

June 19, 1973

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MEMORANDUM FOR MESSRS. CUTLER AND PICKERING

Subject: Representation of the Marianas Political Status Commission, June 1, 1973 - December 31, 1973

*I concur.
I assume we can
apply the \$5,000
monthly payment
against back
progress if we
have less than
\$5000 of
current
progress.
This may be
academic,
but some times
there are
long lags
in negotiations
like these.
LNS*

As you know, we have represented this client since December of last year and recently we completed a substantial amount of work for the Commission in connection with the second session of negotiations with the United States in Saipan. I believe that it is necessary at this time, in both the firm's and the client's interest, to think ahead about the work which should be done for the client and the fee arrangement which we are prepared to accept in connection with our representation of the Commission.

With Mr. Pickering's approval, we agreed to bill the client at the rate of \$3,000 per month for the period from last December through June of this year. We informed the client, by letter dated February 5, 1973, that we would reevaluate the situation at the end of this period and determine what adjustments, if any, should be made in light of our actual experience and the funds available to the Commission from the Marianas District Legislature or other sources.

With a slight variation from the above arrangement, which was approved by the client, we have billed and received from the Commission approximately \$21,000 for legal services during the six month period from December through May 1973. In addition, we have received reimbursement for travel expenses and per diem in an amount ranging from between four and five thousand dollars. Our records indicate that the total progress accumulated during this six month period for the Commission was approximately \$50,000.

Before I left Saipan, I promised the client that I would supply a general description of the work which I believed should be performed for the Commission during the period extending through the next session of negotiations. These will probably take place no earlier than October and no later than December. I also indicated that we would inform the Commission regarding our fee experience to date and provide

some approximation of the monthly bills which we believed would be appropriate in the future. I informed the client that the total cost of our legal services during the next six or so months might be in the vicinity of \$40-\$50,000 (i.e., substantially larger than has been charged to date).

Enclosed is a draft memorandum which generally outlines the nature and extent of work which should be performed on behalf of the Commission during the remainder of this year. It is very difficult to estimate the charges which would be accumulated if all of this work was performed up to our usual standards. I think it is very likely that the cost of the services outlined in this memorandum at our normal charges would be in the vicinity of \$70-\$90,000. I arrived at this sum by assuming that approximately eight to ten weeks of my time would be involved (including five weeks during the actual negotiations) and approximately 20 weeks of associate time. At the moment, both Mr. Lapin and Mr. Carter are assigned to this matter, although it would be clearly possible to spread the burdens more widely among interested and competent associates if that proved to be in the firm's interest.

I recommend that I be authorized to propose to the client the following billing arrangement to the end of this year. I suggest that we bill the client at the rate of \$5,000 per month for our legal services and increase this amount to \$10,000 for each of the two months during portions of which representatives of the firm will be assisting the Commission in preparing for or conducting the negotiations. In effect, this arrangement would call for total billing during the next seven months (June through December) of \$45,000. In addition, we would be reimbursed for our travel and other expenses. This would represent an approximate cost to the client of our firm's services of \$50,000 for the remainder of this year.

Until I have some general reaction from you to this proposal, I do not know how strenuously I need to argue either the propriety or the desirability of these arrangements in light of the particular needs of the Marianas Political Status Commission. With your indulgence, let me outline some of the considerations which I believe support this proposed fee arrangement:

1. In the first place, this proposal will stretch the Commission's financial resources to the ultimate limit

and I would frankly prefer coming in at a somewhat lesser figure. In an economy with a per capita income of 1/3 that in the United States, our fees appear very high. At the same time, however, the Commission members are proud people who are reluctant to accept charity.

To put this in perspective, the Marianas District Legislature has very limited discretionary funds available to it, and authorized a total of \$92,000 to the Commission during the first year of its operation. The Commission now has virtually none of these monies left and must await another session of the District Legislature this August to receive additional funds. Of the \$92,000 authorized, this firm received in fees and expenses approximately \$25,000, the economic consultant firm from Washington received perhaps \$20,000 and the Saipan lawyer serving as Executive Director received approximately \$10,000. The remainder, I assume, has gone primarily for travel expenses, per diem payments to the members of the Commission during the negotiations, and other administrative expenses.

The Commission is confident that the District Legislature will authorize additional funds at the August session. I personally believe that it is unlikely that the amount authorized will exceed \$100,000 and it is likely that the amount will be in the range of \$75,000 to cover the Commission until the next session of the Legislature in February 1974. With these figures in mind, you can begin to appreciate how substantial an item our projected fees appear to be to the members of the Commission and the Legislature. I am hopeful that the Commission will continue to believe that it gets full value for the fees paid to this firm, but I would be very unhappy if it were ever suggested that we were trying to "profit" from our representation of 13,000 disadvantaged Chamorros in the Mariana Islands.

2. I believe that a strong case can be made for treating the Commission as a client deserving of partial pro bono treatment. I think that the need for such consideration clearly exists, in light of the above financial situation. I believe that the significance of the work, both to the Marianas and to the United States, makes the participation of this firm especially attractive and desirable. As the enclosed memorandum indicates, the range and difficulty of many of the problems require the services of a first-rate law firm. Representation of the Commission is also sufficiently different from our "usual" range of work that it is attractive to the lawyers working on the matter, and I humbly suggest that this psychic income accrues to all the firm's lawyers.

3. Assuming that the negotiations continue to progress, the Marianas may be a client of this firm for several years. At some point, hopefully, the Commonwealth of the Marianas will be able to pay our full charges and accept the obligation of so doing as a sign of its new political maturity and economic self-sufficiency. The work ahead promises to be very unusual, including the participation by this firm in a Constitutional Convention to write the new Constitution of the Marianas, to assist in the development of the political institutions of the new government, and to advise in connection with its future economic development and legislative programs. There should be ample opportunity for all the frustrated political scientists and economists in this firm to participate in these various assignments in some responsible way.

After you have had a chance to review the enclosed memorandum, I would like to discuss this matter with you.

~~HPW~~

Attachment

cc: Mr. Mayers

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WILMER, CUTLER & PICKERING
FARRAGUT BUILDING
WASHINGTON, D. C. 20006

June 19, 1973

MEMORANDUM

TO: Edward DLG. Pangelinan, Chairman
Marianas Political Status Commission

RE: Legal Work to be Performed for the Commission:
June 1, 1973 - December 31, 1973

As a result of the negotiations in Saipan ending June 4, 1973, a substantial amount of legal work must be undertaken on behalf of the Marianas Political Status Commission in preparation for the next session of negotiations with the United States. It is expected that the next session will be held in the fall, most probably in October or November. At your request, this memorandum will attempt to summarize the work which we believe should be undertaken by this firm to assist the Commission in preparing for and participating in the next set of negotiations. For convenience we have divided the work into four categories: (1) Committee Assignments; (2) Specific Research Projects; (3) General Representation; and (4) Participation in Negotiations.

I. Committee Assignments

As a result of the negotiations, the two delegations agreed to the creation of working groups or committees to work on specific assignments before the resumption of negotiations. Such committees were established in the areas of political status/legal issues and economics/financial support. Although it is somewhat less clear, some committee work may be required in the area of United States land requirements for military purposes in the Marianas. In varying degrees, the services of this firm will be required to assist in the work of these committees.

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A. Committee On Political Status/Legal Issues

This committee has been given three important assignments and, since its members will be lawyers representing both parties, it is likely that it may become a forum to consider preliminarily other issues related to the next session of negotiations. The specific assignments are as follows:

1. Applicability of Provisions of United States Constitution. The Joint Communique provides that the Commission will study further which additional provisions of the United States Constitution should be made expressly applicable in the Marianas. We will have to undertake the legal research necessary to develop specific proposals on this subject, taking into account what has been done in other territories or commonwealths and what may be acceptable to Congress.

