9

In the absence of local law interpreting local rules of evidence, we turn to counterpart federal law for guidance. *Commonwealth v. Lucas*, 2003 MP 9 ¶ 9

Because the Commonwealth Rules of Criminal Procedure are patterned after the Federal Rules of Criminal Procedure, interpretations of the federal rules are instructive. *Commonwealth v. Diaz*, 2003 MP 14 ¶ 12

When a plea agreement is made pursuant to Federal Rules of Criminal Procedure 11(e)(1)(C), the trial court may accept or reject the agreement, but absent exceptional circumstances, it may not accept the defendant's guilty plea and impose a sentence greater, or less severe, than agreed upon. Fed. R. Crim. P. 11(e)(1)(C). *Commonwealth v. Castro*, 2002 MP 13 ¶ 22

Commonwealth plea agreement procedure is governed by Commonwealth Rules of Criminal Procedure 11(e), which is essentially identical to Federal Rules of Criminal Procedure 11(e). In interpreting Commonwealth procedural rules, it is appropriate to consult the interpretation of counterpart federal rules. Com. R. Crim. P. 11(e), Fed. R. Crim. P. 11(e). *Commonwealth v. Ge Ai Ping*, 1999 MP 16 ¶ 7

Because Congress, in enacting Fed. R. Crim. P. 11(e)(3), intended to protect prosecutors' bargains, the Ninth Circuit concluded that Fed. R. Crim. P. 35(b) permits a district court to reduce a sentence imposed pursuant to an accepted Fed. R. Crim. P. 11(e)(1)(c) agreement only in those exceptional cases where the sentence is plainly unjust or unfair in light of the information the district court received after sentencing the defendant. Fed. R. Crim. P. 11(e)(3); Fed. R. Crim. P. 35(b); Fed. R. Crim. P. 11(e)(1)(c). *Commonwealth v. Ge Ai Ping*, 1999 MP 16 ¶ 11

Because the Commonwealth Rules of Criminal Procedure are patterned after the Federal Rules of Criminal Procedure, interpretations of the federal rules are instructive. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

—Generally

Commonwealth Rule of Criminal Procedure 32(d) provides that a guilty plea may be withdrawn after imposition of a sentence only to correct manifest injustice. This standard is significantly higher than the fair and just standard for withdrawing guilty pleas prior to sentencing. Ignorance of the immigration consequences of a guilty plea did not constitute manifest injustice sufficient to withdraw a guilty plea. *Commonwealth v. Shimabukuro*, 2008 MP 10 ¶ 23 (2008).

The rules of traffic procedure are not the sole authority in traffic-related cases; other rules, such as the Commonwealth Rules of Criminal Procedure, may apply to address procedures that the traffic rules do not specifically address. *Commonwealth v. Jai Hoon Yoo*, 2004 MP 5 ¶ 7

The Commonwealth Rules of Criminal Procedure allow the trial court to grant a defendant relief from waiver of pre-trial defenses or objections for good cause shown. Com. R. Crim. P. 12(f). *Commonwealth v. Jai Hoon Yoo*, 2004 MP 5 ¶ 10

Once good cause is shown, the decision to grant relief from waiver of an objection lies within the discretion of the trial court. When a defendant fails to show good cause, the court must deem the objection waived. *Commonwealth v. Jai Hoon Yoo*, 2004 MP 5 ¶ 11

Search and Seizure

—Arrest

An illegal arrest or detention does not void a subsequent conviction unless the conviction rests solely on evidence seized as a result of an unlawful arrest. This is because the issue of probable cause to arrest does not, alone, bear upon whether an arrestee is to be charged with an offense. Instead, latter decision concerns issues such as the constitutionality of the admission of evidence seized subsequent to the arrest, or whether the arrestee should be released from custody. *Commonwealth v. Yan*, 4 N.M.I. 334 (1996).

