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CLERK, FSM SUPREME COURT
APPELLATE DIVISION

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8 IN THE SUPREME COURT OF THE
9 FEDERATED STATES OF MCRONESIA
10 APPELLATE DIVISION

11 STATE OF CHUUK, STATE OF YAP,)
12 STATE OF KOSRAE AND STATE OF)
13 POHNPEI,)
14 Appellants,)
15 vs.)
16 SECRETARY OF DEPARTMENT OF)
17 FINANCE OF THE FEDERATED STATES)
18 OF MICRONESIA, AND THE NATIONAL)
19 GOVERNMENT OF THE FSM,)
20 Appellees.)

FSM APP. CASE NO. P4-1998
CIV. ACTION NO. 1995-085
MEMORANDUM OF LAW

19 APPELLEES, Secretary of Department of Finance and Federated States of
20 Micronesia, hereby submit the following Memorandum of Law on the question of
21 whether the instant appeal should be dismissed pursuant to Rule 4(a)(4) of the *Rules of*
22 *Appellate Procedure for the Supreme Court of the Federated States of Micronesia*. This
23 memorandum is submitted pursuant to an order of this court dated January 20, 1999.

26 Memorandum of Law

27 I. Procedural History

28 On July 28, 1995, plaintiffs, the four states of the Federated States of Micronesia,
29 filed a complaint seeking declaratory judgment on the proper division of the fishing

1 access fees collected by the defendants, the Federated States of Micronesia National
2 Government, from foreign fishing entities permitted to fish within the Federated States of
3 Micronesia's (hereinafter FSM) Exclusive Economic Zone (hereinafter EEZ). On
4 November 25, 1995, they amended their complaint to include claims for injunctive relief
5 compelling the Secretary of the Department of Finance to pay to the states portions of the
6 previously collected fishing access fees.
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9 On September 23, 1997, plaintiffs filed a motion for summary judgment. On
10 November 17, 1997, defendants filed an opposition to plaintiff's motion for summary
11 judgment and filed their own cross-motion for summary judgment. On November 24,
12 1997, plaintiffs filed a reply to defendants' cross-motion. All motions for summary
13 judgment were argued before the court on December 16, 1997, in a hearing that lasted the
14 entire day. On April 8, 1998, plaintiffs filed a notice of supplemental authority.
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17 Judgment was entered on July 17, 1998, in favor of the defendants, and the case
18 was dismissed with prejudice. The Judgment and attendant opinion were disseminated to
19 the parties on July 24, 1998. On July 27, 1998, plaintiffs filed a motion entitled
20 "Plaintiffs Motion to Alter or Amend Judgment," in which plaintiffs moved this Court for
21 an extension of time in which to file a motion to reconsider its judgment and opinion.
22 Defendants filed an Opposition to Plaintiffs' Motion to Alter or Amend Judgment on
23 August 3, 1998.
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26 On August 24, 1998, plaintiffs filed a Motion for Relief from Judgment, a
27 response to which was filed by defendants on September 8, 1998. On August 25, 1998,
28 plaintiffs filed a notice of appeal in this matter to the FSM Supreme Court Appellate
29

1 Division. On December 2, 1998, this court issued an order setting a hearing date of
2 February 2, 1999, for plaintiffs' motions.

3 II. Plaintiffs' Notice of Appeal is Without Effect

4 Rule 4(a)(4) of the *Rules of Appellate Procedure for the Supreme Court of the*
5 *Federated States of Micronesia* provides, in pertinent part:
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7 Rule 4. When Taken

8 (a) APPEALS IN CIVIL CASES

9
10 (4) If a timely motion under the Rules of Civil Procedure is filed in
11 the Supreme Court trial division by any party: . . . (iii) under Rule 59 to
12 alter or amend the judgment, or . . . for any equivalent relief under
13 comparable rules of any state court from which an appeal may lie, the time
14 of appeal for all parties shall run from the entry of the order denying a new
15 trial or granting or denying any other such motion. A notice of appeal
16 filed before the disposition of any of the above motions shall have no
effect. A new notice of appeal must be filed within the prescribed time
measured from the entry of the order disposing of the motions as provided
above. No additional fees shall be required for such filing.

