

POS. 14  
Legal Services.

Law

203pp.

1/1/67

PROGRAM FOR PCV LAWYERS RESPONSIBLE TO THE JUDICIARY

Goal: To strengthen the system of government of law and not rule by men by advising and training Micronesian personnel involved or interested in the legal profession and to contribute toward substantial justice and economic development by providing professional advice and counsel.

Responsibility: These lawyers shall be primarily responsible to the High Court Justice who is assigned to the district in which the lawyer is located and through him to the Chief Justice. The lawyer will be subject to the guidance of the resident Justice, and it is expected that, when the High Court is sitting in that District, the lawyer devote the major portion of his time to the work of the High Court. When the High Court is not sitting in a district, and no High Court judge is present, the lawyer will, under the guidance of the Presiding Judge of the district, assist in the administration of the District and Community Courts.

Functions:

1. Provide advice and training for Micronesian District and Community Court Judges, Clerks of Court, and Probation Officers, particularly as specific questions arise during the course of daily business.
2. Conduct legal training programs for members of the Judiciary, practising trial assistants and other interested persons, either modeled to fit the needs and requests of the particular district or according to a standardized Territory-wide curriculum.
3. Provide legal assistance to the High Court Justice.
4. Assist in the development of a strong, viable Bar Association in each district.
5. Provide individual counsel to trial assistants on problems of legal research or drafting of legal documents.
6. Advise the Public Defender's Representative in the district on specific matters when he requests assistance.
7. If there is no District Legal Officer, or if the District Legal Officer requests assistance, similar service given to the Public Defender's Representatives could be offered the District Prosecutor or the District Administrator and his staff.
8. To the extent that time permits, cooperation with the Political Affairs Officer in his work with Municipal Councils, Magistrates and political education
9. Upon request, and as time permits, work with the District Legislatures advising their legislative counsel. Work with the Congress of Micronesia or with individual members in the District, upon request, would also be encouraged,

22  
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provided that the High Court Justice is notified sufficiently in advance of, and approves, any long term absence of the lawyer from the district.

10. Advise local businessmen and the OEO Community Action Agency if another lawyer is not available for these services.

11. Provide assistance to the land office or land commission to the extent feasible.

This is not the extent but rather an indication of some of the functions of such a Judiciary Advisor. His association with the Judiciary should provide him, in the eyes of the public, with a position of neutrality, on the side of neither prosecution nor defense, the government nor the individual claimant, but rather interested in the establishment of substantial justice for all. If there is another Volunteer lawyer assigned to the District Legal Office, it may well work out in practice that a Judiciary lawyer will spend most of his time assisting the Court, the defense, or the individual claimant.

Primary Function: Since the work with the Judiciary and trial assistants would be the primary responsibility of this lawyer, some of these functions are elaborated upon more extensively below. The extent to which he becomes involved in the other functions listed above would be worked out with other Volunteer lawyers in the district.

1. Assist the District Court Judges in understanding the law to be applied in specific cases. in distinguishing between law and fact, and in formulating the legal and factual issues to be determined. Delicate tact will be necessary in this area in order not to over-influence the Judge by providing answers rather than the proper questions and alternative possible answers, and also in not offending him by a display of knowledge which he may be somewhat self-conscious about not having.
2. Keep track of the court calendar and assure that there is not unnecessary delay in the adjudication of cases. This means encouraging the counsel to come to trial, encouraging the judge to hold hearings on master referrals, and recommending strict adherence to the rules where delay is inexcusable. Advice may also be offered in providing the most expeditious (for all concerned) method of handling cases, including a time set aside for arraignments, specific days for specific kinds of cases, etc..
3. Observe and recommend the improved application of the Rules of Evidence and of Civil and Criminal Procedure. Occasionally it may be advisable to have the trial transcripts translated and then at the conclusion thereof, offer the Judge advice on various rulings.
4. Suggest ways of improving the effectiveness of the Clerk's office, including making docket entries, when and how to issue a summons and warrant, and what is the most efficient filing procedure. Also, suggest appropriate forms for reoccurring legal papers.