2. Applicability of United States Laws. It was agreed between the two delegations that the formal agreement establishing the future political status of the Marianas would deal expressly with the applicability in the Marianas of certain major areas of federal legislation. Several areas have been identified for study, including taxes, immigration, customs, banking, social security, maritime laws, labor standards and the postal service. This firm needs to conduct an appropriate factual and legal inquiry to determine whether the application of these (and other) laws should be circumscribed by the formal status agreement. In order to form an intelligent judgment in some of these areas, we will undoubtedly have to rely heavily on the Commission's economic consultant and others with expertise in the particular area.

3. Citizenship. This committee has also been given the responsibility for studying the status to be accorded those residents of the Marianas who might not wish to become American citizens. This project will require examination of the precedents providing for the grant of United States citizenship to persons in acquired territories, the options available to those persons electing not to become American citizens, further investigation of the differences between citizen and national status, definition of the persons to whom the choice of citizenship should be afforded, and other legal and practical problems associated with the proposals advanced by the Commission during the negotiations.

B. Committee On Economics/Financial Support

The Joint Communique provides for a joint working group on economics and finance. This committee has the assignment of reviewing the preliminary planning effort outlined by the Commission for which funding is sought from the United States. In addition, the Committee has been asked to study specific questions relating to the long-term financial requirements of the Marianas. Although the principal contributions to this committee will come from our economic consultants, this law firm will have two responsibilities related to this committee. First, counsel representing the Commission should generally supervise all committee work to make certain that it is coordinated and consistent with the Commission's negotiating posture. Second, this firm has been asked to describe in considerable detail the kind of political and legal planning effort desired for Phase I by the Commission. This description would include a terms of reference and costs for a program of political education, necessary referenda, a Constitutional Convention, and the initial development of a legislative program for the new government.

C. Committee On Military Land Requirements

Although the Joint Communique does not reflect establishment of a committee on this subject, it does make reference to further discussions at a technical level to clarify and refine the United States proposals. It is very likely that some effort will be made by Department of Defense representatives during the next few months to educate us more fully as to their requirements and to answer questions raised by the Commission regarding the United States proposals. We do not anticipate any substantial legal work in this connection during the next several months, although it may involve occasional meetings and some written work. It might also be desirable for us to consider how we can develop greater capability to review knowledgeable the specific proposals advanced by the United States for military facilities in the Marianas.

II. Specific Legal Research Projects

In addition to the work necessarily involved in the committees described above, the negotiations resulted in the identification of numerous other projects requiring legal research and analysis. Many of these have a high priority and must be completed before the next session of negotiations.

1. Applicability of Provisions of United States Constitution
2. Applicability of United States Laws
3. Citizenship

These three assignments are described above in connection with the Committee On Political Status/Legal Issues.

4. Maximum Self-Government of the Marianas

We have undertaken to explore means to reconcile the plenary powers of Congress under Article IV, Section 3, Clause 2 of the Constitution with the exercise by the Commonwealth of the Marianas of maximum self-government with respect to internal affairs. This will involve review of pertinent United Nations materials and careful analysis of the powers currently possessed by the Commonwealth of Puerto Rico with respect to its internal affairs. We need to examine also whether appropriate limitations on Congressional powers can be implemented through the extension of the mutual consent requirement, already accepted in principle by the United States executive branch, or whether other approaches are more feasible and politically acceptable. As part of this assignment, further attention must be given to the distinction between foreign affairs and internal affairs, specifically with reference to such matters as control of aviation and use of harbor facilities.

5. Establishment of Marianas Public Corporation

The use of a public corporation has been suggested to the client and further research on this approach is required. A public corporation is a possible vehicle for economic development, as suggested by the Commission's economic consultant. In addition, this option should be explored as a possible recipient of the public lands to be returned by the United States to the Marianas and/or as a possible lessor of lands to the United States for military use. This particular research project requires a comprehensive review of the uses to which public corporations have been put, the problems which could be anticipated in connection with the use of a public corporation in the Marianas, and some detailed recommendations as to how this alternative should be further investigated.