—Arrest Warrants

Purpose for requiring an arrest warrant is to interpose a judge's determination of probable cause to arrest before a police officer may enter a house to effect an arrest. The judge is to make an independent determination of probable cause based on the affidavit. U.S. Const. Fourth Amend. *Commonwealth v. Bowie*, 3 N.M.I. 462 (1993).

Com. R. Crim. P. 9, providing that an arrest warrant for a defendant named in an information may be issued upon the request of a prosecutor, applies when an information has been filed charging a defendant with a felony. *Commonwealth v. Bowie*, 3 N.M.I. 462 (1993).

NMI has no statute or rule prohibiting a police officer from requesting an arrest warrant from a judge, based on probable cause, prior to the filing of a criminal complaint or information. *Commonwealth v. Bowie*, 3 N.M.I. 462 (1993).

When a judge is satisfied, based on an affidavit, verified complaint or verified information that a crime has been committed and a particular person committed the crime, the judge may issue a warrant for the arrest of that person. Com. R. Crim. P. 4, 9. *Commonwealth v. Bowie*, 3 N.M.I. 462 (1993).

——Particular Cases

Trial court could properly rely on uncontested evidence presented by prosecutor in order denying motion to quash arrest warrant and release defendant from custody. *Commonwealth v. Bowie*, 3 N.M.I. 462 (1993).

Com. R. Crim. P. 9, providing that an arrest warrant for a defendant named in an information may be issued upon the request of a prosecutor, did not apply in case in which a police officer requested arrest warrant prior to filing of an information. *Commonwealth v. Bowie*, 3 N.M.I. 462 (1993).

—Arrest Without Warrant

A warrantless arrest in a public place is permissible as long as the arresting officer has probable cause. U.S. Const. Fourth Amendment. *Commonwealth v. Bowie*, 3 N.M.I. 462 (1993).

A person standing in the doorway of his house is in public place for purposes of the exception to the Fourth Amendment to the U.S. Constitution permitting warrantless arrest in a public place as long as the arresting officer has probable cause. *Commonwealth v. Bowie*, 3 N.M.I. 462 (1993).

—Generally

N.M.I. Const. art. I, § 3, protecting individuals from illegal searches and seizures, expands upon rights guaranteed under the U.S. Constitution. *Babauta v. Superior Ct.*, 4 N.M.I. 309 (1995), *aff'd*, 106 F.3d 406 (9th Cir. 1997).

—Pretrial Detention

See **Pretrial Detention**, this topic.

—Search Warrants

A warrant sufficiently describing the premises to be searched will justify a search of property belonging to the person occupying the premises if those effects might contain items described in the warrant. *Commonwealth v. Pua*, 2009 MP 21 ¶ 18 (2009).

In order to assert the "inevitable discovery" exception to the exclusionary rule, the government has to prove by a preponderance of the evidence that (1) the illegally seized evidence would have been discovered by lawful means; (2) a systematic and specific search of the illegally seized evidence was ongoing; and (3) the record shows that discovery would have been inevitable. *Commonwealth v. Pua*, 2009 MP 21 ¶ 17 (2009).

Trial judges have no statutory authority to issue "no-knock" search warrants in the Commonwealth. 6 CMC § 6203. *Commonwealth v. Aldan*, 1997 MP 31 ¶15

Physical entry of the home is the chief evil against which the Fourth Amendment to the U.S. Constitution is directed. The warrant requirement is designed to protect the physical integrity of the home. *Commonwealth v. Bowie*, 3 N.M.I. 462 (1993).

——Particular Cases

Although "no knock" searches have been allowed under Fourth Amendment to United States Constitution based upon a showing of exigent circumstances where there is a threat of physical violence or where police officers have reason to believe that evidence would likely be destroyed if advance notice were given, there were insufficient exigent circumstances to warrant forced entry without knocking where: search warrant was executed at 6:30 a.m. by nine heavily armed police officers while defendant was sleeping; even though rifle was found on premises, there were no allegations that officers knew defendant had a gun or had used a gun to facilitate alleged drug offense; any attempt to escape would have been futile; and there was mere allegation that defendant stated in the past that he would destroy evidence, without any corroborating facts and without more specific

inferences of exigency, and no suggestion that the search was expected. *Commonwealth v. Aldan*, 1997 MP 31 ¶20

—Warrants

——Generally: Form

In N.M.I. Const. art. I, § 3(a), prohibiting issuance of warrants except upon probable cause supported by oath or affirmation, "oath" means an affirmation of the truth of a statement, which renders one willfully asserting untrue statements punishable for perjury. *Commonwealth v. Bowie*, 3 N.M.I. 462 (1993).

