

ConCon commentary

by Herman T. Guerrero,
Chair Post-Convention Committee

AMENDMENT #4 proposes to give the Commonwealth's courts co-equal status in the Constitution with the other two branches of government. If ratified by the voters, it would achieve a goal long sought by both the Commonwealth Supreme Court and the Commonwealth Legislature.



Herman T. Guerrero

Before proposing Amendment #4, the delegates carefully considered the draft legislative initiatives that had been previously prepared by the Supreme Court and the House of Representatives. For several years, drafts of these proposals had been circulated within the CNMI courts, the CNMI bar, and the Legislature. Former Chief Justice Jose Dela Cruz placed an active role in these deliberations and, because of this background and his experience, was of invaluable assistance to the delegates in developing Amendment #4. During the Convention, the views of all interested parties were solicited. There was virtually no opposition expressed by any delegate regarding the specific sections of the proposed Article 4. In fact, the amendment was approved by a vote of 25-0 (two delegates absent).

In view of this background, it is surprising — and disturbing — that objections are now being raised to the rule-making authority of the Supreme Court proposed by Amendment #4. Providing a constitutional basis for the Commonwealth's courts is too important an objective to be derailed by the misunderstandings fostered by self-proclaimed experts.

First, both the Legislature and the Supreme Court in their draft initiatives agreed that the Legislature need not have the right to review rules proposed by the Court before they become effective. Under the present system, the draft rules are submitted to the Legislature and do not become effective until 60 days have passed. The delegates in Amendment #4 followed the advice of the Legislature and the Supreme Court and eliminated this waiting period. Under the proposed amendment, the rules issued by the Supreme Court will become effective when published. The delegates expected that, as a matter of course, the Supreme Court will provide an opportunity for comment by the bar and other interested parties, including the Legislature, before new rules are issued.

Second, Amendment #4 does not seek to limit the power of the Legislature to act with respect to judicial rules issued by the Supreme Court. Section 9(c) of proposed Article 4 does not give the Supreme Court the exclusive right to issue judicial rules. The Legislature remains free — as it is now — to enact laws that operate to cancel or modify rules issued by the Supreme Court. As is recognized by every impartial commentator, the only limitation on the Legislature's authority would be that it could not alter the courts' constitutionally protected structure, functions or independence.

Putting these issues aside, let's be practical about how the Legislature and the CNMI courts interact. The Legislature retains the power, subject to the Governor's veto power, to appropriate funds for the courts. If the legislators do not like what the courts are doing by way of judicial rules, they have a very real way of making their views known — through the appropriations process. These are two co-equal branches of government — protected ultimately by the doctrine of separation of powers — but they must listen to, and respect, the views of the other branch of government.

Post-ConCon debate heats up

By Mar-Vic C. Munro
Variety News Staff

PUBLIC debates over the proposed Constitutional Amendments of 1995 start to heat up as the March ratification exercise approaches.

Post-Convention Committee Chairman Herman T. Guerrero yesterday lambasted critics of the proposed amendments for coming out with their jobs only after the whole process was done.

"We debated the issues for 60 days and these critics should have taken part during the hearings," Guerrero said in an interview with reporters after the question-and-answer forum organized by Saipan Chamber of Commerce.

"The convention did its job through a democratic process and some people would come out and say we didn't do a good job."

Guerrero was smarting from at least two columnists' attack of the Third Constitutional Convention's product.

Pacific Star columnist Ruth L. Tighe has questioned the Convention's giving the judiciary a broad and absolute rule-making power.

"If she was interested, ... she should have entered an input," an irked Guerrero said. "I find it an insult because she's basically saying that locals cannot make good sound decisions."

Short of telling Tighe "it was none of her business," Guerrero said constitutional affairs are concerns of the Commonwealth people.

"The delegates are the ones who have more vested interest in the Commonwealth. We're going to be buried here. Perhaps if she gets tired, she'll go somewhere else," Guerrero said.

Guerrero also replied harshly to criticism hurled by *Saipan* legal counsel Stephen Woodruff in his column

in the Feb. 6 issue of the *Variety*.

Woodruff, a guest columnist of this paper, said the convention bungled its job because "of the failure of its advisors to 'do the research' and carefully draft appropriate provisions."

Woodruff wrote that "the Convention attempt to vest a portion of the legislative power exclusively in the judiciary probably violated Section 203(c) of the Covenant..."

"I find it an insult," Guerrero said. "It sounds like he is questioning the credibility of former Supreme Court Justice Jose dela Cruz who has been instrumental in the formulation of amendments on judiciary item."

He said all items in the draft Constitution were reviewed extensively and "we decided that this is the way it's going to be."

Two-thirds of the convention members voted for the amendments, Guerrero said.

He further lashed back at Woodruff saying "legal counsels have no business interfering in policy

issues — that is a function of the Legislature."

Guerrero, along with convention's legal counsels Howard Willens and Deanne Siemers were panelists at yesterday's question-and-answer forum at the hotel.

Willens and Siemers presented at least four major reasons why changes in the Constitution were made:

- To make the Commonwealth government lower cost and more effective;

- To have local and village matters handled by mayor and municipal council and local voters; The power of local executive officials over expenditure are enhanced.

- To strengthen protection for local people in land matters; and

- To update the Constitution where necessary.

The proposed amendments will be presented to CNMI voters for ratification on March 2.

Voting will be on individual amendment basis, according to Willens.



Deanne Simmers (left) and Howard Willens present proposed Constitutional Amendments before members of Saipan Chamber of Commerce.

To All members of Visayas Mindanao Association (Visminda) of CNMI. There will be an annual membership meeting and election of officers on February 11, Sunday at 3:00 p.m. at Kilili Pavilion right