6. Transition

On the last day of negotiations the United States summarized its views regarding the transitional stage through which the Marianas might pass before termination of the trusteeship agreement. Included in this general subject area is the question whether a separate administration should be established for the Marianas District once an agreement regarding its future political status has been negotiated with the United States. There are several legal and tactical issues raised by this question of transition, some of which were discussed in our initial report to the Commission, and it is necessary to develop a position for consideration by the Commission before the next session of negotiations.

7. Restriction of Aliens

The Commission has expressed repeated concern about the ability of the future Commonwealth government to limit immigration of aliens into the Marianas. We have undertaken to explore this question in connection with our review of the United States immigration laws and their applicability to the Marianas. In addition, the United States in its response to our position paper on United States military requirements asked to be advised regarding our views as to how the future government of the Marianas would plan to restrict immigration to the island of Tinian so as to prevent the undesirable social and economic consequences which might result from the establishment there of a substantial military facility. In order to deal with this question, it will be necessary to begin to think about alternative legislative approaches which might be taken by the Marianas to deal with the immigration of aliens, the residence requirements for Marianas citizenship, and the division of authority between the Commonwealth and local governments of the Marianas.

8. Eminent Domain

It will be necessary for the Commission to develop a detailed position on eminent domain for the next stage of negotiations. Based on the Commission's preliminary discussion of this subject, it would be desirable to prepare a review of eminent domain procedures in the United States for the

Commission. In addition, we should review the specific procedures on this subject set forth in the Commonwealth proposal advanced by the United States in May 1970 to ascertain whether these procedures, or some revision of them, should be advanced by us to the United States as a limitation on Federal rights in this area.

9. Restrictions on Land Alienation

The Joint Communique reflected the understanding of the parties that the future government of the Marianas would be permitted to enforce restrictions on land alienation designed to preserve control of land in the Marianas to persons of Marianas ancestry. Although final resolution of this matter will rest ultimately with the future government of the Commonwealth of the Marianas, it appears desirable to undertake some preliminary legal analysis of the alternate legal mechanisms by which such control can be enforced. Such a review is timely now because of the possibility that the U.S. Congress will want to be fully informed on this subject before approving any formal status agreement and because we may want to raise with the Commission the possibility of including such provisions in the Constitution of the Marianas. The United States has offered to provide assistance on this subject if the Commission so desires. Before the next round of negotiations it would be desirable to prepare a memorandum on this subject, including an analysis of such questions as the definition of persons of Marianas ancestry, the kind of interests in land which could be held by persons not of Marianas ancestry, and the enforcement mechanisms which should be established to implement any such policy.

10. Land Valuation

Valuation of land in the Marianas desired by the United States for military purposes will be one of the important issues discussed during future negotiations. Based upon their initial positions, the Commission is arguing for the adoption of innovative land valuation procedures designed to reflect accurately the scarcity of land in the Marianas and anticipated economic developments within the Marianas, whereas the United States appears to be urging more traditional valuation approaches of the kind that have been used within the continental United States. Our research and analysis in this area should explore at least three questions. First, the Commission should be advised regarding the procedures which are traditionally followed in

the United States to establish the value of land taken by the United States for civilian or military purposes. Second, some analysis is required of the economic factors which can be appropriately taken into account in fixing the value of such land. Third, it would be desirable to explore the use of arbitrators or other procedures as a mechanism for determining the value of land in the Marianas.

11. Analysis of Military Leases

Although the United States has requested the right to purchase land in Tinian for military purposes, the Commission has taken the position that it will lease this land to the United States on a long-term basis. In order to further support our position, it would be desirable to review the extent to which the United States does lease land, both within and outside the United States, for military purposes. In addition, it would be desirable to analyze sample lease agreements in order to begin the process of proposing lease arrangements to the United States which will be of maximum benefit to the people of the Marianas.