——Particular Cases

Despite fact that affidavit supporting issuance of arrest warrant was not notarized, declarant police officer's oral affirmation before judge that contents of affidavit were true and correct satisfied N.M.I. Const. art. I, § 3(a) requirement that request for warrant be supported by oath or affirmation. *Commonwealth v. Bowie*, 3 N.M.I. 462 (1993).

Sentencing

For particular offenses, see specific offenses in **CRIMINAL LAW**

—Cruel and Unusual Punishment

See **Punishment, Cruel and Unusual**, this topic.

—Deferred Sentence

Imposition of sentence is deferred under 6 CMC § 4113, and the conviction is expunged if defendant complies with all conditions. Where a sentence is imposed, 6 CMC § 4113 is not implicated. *Commonwealth v. Sablan*, 1996 MP 22 ¶9; *Commonwealth v. Mitchell*, 1997 MP 4 ¶17

The sentencing judge has the discretion to impose incarceration as one of the conditions of suspension of imposition of sentence under 6 CMC § 4113. *Commonwealth v. Itibus*, 1997 MP 10 ¶6

—Generally

The Commonwealth Code's mandatory minimum sentencing provision provides in pertinent part that "[a]ny person who is armed with a dangerous weapon in the commission of an offense shall be sentenced to serve no less than one-third of the maximum term of imprisonment which may otherwise be imposed upon conviction of the offense . . . ." 6 CMC § 4102(a). The maximum prison term that may be imposed for assault with a dangerous weapon is ten years. 6 CMC § 1204(b). However, the mandatory minimum sentence only applies if "being armed with a dangerous weapon is alleged and proven as an element of the underlying offense." 6 CMC § 4102(a). *Commonwealth v. Demapan*, 2008 MP 16 ¶ 51 (2008).

A trial court may not enhance a criminal sentence based on facts that are not submitted to a jury and proved beyond a reasonable doubt. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 52 (2008).

The trial court enjoys nearly unfettered discretion in determining what sentence to impose. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 135

Absent a clear indication that the trial court has abused its discretion, the N.M.I. Supreme Court generally will not disturb the denial of a motion to reduce a lawful sentence. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 135

A criminal sentence must reflect an individualized assessment of a particular defendant's culpability rather than a mechanistic application of a given sentence to a given category of crime. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 136

The sentence in a criminal case is the punishment imposed orally by a sentencing judge in a defendant's presence. *Commonwealth v. Santos*, 4 N.M.I. 348 (1996).

—Jurisdiction

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, and pursuant to 1 CMC § 3102(a), the N.M.I. Supreme Court has jurisdiction over an appeal from a Sentence Order of the Superior Court. N.M.I. Const. art. IV, § 3, 1 CMC § 3102(a). *Commonwealth v. Repeki*, 2003 MP 1 ¶ 1

Pursuant to Article IV, Section 3 of the Commonwealth Constitution and pursuant to 1 CMC § 3102(a), the N.M.I. Supreme Court has jurisdiction over the appeal of the imposition of a sentence. *Commonwealth v. Diaz*, 2003 MP 14 ¶ 1

Pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, and pursuant to 1 CMC § 3103, the N.M.I. Supreme Court has jurisdiction over the appeal of a trial court order finding defendant guilty of criminal

offenses of assault and battery, disturbing the peace, and misconduct in public office, and over the trial court's sentencing order. N.M.I. Const. art. IV, § 3, 1 CMC § 3103. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 1

The N.M.I. Supreme Court has jurisdiction pursuant to Article IV, Section 3 of the Commonwealth Constitution over an appeal of the trial court's imposition of a sentence inconsistent with the sentence contained in a written plea agreement. N.M.I. Const. art. IV, § 3. *Commonwealth v. Ge Ai Ping*, 1999 MP 16 ¶ 1

——Particular Cases

NMI Supreme Court had jurisdiction, pursuant to Article IV, § 2 of the Commonwealth Constitution, over appeal from verdict and judgment of conviction for burglary and theft, sentencing order, denial of proposed jury instructions, and denial of oral motion for judgment of acquittal. N.M.I. Const., art. IV, § 2 (as amended by Legislative Initiative 10-3, ratified by the voters on November 1, 1997, and certified by the Board of Elections on December 13, 1997). *Commonwealth v. Santos*, 1998 MP 6 ¶1

NMI Supreme Court had jurisdiction, pursuant to1 CMC § 3102(a), over appeal from conviction for possession of methamphetamine hydrochloride, denial of motion to suppress, and imposition of five year sentence pursuant to 6 CMC § 2142(d)(4). 6 CMC § 2142(a). *Commonwealth v. Aldan*, 1997 MP 31 ¶1

NMI Supreme Court had jurisdiction pursuant to 1 CMC § 3102 (a) over appeal on the legality of a sentence for robbery. *Commonwealth v. Sablan*, 1996 MP 22 ¶1

NMI Supreme Court had jurisdiction pursuant 1 CMC § 3102(a) over appeal of trial court's denial of motion for a reduction in sentence for the offense of vehicular homicide. *Commonwealth v. Ramangmau*, 1996 MP 17 ¶1

NMI Supreme Court had jurisdiction, pursuant to general jurisdictional statute, over appeal from sentence imposed in prosecution for bribery. 1 CMC § 3102(a). *Commonwealth v. Duenas*, 4 N.M.I. 377 (1996).

NMI Supreme Court had jurisdiction, pursuant to general jurisdictional statute, over appeal of Superior Court order revoking probationer's probation. 1 CMC § 3102(a). *Commonwealth v. Santos*, 4 N.M.I. 348 (1996).

NMI Supreme Court had jurisdiction, pursuant to general jurisdictional statute, over appeal of Superior Court order revoking probationer's probation. 1 CMC § 3102(a). *Commonwealth v. Cristobal*, 4 N.M.I. 345 (1996).

NMI Supreme Court had jurisdiction, pursuant to general jurisdictional statute, over appeal from drug trafficking conviction and sentence. 1 CMC § 3102(a). *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

—Orders

Where oral and written criminal sentencing orders vary, an unambiguous order prevails unless the written order is corrected under Com. R. Crim. P. 36. *Commonwealth v. Santos*, 4 N.M.I. 348 (1996).

—Presentence Investigation and Report

While it is ordinarily desirable to obtain a presentence investigation and report, when a court does not order a report, the defendant has the burden of showing an abuse of discretion by the court or actual prejudice to the defendant from the lack of the report. *Commonwealth v. Yi Xiou Zhen*, 2004 MP 4 ¶ 44

A trial court does not abuse its discretion in imposing a sentence without the benefit of a presentence report where there was sufficient record information to enable the court to make a fair sentencing determination, such as when the court has heard extensive testimony about the crime and the defendant's background. *Commonwealth v. Yi Xiou Zhen*, 2004 MP 4 ¶ 44

The defendant's inability to pay a penalty should be considered by the trial court in sentencing. *Commonwealth v. Yi Xiou Zhen*, 2004 MP 4 ¶ 49

The defendant bears the burden of proof that he or she is financially incapable of paying the penalty imposed by the trial court. *Commonwealth v. Yi Xiou Zhen*, 2004 MP 4 ¶ 49

—Probation

Any consideration of a 6 CMC § 4113 disposition must be specifically agreed to in the plea agreement or it must be unambiguously specified by the Superior Court since it departs from normal

sentencing procedures. *Commonwealth v. Eguia*, 2008 MP 17 ¶ 5 (2008).