5. Attempt to systematize the sentencing procedures and work with the Judge to consider factors which should be considered in sentencing. Supervise the introduction of a cafeteria system for dealing with motor vehicle violations.
6. Assist Judges and Clerks in drafting judgments or orders and any memorandum opinions or remarks.
7. Provide assistance to probation officers and the judges of juvenile cases, particularly working to establish an effective probation office by writing useful probation reports, recommending rehabilitative conditions, and following through on the rehabilitative process. This work could develop into a district wide juvenile delinquency prevention and rehabilitation program.
8. Upon request of the High Court, conduct hearings as a specially appointed Master, or assist a Micronesian Judge who is so appointed.
9. Research questions of law for High Court Judge and assist him in the preparation of opinions.
10. To the extent that time permits, work on projects for the benefit of the Judiciary such as rules or statutory revision, improvement of library facilities, etc..
11. Do research or field work in the codification of customary law, examination of traditional and foreign influences on the land law, or interpretation of decisional law would contribute to an accumulating body of reference material.
12. If the district appears to be ready, start working with Judges in order that they may fill more specialized roles in judicial proceedings such as probate, domestic relations, juvenile proceedings, etc..

#### BAR ASSOCIATION

1. Conduct legal training courses. This may be done with the advice or assistance of the education committee of the Bar Association or through some other program such as the Community Action Agency. Also, the Judiciary may supply the funds for a Community Court Judges' School to which all the Judges would be brought for a training session. The following courses would be particularly useful.

- (a) Drafting of pleadings, motions, contracts and wills.
- (b) Criminal Procedure, including statutory requirements, Rules, and Bill of Rights.
- (c) Civil Procedure.

- (d) Land law, customary, German and Japanese, and present property law.
- (e) Law of contracts.
- (f) General business law.
- (g) Basic Trust Territory law, including the United Nations Charter, Trusteeship Agreement, Secretarial Orders, Bill of Rights, etc.. This is the equivalent of Constitutional Law.
- (h) Criminal law.
- (i) Torts.
- (j) Domestic Relations law.
- (k) Trial practice and strategy.

2. Conduct program of public education on the law. Certainly a government of law requires a general understanding by the public of what the law is and their rights and responsibilities under the law. Too often neglected because there is no department specifically responsible for it, this education is necessary to the commitment of the United States to develop Micronesia politically and democratically. Radio programs on law, articles in local newspapers, talks to elementary schools, the development of a simplified mimeographed introduction to law in the Trust Territory for use in the schools, perhaps a course in the local high school, Law Day ceremonies, or adult education courses are all possibilities.

3. Preparation of a code of legal ethics with machinery to enforce it.

4. One objective of establishing a strong, viable Bar would be to eventually include within it all trial assistants as a prerequisite to practising law. Further, as the Association gains the respect of the community, it may offer advice on judicial appointments and proposed legislation affecting the district.

5. The Association, through special committees, might investigate certain legal problems or areas of needed legislation or statutory revision, and make proposals thereon to the Municipal Councils, District Legislatures, or the Congress of Micronesia.

#### WORK WITH INDIVIDUAL TRIAL ASSISTANTS

1. As a general rule, the function should be to educate and not to litigate, meaning that the lawyer should not actually appear in court, should avoid doing the actual drafting of pleadings, motions or contracts, and should remain as neutral as possible on substantive issues. Whenever possible, the lawyer should assist only one side in a particular case. When the achievement of justice in an individual case and the preservation of a balance between litigating sides

requires it, exceptions to any of the above guidelines would be appropriate. What is more important is that the lawyer's objective is to assist the trial assistant to do his job better, to find the appropriate law, to determine and articulate the key issues, and to correctly draft the appropriate documents. The lawyer should not be in a position of competing with trial assistants who earn their livelihood from the practice.

Support: The Judiciary would provide the supplies and office space for the support of the lawyer's activities which are in the interest of the Judiciary, Bar Association, Trial Assistants, and the promotion of a government of law. Further, to the extent that their court duties permit, the Clerks of Courts would provide translating and clerical services.