12. Resettlement of Tinian Residents

During the course of the negotiations, the United States advanced certain proposals regarding the resettlement of Tinian residents. In this connection, frequent reference was made to legislation establishing the standards for such resettlement which the United States intends to follow. In order to ensure that resettlement arrangements are as flexible and generous as possible, we should undertake an analysis of the relevant federal legislation and regulations and develop a position which could be advanced on behalf of the Commission to maximize the benefits received by the residents of Tinian.

13. Periodic Review of Status Agreement

The United States has reluctantly agreed to consider the Commission's proposal for periodic review of the formal status agreement to be negotiated between the Marianas and the United States. The burden is on the Commission, however, to present a specific proposal on this subject, at the next session of negotiations. Among other issues, the proposal should explore the means by which the review should be triggered, the process by which items are identified for inclusion on the agenda, the level of participation within the federal government, the possible involvement of representatives of Congress, and the process by which differences between the parties can be resolved.

14. Resolution of Land Disputes

Several important problems relating to land (other than the land requirements of the U.S.) were identified during the past session of negotiations. It is expected that many of these problems will be further investigated by the Commission's Executive Director in Saipan, Mr. James E. White. Depending upon Mr. White's preferences, we are prepared to assist him in exploring these problems and developing proposals for consideration by the Commission before the next session of negotiations. In particular, it may be desirable to review the various kinds of land disputes in the Marianas and to develop detailed proposals for a mechanism to resolve these disputes.

15. Preparation of NEPA Statement by United States Military

Representatives of the United States acknowledged during the negotiations that a formal NEPA statement would have to be prepared regarding its plans for military facilities on Tinian. In this connection, they cited a recent decision by the United States District Court in Hawaii on this subject. We should review this decision and the standard procedures for preparation of a NEPA statement so that the Commission will be fully informed of the opportunities which will be available to citizens of the Marianas to comment upon the environmental impact of any military facilities planned by the United States within the Marianas.

16. Use of Local Contractors by United States Military

The United States stated during the negotiations that every effort will be made to use local contractors and suppliers during the construction and operation of the base on Tinian. The Commission has requested the United States to prepare a report on the procurement regulations and procedures relevant to the Tinian base. Although not of high priority in connection with the next round of negotiations, it will be necessary at some point to explore standard procurement procedures to develop proposals which can be advanced on behalf of the Commission to ensure use of local contractors by the military, especially with regard to small business contracts and non-competitive bid contracts.

III. General Representation

In addition to the above specific projects, our representation of the Commission will undoubtedly involve other responsibilities which are more difficult to identify or quantify. During the next several months we plan to establish liaison with the staff and members of the responsible committees in the House of Representatives and Senate. The general purpose of these efforts will be to inform the Congressional committees of the progress being made in our negotiations, the significant problem areas which have been identified, and generally to solicit their support for the work of the Commission. In addition, this general representation will include any further efforts in connection with the review by the United Nations of our separate status negotiations with the U.S. It will also be necessary to deal with the Office of Micronesian Status Negotiations on a wide variety of procedural and substantive matters and, in this connection, to function generally as the Washington liaison between the United States and the Commission.

IV. Participation in Negotiations

In order to round out the description of this firm's representation of the Commission during the next several months, it is necessary to anticipate the needs which will arise from the next session of negotiations later this year. Based upon our experience during the last session, it will be necessary for at least one representative of this firm to be with the Commission during its preparation for the negotiations as well as during the negotiations. In light of the number and complexity of the problems involved, as well as the procedures followed during these negotiations, it must be anticipated that this commitment will be for approximately five weeks. As was the case during this past session, it will probably be desirable to have a second lawyer from this firm in attendance during a substantial portion of the next session of negotiations.

Howard P. Willens

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