6 CMC § 4113 is used as an exception to normal sentencing procedures. Without a clear indication that this exception has been agreed to by the parties or prescribed by the trial judge, 6 CMC § 4105 must apply. *Commonwealth v. Eguia*, 2008 MP 17 ¶ 6 (2008).

Any consideration of a 6 CMC § 4113 disposition must be specifically agreed to in the plea agreement or it must be unambiguously specified by the Superior Court since is departs from normal sentencing procedures. *Commonwealth v. Monton*, 2008 MP 14, ¶ 6 (2008).

Under Commonwealth sentencing laws, two types of probation exist, one codified in 6 CMC § 4113, and the other in 6 CMC § 4105. In a section 4105 disposition, the trial court imposes sentence, but suspends the execution of the sentence, usually a period of incarceration, provided the defendant fully complies with all terms and conditions. Following the probationary period, the conviction remains on the defendant's record. *Commonwealth v. Monton*, 2008 MP 14, ¶ 7 (2008).

In contrast to 6 CMC § 4105, section 4113, "is a provision which provides for a deferred imposition of sentence. The defendant is placed on probation for a fixed period of time based on certain conditions. If the defendant complies with all the conditions of the suspended imposition of sentence, the conviction is expunged." *Commonwealth v. Monton*, 2008 MP 14, ¶ 8 (2008).

"[A] deferred-sentence agreement is a sentence postponed rather than imposed. It is similar to a conditional pardon." *State v. Rafuse*, 726 A.2d 18, 20 (Vt. 1998). *Commonwealth v. Monton*, 2008 MP 14, ¶ 8 (2008).

"[W]hen a trial court places a defendant on probation and defers or postpones sentencing, the trial court is said to have suspended the imposition of the sentence. When the trial court imposes a fixed definite term of imprisonment but the sentence is suspended for probation, the trial court is said to have suspended the execution of the sentence." *Pavulak v. State*, 880 A.2d 1044, 1046 (Del. 2005) (citing *Roberts v. United States*, 320 U.S. 264, 268, 64 S. Ct. 113, 88 L. Ed. 4 (1943)). *Commonwealth v. Monton*, 2008 MP 14, ¶ 8 (2008).

Under 6 CMC § 4113(a) the trial court must determine that a deferred sentence will be in the best interest of the defendant and the public before it may be used. The provision states that "the court, when satisfied that the ends of justice and the best interests of the public as well as the defendant will be served, may suspend the imposition of sentence." 6 CMC § 4105 provides that the court may order probation "where that action is deemed to be in the best interest of justice." While both statutes speak to the ends of justice, section 4113 requires additional evaluation of the defendant's circumstances and the public's interests, indicating that its application is reserved for exceptional situations. *Commonwealth v. Monton*, 2008 MP 14, ¶ 11 (2008).

The standard of proof for revocation of probation is less than that in a criminal trial. *Commonwealth v. Santos*, 4 N.M.I. 348 (1996).

Probation is imposed where either the imposition or execution of a sentence is suspended and the probationary period itself comprises a portion of the sentence. 6 CMC §§ 4105, 4113(a). *Commonwealth v. Santos*, 4 N.M.I. 348 (1996).

Conditions attached to a probationary period are intended to serve the purpose of giving notice of proscribed activities which may result in revocation of probation and to guide the probationer in his conduct. *Commonwealth v. Santos*, 4 N.M.I. 348 (1996).

Although trial court is empowered to suspend a sentence and instead impose probation, such suspension—and the resulting probation—may not exceed the maximum term of sentence which may be imposed. Maximum term of a sentence that may be imposed by trial court means the combined length of any prison term plus any suspended portion (and resulting probation) which is to follow the prison term. Thus, any probation period to be imposed upon a defendant following his prison term may not exceed the remaining balance that he may be imprisoned for that offense. 6 CMC §§ 4105, 4113(a). *Commonwealth v. Oden*, 3 N.M.I. 186 (1992), *aff'd*, 19 F.3d 26 (9th Cir. 1994).