17 FSM App. R. 4(a)(4). FSM Appellate Rule 4(a)(4) is similar to Rule 4(a)(4) of the
18 United States Federal Rules of Appellate Procedure. It is a settled rule of statutory
19 construction that a statute adopted from another jurisdiction is presumed to have been
20 adopted as construed by the courts of that jurisdiction. Andohn v. Federated States of
21 Micronesia, 1 FSM Intrm. 433 (App. 1984). Since this court has not yet specifically
22 addressed the issue of the effect of a notice of appeal filed while a post-judgment motion
23 is pending, it is appropriate to look at precedents from other jurisdictions for guidance.
24 Semens v. Continental Air Lines, Inc., 2 FSM Intrm. at 139-40.

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26 In a civil case, if certain post-trial motions are timely filed by any party, the time
27 to appeal for all parties runs from the entry of an order disposing of the last such motion
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29

1 outstanding. 5 Am. Jur. 2d, *Appellate Review* §303 (1995). The filing of one of the
2 enumerated motions, including a motion to alter or amend judgment pursuant to Federal
3 Rule 59, suspends the running of the time to appeal as to all issues. *Id.* A motion for
4 relief from judgment pursuant to Rule 60 of the Federal Rules of Civil Procedure, on the
5 other hand, does not toll the running of the time for taking an appeal, and the pendency of
6 the motion before the trial court does not effect the continuity of a prior-taken appeal.
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8 See Stone v. INS, 115 S. Ct. 1537 (1995).

10 Where a notice of appeal is filed after the announcement or entry of a civil
11 judgment by a trial court but prior to disposition of any of the post-trial motions which
12 toll the period for appeal, the notice of appeal is ineffective to appeal from the judgment,
13 order, or part of the judgment or order specified in such notice. *Id.* at §307. Federal Rule
14 4(a)(4) differs from FSM Appellate Rule 4(a)(4), in that it provides that the notice of
15 appeal is ineffective “until the date of the entry of the order disposing of the last such
16 motion outstanding.” FR App. P., Rule 4(a)(4). FSM Appellate Rule 4(a)(4), on the
17 other hand, simply states that the notice of appeal is ineffective, with no provision for
18 reinstatement of the appeal upon resolution of the motions. FSM App. R. 4(a)(4). In
19 that regard, the FSM Appellate Rule is similar to Federal Rule 4(a)(4) prior to a 1993
20 amendment. The pre-amendment Federal Rule, absent the language noted above, was
21 found to require a party to file a new notice of appeal after the motion’s disposition.
22 “Unless a new notice is filed, the court of appeals lacks jurisdiction to hear the appeal.”
23 Griggs v. Provident Consumer Discount Co., 459 U.S. 56 (1982)(cited in Federal Civil
24 Judicial Procedure and Rules, Advisory Committee Notes on Rules, 421 (1995)). Since
25 a notice of appeal filed before the disposition of a post trial motion, even if it were valid
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1 for purposes of jurisdiction, would not address objections to the ruling on the motion, it
2 was deemed preferable to postpone the notice of appeal until after the motions were
3 disposed of. Federal Civil Judicial Procedure and Rules, *supra*, at 420. In any event, it
4 is clear under both the pre- and post-amendment Federal Rule 4(a)(4) that any notice of
5 appeal filed before or while a post-judgment motion was pending is without effect.
6

7 Plaintiffs in this case have filed two post-judgment motions. One of those
8 motions, filed pursuant to FSM Civil Rule 59, to alter or amend judgment, is enumerated
9 in Rule 4(a)(4) as rendering a notice of appeal without effect. The other motion, for
10 Relief from Judgment under FSM Civil Rule 60, would have no effect on the pending
11 appeal. Until the trial court has resolved the plaintiffs' motion to alter or amend
12 judgment, the appellate division has no jurisdiction to take any action with regard to
13 plaintiffs' appeal. The notice of appeal is, pursuant to Rule 4(a)(4), without effect, and
14 upon the trial court's ruling on the pending motion, plaintiffs will have the opportunity, if
15 they choose to do so after the trial court has ruled, and without additional cost, to file a
16 new notice of appeal in this matter. Since the notice of appeal is without effect, it does
17 not appear that dismissal of this matter is appropriate or necessary.
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23 Respectfully submitted.
24 EMILIO MUSRASRIK,
25 SECRETARY, DEPARTMENT OF JUSTICE

26 Date: 1/28/99

27 by: Elizabeth M. McCormick
28 ELIZABETH M. MCCORMICK,
29 Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via first-class mail, postage pre-paid, and by facsimile, on the following individuals, on this 28th day of January, 1999.

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