Office Hours: Lawyers would be expected to maintain substantially Trust Territory office hours.

PROPOSED PROGRAM FOR TRAINING OF PCV LAWYERS  
ASSIGNED TO THE JUDICIARY

1. PCV Lawyers would have the standard courses in language, local custom and anthropology, areas studies, health, etc. in the District training centers. They would also have sufficient free time to undergo an independent course of study with materials and reading assignments outlined for them. For this purpose, some library facilities are necessary, either at the location of the training center or at the District Court House law library. Perhaps travel to the law library could be arranged for the pursuit of this independent study.

2. Independent Study Program.

Reading Materials:

- Trust Territory Code, with special emphasis on Chapters 1 through 6.
- Rules of Evidence (appendixed to T T Code)
- Rules of Procedure, Civil and Criminal
- Rules of Juvenile Delinquency Proceedings
- District Laws
- Municipal Ordinances for the District
- Land Tenure Patterns, Section relevant to the District
- Anthropological materials on the District, published or mimeographed
- Relevant articles in the Micronesian Advocate (particularly, Role of Peace Corps Lawyer, Juvenile Delinquency, Revenue Raising Powers of District Legislatures, Legal Education and Training in the Trust Territory, Problems in Legal Translations)
- Practising Law Institute, Presenting the Evidence, Depositions and other Disclosures, Final Argument, Cross Examination, Marshalling the Evidence, Final Preparation Before Trial, Pleading and Practice Before Trial, Motion Practice and Strategy, and Model Code of Evidence.
- Department of State, Trust Territory of the Pacific Islands, 1966
- Keeton, Trial Tactics and Methods (review only)
- McCormick, On Evidence (review only)
- Perkins, On Criminal Law (review only)
- Resolutions of the Congress of Micronesia, 1965, 1966, 1967
- Manual of Administration (review only)
- Constabulary Manual
- Congress of Micronesia Manual
- Hawaiian Architects and Engineers, Summary Report, Cultural Considerations for Planning in Micronesia, Progress Report on Planning Legislation Needs, District Center plan
- Nathan Report on Economic Development
- Nathan Report on Public Finance

3. Prepare three papers during the course of training on any of the following topics or on an individually selected and approved topic. Personal interviews should constitute a substantial amount of the materials in the paper. Papers of merit may be published in the Micronesian Advocate.

3. continued

Juvenile Delinquency in the District: Causes and Proposed Solutions	Customary Marriage and Divorce
Land Law in the District As Developed in the Decisions of the High Court	Problems in Translating Legal Terminology Into Local Language
Codification of Crimes Under Custom in the District (T T C Sec 434,436)	Standardization of Sentencing Procedures and Parole
Suggestions for a more Workable Federalism in the Trust Territory ( T T C Sec 46,47,48)	Tort Liability Under Custom
Customary Adoption	Testamentary Disposition of Land Under Custom

4. Conferences with the following people in the District should be arranged during the course of the training program

Presiding and Associate Judges of the District Court	
Clerks of Courts	Political Affairs Officer
Probation Officer	Speaker of the District Legislature
Sheriff	Mayor or Magistrate of District Center
Prosecutor	President, Bar Association
Public Defender Representative	Local business leaders
Land Title Officer	Trial Assistants
Community Court Judges (particular any Judge in the District Center)	

Some time during the training, a general meeting should be arranged at which time the lawyer could be introduced to members of the legal profession, particularly Trial Assistants, and his role defined for them.

5. Conferences with the following T.T. personnel should be arranged when they are passing through the District.

Public Defender  
District Attorney or District Attorney Supervisor  
Attorney General or Assistant Attorney General  
High Court Justices or Chief Justice  
Administrative Officer, Judiciary

6. Either at the conclusion of the training programs or prior to the conclusion, the six lawyers to be responsible to the Judiciary would meet at the annual Judicial Conference with representatives from all the Districts. At this time they would be invited to participate and conduct various workshop seminars on certain aspects of the law with the Micronesian personnel.