



LAW REVISION COMMISSION

Commonwealth of the Northern Mariana Islands

JUDICIAL BRANCH

House of Justice ♦ Guma Hustisia ♦ Iimwal Aweewe
P.O. Box 502179
Saipan, MP 96950-2179

Tel: (670) 236-9820
Fax: (670) 236-9897
E-Mail: cnmilaw@itecnmi.com

November 7, 2007

TO: CHIEF JUSTICE MIGUEL DEMAPAN, CNMI SUPREME COURT
JUSTICE ALEXANDRO CASTRO
JUSTICE JOHN MANGLONA
PRESIDING JUDGE ROBERT NARAJA, CNMI SUPERIOR COURT
JUDGE RAMONA MANGLONA
JUDGE JUAN LIZAMA
JUDGE DAVID WISEMAN
JUDGE KENNETH GOVENDO
JONATHAN GRAYSON, SUPREME COURT CLERK OF COURT
CNMI BAR MEMBERS
CNMI COURT RULES PURCHASERS

SUBJECT: **CNMI RULES OF CIVIL PROCEDURE**

Hafa adai,

It was brought to my office's attention that there were two different versions of the *Commonwealth Rules of Civil Procedure*, specifically concerning Rule 26(b)(1) and Rule 23.1, being issued by my office.

After research it was revealed that the mix-up stemmed from the 1996 revision of the rules. Apparently, my office was unaware, until recently, that we were in receipt of two varying paper versions of the rules since the paper copies otherwise looked alike with the headnotes and all. How two different versions of the 1996 revision of the rules were circulated in the first place is beyond explanation by my office since we did not actually type the subject rules; my office has been distributing scanned copies.

To resolve this matter, my office was able to obtain from the Legislative Bureau's Archive Division a copy of the original 1996 transmittal to the legislature of the proposed revision to the rules by the CNMI Chief Justice of the time. Having compared Rule 26 and Rule 23.1 therein to the varying copies held by my office, I have determined with confidence which version of the specific rules held by my office is the correct version. I have also completely disposed of the incorrect version in my office's paper and electronic files to avoid any future confusion.

Attached for your reference are copies from the original 1996 transmittal to the legislature of Rules 23.1 and 26(b)(1).

It is pertinent that you visit http://www.cnmilaw.org/court_rules.htm to download the correct version of the complete *Commonwealth Rules of Civil Procedure* (As of 5/24/04). If you do not have internet access, please contact my office for a copy.

Once again, my office would not have been aware of this error had it not been for someone to bring it to my office's attention. Your feedback, especially as the users of the legal resources put forth by the Law Revision Commission, is invaluable and greatly appreciated.

Sincerely,



Naomi E. Lujan-Gonzales
Executive Director

attachments: Rule 23.1 and Rule 26(b)(1) (*May 15, 1996, CNMI Supreme Court Transmittal to the CNMI Legislature*)



JUD. BR. Comm: 10-7
(HOUSE)

Supreme Court of the Commonwealth of the Northern Mariana Islands

Chambers of
MARTY W.K. TAYLOR
Chief Justice
May 15, 1996

P.O. BOX 2165
SAIPAN, MP 96950
TELEPHONES: (670) 234-5175/76/77
TELECOPIER: (670) 234-5183

MAY 15 1996
RECEIVED

The Honorable Jesus R. Sablan
President of the Senate
Tenth Commonwealth Legislature
P.O. Box 129
Saipan, MP 96950

The Honorable Diego T. Benavente
Speaker of the House of Representatives
Tenth Commonwealth Legislature
P.O. Box 586
Saipan, MP 96950

Re: Proposed Revised Rules of Civil Procedure; Fee Schedule

Dear President Sablan and Speaker Benavente,

It is my honor to submit to the Legislature the enclosed proposed revised Commonwealth Rules of Civil Procedure. The Rules of Civil Procedure and fee schedule were last revised in 1989, and this revision represents an important step in keeping the Commonwealth Judiciary current with the legal needs of the people of the CNMI.

These proposed Rules are the culmination of over two years' work by the Advisory Committee on Civil Procedure, appointed in 1993 by former Chief Justice Jose S. Dela Cruz, and chaired by Northern Marianas Bar Association President Michael A. White. The Advisory Committee's Report is attached as a reference guide for your consideration. Following the submission of the Advisory Committee's draft to the Supreme Court, the Court sent a notice to all Bar members on February 1, 1996, announcing the availability of the proposed Rules for inspection and requesting comments. Once this thirty-day public comment period elapsed, the Court made several revisions of its own to the Advisory Committee's draft. The Court's Notes on these changes are also attached for your consideration.

Pursuant to 1 CMC § 3403(c), these proposed Rules shall become effective sixty days from today, unless either House of the Commonwealth Legislature votes to disapprove them. If you or your colleagues have any questions or concerns regarding these proposed Rules, please do not hesitate to contact me.

Sincerely,

Marty W.K. Taylor
Chief Justice, Commonwealth Supreme Court

cc: **The Honorable Alexandro C. Castro, Presiding Judge, Commonwealth Superior Court**
Michael A. White, President, Northern Marianas Bar Association
Froilan C. Tenorio, Governor
C. Sebastian Aloit, Acting Attorney General
Sam Thompson, Executive Director, Law Revision Commission

Rule 23.1 Derivative Actions by Shareholders.

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

V. DEPOSITIONS AND DISCOVERY

Rule 26. General Provisions Governing Discovery.

(a) DISCOVERY METHODS. Parties may obtain discovery by one or more of the following methods: deposition upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examination; and requests for admission.

(b) DISCOVERY SCOPE AND LIMITS. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably

cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

(2) Insurance Agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial Preparation: Materials. Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial