

*copy to
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United States Court of Appeals

For the Ninth Circuit

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San Francisco, California 94101

Home Address
Tucson, Arizona

Office of
Richard H. Chambers
Circuit Judge

September 22, 1977

Honorable James O. Eastland, Chairman
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

I write to you today in my capacity as Chairman of the Committee on Pacific Territories, Judicial Conference of the United States. At its meeting on Friday, September 16, 1977, the Conference authorized me to advise you of its actions concerning the judicial establishment to be created for the new Commonwealth of the Northern Mariana Islands.

The Conference was advised that the issuance of a Presidential Proclamation to activate substantial portions of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States, and to approve the Constitution of the commonwealth, effective shortly after January 1, 1978, is imminent. The covenant was approved by the Act of March 24, 1976, Pub. L. No. 94-241, 90 Stat. 263. Included among the provisions to be activated pursuant to section 1003(b) of the covenant is Article IV, which concerns the judicial authority for the new territory.

Our committee was and is of the view that Article IV is not entirely self-executing, and that legislation is necessary to implement that judicial authority, to assure the establishment of the federal District Court for the Northern Mariana Islands, to provide for the appointment by the President of a federal judge for the court, and to authorize the designation and assignment of other judges to the court in a manner analogous to that now in effect for other courts of the United States. If legislation is not passed during the current session of Congress and signed into law by the President, we face the total absence of a judicial tribunal in the commonwealth to hear federal cases, including prosecutions under the federal Criminal Code, title 18, United States Code.

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The Judiciary did not create the new Commonwealth of the Northern Mariana Islands. However, inasmuch as approval of the covenant has committed the Government of the United States to effect the establishment of the District Court for the Northern Mariana Islands, as part of the ninth judicial circuit of the United States, we feel obligated to bring to your attention the need for legislation to enable the judicial power of the United States to be exercised in the commonwealth.

The Departments of Interior and Justice have been working with us on an appropriate bill. We have been told that Interior already has submitted its legislative package to the Office of Management and Budget for approval. We have received assurances that recognition of the urgency of this need by all interested officers guarantees that OMB will approve the package expeditiously, so that it may be presented to the Congress formally on or before Friday, September 23, 1977.

On September 16, the Judicial Conference approved the concept of the then-current draft of the necessary legislation, subject to certain amendments recommended by our committee. You will find the proposed legislation which will be submitted by Interior to be a synthesis of this earlier draft and the recommendations of our committee. An advance copy of the proposed legislation is enclosed for your review. Because of our frequent conferences with Interior and Justice and our participation in the drafting process, we are confident that Interior's package deals adequately with the issues requiring immediate action.

There is one exception, however, to our consensus. The Judicial Conference would prefer enactment of legislation which would provide for review of the decisions of the appellate division of the District Court for the Northern Mariana Islands by writ of certiorari from the United States Court of Appeals for the Ninth Circuit. Because of the apprehension of the two departments that such an appellate procedure should have the express or tacit approval of the people of the commonwealth, the provisions of the enclosed proposed legislation continue to provide for appeal as of right to the United States Court of Appeals for the Ninth Circuit from decisions of the appellate division. With the exception of our differing views on the nature of the appellate procedure, I can say confidently that the concept of the proposed legislation has the approval of the Judicial Conference.

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Finally, our committee has been empowered by the Judicial Conference to endorse the appointment of a judge for the District Court for the Northern Mariana Islands who will be able to devote his efforts on a full-time basis to the work of that court. Our analysis supports the conclusion that the workload of the court will be sufficient to justify such an appointment. Accordingly, the dual appointment of an individual already holding the office of judge in another district court would be, in our opinion, inconsistent with the efficient and expeditious administration of justice in both districts.

Our committee was to remain flexible and in my absence during the coming weeks, Mr. Stafford D. Ritchie, II, Assistant General Counsel, Administrative Office of the United States Courts, will be able to advise you of our committee's attitude concerning such modifications as Justice, Interior, or your committee may suggest.

