

WHITE, PIERCE, MAILMAN & NUTTING

ATTORNEYS AT LAW

POST OFFICE BOX 5222

SAIPAN, MARIANA ISLANDS 96950

MICHAEL A. WHITE
BRUCE L. MAILMAN
STEPHEN J. NUTTING
RICHARD W. PIERCE

S. JOSHUA BERGER
JENNIFER GRIFFIN SKINNER

CHARLES K. NOVO-GRADAC
OF COUNSEL

OFFICE: JOETEN CENTER
SUSUPE, SAIPAN
TELEPHONE: (670) 234-6547
FACSIMILE: (670) 234-9537

June 15, 1995

Deanne Siemer, Esq.
Law Office of William M. Fitzgerald
P.O. Box 909
Saipan, MP 96950

via telefax: 322-0993

Dear Deanne:

Thank you for sending me a copy of the draft of Article IV which will be submitted by the Committee on Judiciary and Other Elected Offices. I will bring it to the attention of the Bar Association, which may or may not choose to comment on it. The comments in this letter are my own.

The Committee is to be commended for taking the reappointment process of the hands of politicians. However, the draft does nothing to resolve the fact that initial appointments to the Supreme and Superior Courts remain thoroughly contaminated by the political process. The situation shows no signs of improving; witness the events of the past few weeks.

Judges and Justices should be appointed by the Governor from a short list submitted by a judicial nominating commission. I no longer have a copy of the ABA Model Judicial Article, but I believe that it contains appropriate language. The Commission should be broadly representative of the people of the Commonwealth including the legal profession. No legislative confirmation should be required.

Proposed Section 5 should contain some practice requirement. As it is presently worded, someone could live in the Commonwealth for the first five years of his or her life, move to the Mainland, graduate from law school at age 34, take the CNMI Bar, drive a taxi for a year, and become Chief Justice of the Supreme Court at age 35. I suggest that Section 5 should contain a provision requiring that a nominee have been a member of the bar of the highest court of a state or territory (including the CNMI) for at least ten years preceding the nomination, and of the CNMI Bar for at least five years preceding the nomination.

Deanne Siemer, Esq.
June 15, 1995
page 2.

Proposed Section 7 continues the current provision requiring the Legislature to establish an advisory committee on the judiciary. In my opinion, the Legislature has shown little, if any, responsibility in respect of the judiciary. The Advisory Commission on the Judiciary has been in our Constitution for many years, but the Commission has never functioned. I have no reason to believe that, if the Commission ever did function, it would be any less political than the Legislature is. Under those circumstances, allowing the Governor to remove, suspend, or otherwise sanction a justice or judge, merely upon the recommendation of the Commission, would constitute a totally unacceptable threat to the independence of the judiciary. It is bad enough that the authority to impeach is vested in the Legislature; unfortunately, I cannot think of a better alternative, although there must be one.

From the Committee's report, I infer that it did not look at the ABA Model Judicial Article. I would like to suggest it do so. The ABA has, over the years, come to grips with all of the issues now facing the Convention in respect of the judiciary. The Model Article represents the voice of wisdom and experience in dealing with the special considerations which apply to the judicial branch of government.

Thank you for the opportunity to comment.

Very truly yours,

WHITE, PIERCE, MAILMAN & NUTTING

A handwritten signature in black ink, appearing to read "M. A. White", written over a horizontal line.

MICHAEL A. WHITE, ESQ.
Attorney at Law