

High Court

OF THE

TRUST TERRITORY OF THE PACIFIC ISLANDS

November 9, 1976

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ROBERT A. HEFNER
ASSOCIATE JUSTICE
KOROR, PALAU W.C.I. 96940

Deanne C. Seimer
Wilmer, Cutler & Pickering
Inter-Continental Hotel
Saipan, Mariana Islands 96950

Dear Ms. Seimer:

I have reviewed the draft of the proposed Constitution for the Government of the Northern Marianas as it applies to the Judicial Branch.

There are some very important matters which should be brought to the attention of the delegates before this article is further considered.

The draft establishes a court in Tinian and Rota, a Land Court and such other courts as the legislature may form. The High Court of the Trust Territory and lower courts for the Mariana Islands District have statistics for past case filings and which can establish a fairly accurate base upon which to project future court needs.

Pursuant to Section 2, a specialized division of the Court is established to hear and decide "land matters". Some question comes to mind as to what is meant by the term. It is not known whether the Land Commission system is to be retained under the new government, but as will be seen it is recommended that it be kept intact.

The Land Commission is a functioning administrative body which not only makes land determinations but does the field work and survey work to perform a program of land title registrations. According to the Land Commission Office, it has issued almost 2400 Land Title Determinations since it began operations in 1968. There have been only approximately 20 appeals to the High Court which are allowed pursuant to 67 TTC 115. Therefore the number of cases that the High Court has handled from the Land Commission have averaged less than three per year. The land registration program is completed on Tinian and the land in the villages in Saipan is ninety percent (90%) done. This primarily leaves Rota and the agricultural land on Saipan. It would be expected that the number of appeals from the Land

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Commission would not increase significantly in the future.

The High Court has exclusive jurisdiction over land cases (5 TTC 53, 101). Since January 1975 to the present, there have been 525 cases filed in the High Court in the Marianas District.

Of the 525 cases only 28 are what can be classified as "land matters".

It is therefore apparent that to establish a specialized division for land matters is not necessary and whatever land cases do come to the courts can be handled by the regular trial court judge.

A full-time judge for Rota and one for Tinian is also indicated in the draft. Rather than go into a long dissertation as to the population of Tinian and Rota and past, present and expected future case filings for those two islands, suffice it to say that such courts cannot be rationally supported.

To cite only a few statistics immediately available, Rota has an approximate population of 1104. The case filings from June 1974 to October 1975 show a total of 114 traffic cases, 4 misdemeanor, 4 felonies, 3 civil cases, 1 juvenile, and 4 small claims. With this low case load, the T.T. District Court judge has always been on a part-time basis.

This leads to the type of judge(s) which will be sitting on the bench in the Commonwealth court.

Section 5 does not require that the appointee(s) of the Governor be legally trained. I cannot stress too much the importance of inserting a provision requiring not only a law degree and being a member of a bar, but also some length of time practicing law.

The jurisdiction which the Court will have (Section 2) is fairly extensive, particularly when considering that defendants in criminal cases can be sentenced to five (5) years. One cannot justify the new court by looking at the Trust Territory District Court system. The Commonwealth Courts will be subject to different standards and tests.

The judge(s) of the Northern Marianas will be hearing relatively more sophisticated cases. There will be formally trained lawyers appearing before them on a daily basis. If jury trials are to be held, an untrained judge simply will not be able to conduct the trial without the real possibility of errors being made. Consideration also must be given to recent United States cases dealing with non-lawyer judges (Gordon v. Justice Court, 525 P 2d 72, (Cal. S. Ct.), cert. den. 420 U.S. 938. Also note that the case of North v.

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Russell, docket # 74-1409 was argued before the U.S. Supreme Court in December 1975. Decision pending.)

Section 7 of the draft provides for the removal of a judge by the Governor upon the recommendation of the Advisory Commission. The grounds are "for illegal or improper conduct". It is suggested that since the legislature has the impeachment power and there is the possibility of the Governor using the Advisory Commission to summarily discharge a judge, the provision be deleted.

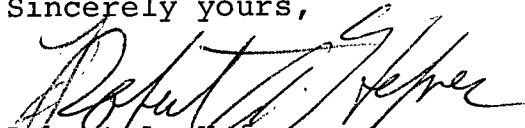
In summary, it is recommended as follows:

1. Delete any reference to a "specialized division" of the Court for land matters and for a full-time judge in Rota and Tinian. The need for such courts is not demonstrated. The establishment of any courts in excess of those needed is nothing but a drain on the taxpayer. Such an obvious waste, may seriously affect the approval of the Constitution by the U.S. Government.
2. If the recommendation in No. 1 is accepted this leaves it up to the legislature to create the number of judgeships necessary to efficiently and expeditiously dispose of the expected case load in the Marianas. If Recommendation No. 3, set forth hereinafter, is adopted, one full-time judge will be more than sufficient.

The total population of the Marianas is approximately 15,000. A similar type judge in California, where the case load could be expected to far exceed that here, will service a population of 40,000 people.

3. The qualifications for the judges require a law degree, bar membership and some years of experience.
4. The provision for the Advisory Commission be deleted or at least modified so that impeachment by the legislature is the sole way to discharge a judge.

Sincerely yours,


Robert A. Refner
Acting Chief Justice