We close with a prayer that the new Commonwealth of the Northern Mariana Islands will not find itself without its old High Court of the Trust Territory of the Pacific Islands and without its new District Court for the Northern Mariana Islands. The absence of both will be an invitation to anarchy.

Sincerely,



Richard H. Chambers
Chairman

Committee on Pacific Territories
Judicial Conference of the United States

cc: Honorable Dennis DeConcini, Chairman
Subcommittee on Improvements in
Judicial Machinery

Enclosure

9/19/77

A B I L L

To implement Article IV of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America.

Whereas Section 401 of the Covenant to establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, approved by Section 1 of the Joint Resolution of March 26, 1976, Public Law 94-241, 90 Stat. 266, provides that the United States will establish a District Court for the Northern Mariana Islands, the following implementing provisions are hereby enacted:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) there is hereby established for and within the Northern Mariana Islands a court of record to be know as the "District Court for the Northern Mariana Islands." The Northern Mariana Islands shall constitute a part of the same judicial circuit of the United States as Guam.

(b)(1). The President shall, by and with the advice and consent of the Senate, appoint a judge for the District Court for the Northern Mariana Islands who shall hold office for the term of eight years and until his successor is chosen and qualified, unless sooner removed by the President for cause. The judge shall receive a salary payable by the United States which shall be at the rate prescribed for judges of the United States district courts.

(b)(2). The Chief Judge of the Ninth Judicial Circuit of the United States may assign justices of the High Court of the Trust Territory of the Pacific Islands or judges of courts of record of the Northern Mariana Islands who are licensed attorneys in good standing or a circuit or district judge of the Ninth Circuit, or the Chief Justice of the United States may assign any other United States circuit or district judge with the consent of the judge so assigned and of the chief judge of his circuit to serve temporarily as a judge in the District Court for the Northern Mariana Islands whenever such an assignment is necessary for the proper dispatch of the business of the court. Such judges shall have all the powers of a judge of the District Court for the Northern Mariana Islands, including the power to appoint any person to a statutory position, or to designate a depository of funds or a newspaper for publication of legal notices.

(b)(3). The President shall appoint, by and with the advice and consent of the Senate, a United States attorney and United States marshal for the Northern Mariana Islands to whose offices the provisions of chapters 35 and 37 of title 28, respectively, United States Code, shall apply.

(b)(4). If the President appoints a judge for the District Court for the Northern Mariana Islands or a United States attorney or a United States marshal for the Northern Mariana Islands who at that time is serving in the same capacity in another district, the appointment shall, without prejudice to a subsequent appointment, be for the unexpired term of such judge or officer.

(c). The provisions of chapters 43 and 49 of title 28, United States Code, and the rules heretofore or hereafter promulgated and made effective by the Congress or the Supreme Court of the United States pursuant to titles 11, 18, 28, United States Code, shall apply to the District Court for the Northern Mariana Islands and appeals therefrom where appropriate, except as otherwise provided in Articles IV and V. The terms "attorney for the government" and "United States Attorney" as used in the Federal Rules of Criminal Procedure (Rule, 54(c)) shall, when applicable to cases arising under the laws of the Northern Mariana Islands, mean the Attorney General of the Northern Mariana Islands or any other person or persons as may be authorized by the laws of the Northern Marianas to act therein.

Section 2. The District Court shall have such appellate jurisdiction as the Constitution and laws of the Northern

Mariana Islands provide. Appeals to the District Court shall be heard and determined by an appellate division of the court consisting of three judges, of whom two shall constitute a quorum. The judge appointed for the court by the President shall be the presiding judge of the appellate division and shall preside therein unless disqualified or otherwise unable to act. The other judges who are to sit in the appellate division at any session shall be designated by the presiding judge from among the judges assigned to the court from time to time pursuant to subsection 1(b)(2), provided, however, that only one of them shall be a judge of a court of record of the Northern Mariana Islands. The concurrence of two judges shall be necessary to any decision by the District Court on the merits of an appeal but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedure.

Section 3. These amendments shall come into force upon its approval or at the time proclaimed by the President at which the Constitution of the Northern Mariana Islands shall become effective, whichever is the later date.