——Particular Cases

Probationer's receipt of notice of condition of probation one day after sentencing hearing did not signify that probationer was deprived of his right to fair warning of any conditions that could violate his probationary status. *Commonwealth v. Santos*, 4 N.M.I. 348 (1996).

Written notice received by probationer to the effect that he was to obey all NMI laws was sufficiently clear to serve as a guide for probationer's expected behavior during probation term, and was adequate notice of proscribed activities which could result in revocation of his probation. *Commonwealth v. Santos,* 4 N.M.I. 348 (1996).

—Reduction in Sentence

——Particular Cases

Trial court did not abuse its discretion by denying defendant's motion for a reduction of sentence where the trial court found that the only new circumstances pertained to defendant's exemplary conduct while in custody and concluded that this was insufficient to merit a reduction in his sentence. *Commonwealth v. Ramangmau*, 1996 MP 17 ¶8

—Release Pending Appeal

In criminal cases, motions to stay sentence based on Commonwealth Rules of Appellate Procedure 8(c), also implicate Commonwealth Rules of Appellate Procedure 9(c). *Commonwealth v. Blas*, 2004 MP 26 ¶ 4

Three factors determine whether a defendant is eligible for release pending his appeal: whether he can establish that he will not flee the jurisdiction or pose a danger to any other person or to the community; whether his appeal is a mechanism to delay incarceration; and whether the appeal raises a substantial question of law or fact likely to result in reversal or an order for a new trial. Com. R. App. P. 9(c); Com. R. Crim. P. 46(c). *Commonwealth v. Blas*, 2004 MP 26 ¶ 5

As a threshold requirement, the Commonwealth Rules of Appellate Procedure require a defendant to file an initial application for a stay of his conviction in the trial court. *Commonwealth v. Blas*, 2004 MP 26 ¶ 6

Failure to apply for a stay of a defendant's sentence in the trial court leaves the appellate court without an adequate record from which to evaluate whether or not the defendant would be eligible for release pending appeal of his conviction. *Commonwealth v. Blas*, 2004 MP 26 ¶ 6

Without adequate record, the appellate court is unable to determine whether defendant is a flight risk or a danger to the community; whether the appeal was a tactic to delay sentence and whether the appeal raises a substantial question of law or fact likely to result in reversal or an order for a new trial. *Commonwealth v. Blas*, 2004 MP 26 ¶ 7

A substantial question of law is one that is fairly debatable or doubtful. *Commonwealth v. Blas*, 2004 MP 26 ¶ 8

Where a defendant fails to provide any record or cite to any legal authority to support his contention that a jury instruction was inconsistent with the verdict, the appellate court will be unable to determine the potential legal impact on his conviction. *Commonwealth v. Blas*, 2004 MP 26 ¶ 9

The appellate court will be unable to determine whether the trial court's sentencing was in error where a defendant fails to provide excerpts of relevant portions of the transcript to support his contention that sentence was inconsistent with the statute. *Commonwealth v. Blas*, 2004 MP 26 ¶ 10

Where a defendant fails to provide an adequate record, the defendant will not meet his burden of establishing the appeal raises a serious question of fact or law that would likely result in reversal or an order for a new trial and thus the defendant will not be entitled to release pending appeal. *Commonwealth v. Blas*, 2004 MP 26 ¶ 11

Com. R. App. P. 9(c) provides the criteria for determining whether to issue a stay of sentence pending appeal of a criminal case. *Commonwealth v. Martinez*, 4 N.M.I. 18 (1993).

Com. R. App. P. 9(b) is patterned after Fed. R. App. P. 9(b) and sets forth the criteria for release of defendants pending appeal from convictions. *Commonwealth v. Martinez*, 4 N.M.I. 18 (1993).

If a petitioner is eligible for release from imprisonment pending appeal under Com. R. App. P. 9(b), a stay of sentence is also proper. *Commonwealth v. Martinez*, 4 N.M.I. 18 (1993).

