

CONSTITUTION
OF THE
COMMONWEALTH
OF THE
NORTHERN
MARIANA ISLANDS
ANNOTATED



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and Former Attorney General
Richard Weil
Former Members and Steadfast Supporters
of the Commission

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CONTENTS

INTRODUCTION	vii
ARTICLE I: PERSONAL RIGHTS	
Section 1: Laws Prohibited	1
Section 2: Freedom of Religion, Speech, Press and Assembly	2
Section 3: Search and Seizure	4
Section 4: Criminal Prosecutions	7
Section 5: Due Process	13
Section 6: Equal Protection	19
Section 7: Quartering Soldiers	25
Section 8: Trial by Jury	25
Section 9: Clean and Healthful Environment	27
Section 10: Privacy	28
Section 11: Victims of Crime	28
Section 12: Abortion	28
ARTICLE II: LEGISLATIVE BRANCH	
Section 1: Legislative Power	29
Section 2: Composition of the Senate	30
Section 3: Composition of the House of Representatives	32
Section 4: Reapportionment and Redistricting	33
Section 5: Enactment of Legislation	35
Section 6: Local Laws	36
Section 7: Action on Legislation by the Governor	37
Section 8: Impeachment	39
Section 9: Vacancy	40
Section 10: Compensation	40
Section 11: Other Government Employment	40
Section 12: Immunity	41
Section 13: Sessions	41
Section 14: Organization and Procedures	43
Section 15: Conduct of Members	46
Section 16: Budget Ceiling	46
Section 17: Legislative Bureau	48
ARTICLE III: EXECUTIVE BRANCH	
Section 1: Executive Power	49
Section 2: Qualifications of the Governor	51
Section 3: Lieutenant Governor	51
Section 4: Joint Election of the Governor and Lieutenant Governor	52
Section 5: Compensation	52
Section 6: Other Government Employment	52
Section 7: Succession to the Governorship and Lieutenant Governorship	53

Section 8: Absence or Disability of the Governor	53
Section 9: Executive Functions	53
Section 10: Emergency Powers	55
Section 11: Attorney General	56
Section 12: Public Auditor	57
Section 13: Department of Education [repealed]	58
Section 14: Heads of Executive Departments	58
Section 15: Executive Branch Departments	59
Section 16: Civil Service [repealed]	61
Section 17: Public Services	61
Section 18: Executive Assistant for Carolinian Affairs	62
Section 19: Impeachment	63
Section 20: Retirement System	63
Section 21: Boards and Commissions	64
Section 22: Special Assistant for Women’s Affairs	65
Section 23: Resident Executive for Indigenous Affairs	66

ARTICLE IV: JUDICIAL BRANCH

Section 1: Judicial Power	67
Section 2: Commonwealth Trial Court	68
Section 3: Commonwealth Appeals Court	70
Section 4: Appointment and Qualifications	70
Section 5: Compensation	70
Section 6: Sanctions	71
Section 7: Limitations on Activities of Judges	71
Section 8: Rule-making Power	71

ARTICLE V: REPRESENTATION IN THE UNITED STATES

Section 1: Resident Representative to the United States	72
Section 2: Term of Office	73
Section 3: Qualifications	73
Section 4: Annual Report	74
Section 5: Compensation	74
Section 6: Vacancy	75
Section 7: Impeachment	75

ARTICLE VI: LOCAL GOVERNMENT

Section 1: Local Government	75
Section 2: Election of Mayor	76
Section 3: Responsibilities and Duties of the Mayor	77
Section 4: Compensation	78
Section 5: Governor’s Council	79
Section 6: Municipal Councils	79
Section 7: Powers, Meetings and Compensations	81
Section 8: Agencies of Local Government	82

