



Superior Court of the Commonwealth of the Northern Mariana Islands

P.O. Box 307, Saipan, MP 96950

Presiding Judge
Alexandro C. Castro

June 16, 1995

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The Honorable Henry U. Hofschneider
Chairman

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Committee on Judiciary and other Elected Offices
Third Constitutional Convention

Associate Judge
Edward Manibusan

Saipan, MP 96950

Dear Chairman Hofschneider:

Acting Chief Justice Ramon G. Villagomez forwarded to me the Committee's proposed draft of Article IV, which I understand will be reported out to the Convention next week. I write to express my strong support for the overall terms of the draft proposal, and to take the opportunity to provide some suggestions which I believe would further strengthen the Article ultimately adopted. What follows are my specific suggestions on a section-by-section basis.

Section 1. There is no doubt that both Courts of the Commonwealth need to be established in the Constitution. My only suggestion here would be to make more explicit what now remains implicit only in Section 9(c): the authority of the Courts to create inferior courts of limited jurisdiction (land courts, juvenile courts, family courts) as the need arises. I would therefore add the phrase "... and such other inferior courts as may be established pursuant to Section 9 of this Article."

Sections 2 and 3. My only suggestion regarding these Sections is the addition of the word "initially" prior to the phrase "appointed by the governor," so as to reflect the Missouri Plan retention system proposed for retention of judges after their initial terms.

Section 4. I support the overall scheme of this section, with two modifications. First, I believe that the initial terms of office in both the Superior and the Supreme Court should be six years. Second, I believe that the Constitution should be clear to all that under no circumstances should a justice or judge campaign for office, other than providing factual information in accordance with the provisions of the Code of Judicial Conduct (CJC). I urge this addition not to place any restraint on judges, who are already restrained by the CJC, but rather to clarify for citizens at large the judge's role in the electoral process, since the contemplated procedure would be new, and there is a critical need for the judiciary to be understood to be independent of the political process.

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Section 5. I support the terms of this Section, with two minor changes. First, I would clarify the terms of the residency requirement so that it captures the intention of the Committee without unduly excluding people who might have been away from the Commonwealth for some short period in the previous five years. As you know, residency and domicile are concepts of some difficulty. I attach *Ruben v. Ogumoro*, an opinion this Court issued after the last election, to show some of the Commonwealth's prior difficulty with these concepts. If the Committee believes a residency period is essential, perhaps a residency of two of the past five years coupled with continuing domicile throughout the five year period would suffice. Second, I would make the minor change of adding "a member in good standing of the Northern Marianas Bar Association" in place of the current language.

Sections 6, 7 and 8. I have no recommended changes.

Section 9. I support the overall structure of this Section, with the following modifications:

Subsection (a); I would delete the requirement that the address be on the same occasion as the State of the Commonwealth address, to avoid needless scheduling difficulties.

Subsection (c); I would break this into three separate subsections. The first would continue unchanged up to the phrase "judicial and professional ethics," where I would place a period and end the subsection. I would then propose a second subsection, which would read: "The supreme court shall have overall supervisory authority over the assignment of judges to Rota and Tinian for effective judicial service for the people of those islands, and over all other matters pertaining to the administration of the judiciary." The third proposed subsection would read: "The supreme court shall have the authority to create inferior courts of limited jurisdiction as the need arises." This tripartite structure would, I believe, enhance the clarity of the provision.

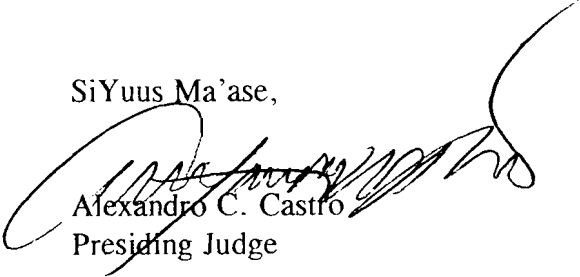
Subsection (d); I support this system. I would suggest, however, that sitting judges of the Commonwealth Superior Court not be empowered to sit at the appellate level. This would protect the collegiality and teamwork necessary for the effective function of the Superior Court.

Section 10. I support the placement of the "acting" designation in the Constitution, rather than its current status as a court rule. However, I do not support the conversion of "acting" status to permanent status after a period so short as ninety days. The nomination and confirmation process is already subject to political influence. The proposed system could build in an incentive for further political maneuvering between the elected branches. Thus, I would propose a period of six months, or, alternatively, deletion of the last sentence altogether.

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These are my suggestions. I reiterate that I strongly support the overall objectives and structure of the proposal, and I congratulate the Committee on the high quality of the draft it has produced. If I may be of any further assistance to the Committee, please do not hesitate to contact me.

SiYuus Ma'ase,



Alexandro C. Castro
Presiding Judge

Enclosure: *Ruben v. Ogumoro*, Civil Action No. 94-14 (Super. Ct. Feb. 8, 1994)

cc: Acting Chief Justice Ramon G. Villagomez
CNMI Bar Association President Michael A. White