Following practice should be followed by criminal defendant seeking stay of sentence pending appeal: (1) upon imposition of sentence, notice of appeal should immediately be filed; (2) motion for stay of sentence pending appeal should be filed simultaneously or immediately after filing of notice of appeal; (3) trial court should allow opposing party to respond in writing, and then set expedited hearing; (4) if, after hearing, court denies motion, it should expeditiously issue written order setting forth reasons

for denial; and (5) defendant may then renew motion for stay with NMI Supreme Court and attach trial court's order. Prosecutor is thus able to adequately respond to motion and trial court to adequately set forth reasons for denial of motion. Com. R. App. P. 9. *Commonwealth v. Martinez*, 4 N.M.I. 18 (1993).

——Particular Cases

In entertaining motion for review of order of NMI Supreme Court justice staying sentence of imprisonment of criminal defendant pending appeal, NMI Supreme Court would consider entire record presented to the justice, including the government's response to motion for stay filed after stay had been entered. Com. R. App. P. 9. *Commonwealth v. Martinez*, 4 N.M.I. 18 (1993).

In weighing motion for review of single-justice order staying short sentence of imprisonment of criminal defendant pending appeal, NMI Supreme Court would sua sponte consider possibility of mootness if stay was not granted. Com. R. App. P. 9. *Commonwealth v. Martinez*, 4 N.M.I. 18 (1993).

The issue of mootness if a stay of sentence of a convicted criminal defendant is not granted pending appeal is one which the court may weigh into factors considered under Com. R. App. P. 9(c), and may tip the balance in favor of a stay, especially where the likelihood of success on appeal is strongly disputed. Where there is little or no likelihood of success on appeal, mootness would not be an important factor. *Commonwealth v. Martinez*, 4 N.M.I. 18 (1993).

In view of threat of harm to convicted criminal defendant (i.e., a short sentence of imprisonment) that could have rendered his appeal moot, NMI Supreme Court would affirm grant of stay by single justice, giving defendant time to formulate and pursue any additional issues on appeal evinced by transcript or tapes of proceedings. Burden imposed on government by grant of stay was outweighed by burden on defendant if stay was not continued. Com. R. App. P. 9. *Commonwealth v. Martinez*, 4 N.M.I. 18 (1993)

—Restitution

Restitution may be ordered as part of a sentence and the Superior Court has the discretion to determine what expenses should be covered. N.M.I. Const. art. I § 11; 6 CMC § 4109; 6 CMC § 4104. *Commonwealth v. Mitchell*, 1997 MP 4 ¶14.

Specific Findings Requirement

A court may satisfy the specific findings requirements of 6 CMC § 4115 by orally providing several distinct reasons for the sentence imposed. 6 CMC § 4115. *Commonwealth v. Yi Xiou Zhen*, 2004 MP 4 ¶ 43

Sixth Amendment

See **COVENANT - U.S. Law, Applicability of - Constitution: Particular Provisions**

Trial

DC NMI 1988. The court has wide discretion in deciding who shall be present at counsel table. *United States of America v. Mafnas*, 3 CR 421.

Vehicular Homicide

—Sentencing

——Particular Cases

Trial court did not abuse its discretion by denying defendant's motion for a reduction of sentence where trial court found defendant's sentence was not disproportionate with sentences imposed in other vehicular homicide cases. In other cases, defendants negotiated plea agreements, admitted guilt to received reduced sentences, and were ordered to perform other duties. Defendant was charged with, tried by jury for, and convicted of vehicular homicide; his sentence was within the guidelines of the statute; he did not negotiate a plea agreement with the government nor cooperate in the investigation; and he was not ordered to do anything other than serve time in jail. *Commonwealth v. Ramangmau*, 1996 MP 17 ¶12

Verdicts, Jury

See **Juries: Verdicts**, this topic.

Witnesses

—Disclosure

See **Discovery - Prosecution's Duty to Disclose Evidence**, this topic.