ARTICLE VII: ELIGIBILITY TO VOTE	
Section 1: Qualifications of Voters	83
Section 2: Prohibition of Literacy Requirement	83
Section 3: Domicile and Residence	83
ARTICLE VIII: ELECTIONS	
Section 1: Regular General Election	83
Section 2: Other Elections	83
Section 3: Election Procedures	84
Section 4: Taking Office After Elections	84
Section 5: Resignation from Public Office	85
ARTICLE IX: INITIATIVE, REFERENDUM AND RECALL	
Section 1: Initiative	85
Section 2: Referendum	86
Section 3: Recall	87
ARTICLE X: TAXATION AND PUBLIC FINANCE	
Section 1: Public Purpose	88
Section 2: Report on Tax Exemptions	88
Section 3: Public Debt Authorization	88
Section 4: Public Debt Limitation	89
Section 5: Real Property Taxes	89
Section 6: Liquidation of Deficits	89
Section 7: Government Employment	90
Section 8: Control of Public Finance	90
Section 9: Taxpayer's Right of Action	90
ARTICLE XI: PUBLIC LANDS	
Section 1: Public Lands	92
Section 2: Submerged Lands	92
Section 3: Surface Lands	93
Section 4: Marianas Public Land Corporation	93
Section 5: Fundamental Policies	96
Section 6: Marianas Public Land Trust	101
ARTICLE XII: RESTRICTIONS ON ALIENATION OF LAND	
Section 1: Alienation of Land	102
Section 2: Acquisition	104
Section 3: Permanent and Long-Term Interests in Real Property	106
Section 4: Persons of Northern Marianas Descent	108
Section 5: Corporation	109
Section 6: Enforcement	110
ARTICLE XIII: EMINENT DOMAIN	
Section 1: Eminent Domain Power	120
Section 2: Limitations	121

ARTICLE XIV: NATURAL RESOURCES

Section 1: Marine Resources 121
Section 2: Uninhabited Islands 122
Section 3: Places and Things of Cultural and Historical Significance 122

ARTICLE XV: EDUCATION

Section 1: Elementary and Secondary Education 123
Section 2: Higher and Adult Continuing Education 124

ARTICLE XVI: CORPORATIONS

Section 1: Corporations 125

ARTICLE XVII: OATH OF OFFICE

Section 1: Oath of Office 125

ARTICLE XVIII: CONSTITUTIONAL AMENDMENT

Section 1: Proposal of Amendments 126
Section 2: Constitutional Convention 126
Section 3: Legislative Initiative 127
Section 4: Popular Initiative 127
Section 5: Ratification of Amendments 129

ARTICLE XIX: CODE OF ETHICS

Section 1: Code of Ethics 129

ARTICLE XX: CIVIL SERVICE COMMISSION

Section 1: Civil Service 129

ARTICLE XXI: GAMBLING

Section 1: Prohibition 130

ARTICLE XXII: OFFICIAL SEAL, FLAG AND LANGUAGES

Section 1: Official Seal 132
Section 2: Official Flag 132
Section 3: Official Language 132

SCHEDULE ON TRANSITIONAL MATTERS

Section 1: Effective Date of Constitution
 [certified as executed November 28, 1983] 133
Section 2: Continuity of Laws 133
Section 3: Continuity of Government Employment and Operations
 [certified as executed November 28, 1983] 133
Section 4: Continuity of Judicial Matters
 [certified as executed June 14, 1994] 134
Section 5: Continuity of Legislative Matters
 [certified as executed November 28, 1983] 135
Section 6: Continuity of Corporations and Licenses 135

Section 7: Statutes of Limitations 136

Section 8: Interim Definition of Citizenship
 [certified as executed June 14, 1994] 136

Section 9: Commonwealth [certified as executed June 14, 1994] 137

Section 10: Elections [certified as executed November 28, 1983] 138

Section 11: Saipan Election Districts [repealed by PL 3-78, § 2] 138

Section 12: Commencement of Terms
 [certified as executed November 28, 1983] 138

Section 13: Succession 139

Section 14: Approval of Constitution by the United States
 [certified as executed November 28, 1983] 139

INTRODUCTION

Every effort has been made to ensure that the Constitution of the Commonwealth of the Northern Mariana Islands published in this volume is, verbatim, the document ratified by Commonwealth voters in 1977, accurately incorporating amendments ratified in subsequent elections.¹

This introduction summarizes the Constitution's legal history, describes notes and commentary following each section in this publication, briefly considers principles guiding judicial interpretation and describes research sources.

I. Legal History

A. Requirements Specified in Covenant

Section 103 of the COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA² (hereinafter "Covenant") provides that the people of the Northern Mariana Islands will have the right of local self-government and will govern themselves with respect to internal affairs in accordance with a Constitution of their own adoption. According to Covenant § 201, "[t]he people of the Northern Mariana Islands will formulate and approve a Constitution and may amend their Constitution pursuant to the procedures provided therein."

Article II of the Covenant specifies several requirements concerning the Constitution, most of which are set forth in Section 203 (footnotes have been added with citations to relevant Constitutional provisions):

(a) The Constitution will provide for a republican form of government with separate executive,³ legislative⁴ and judicial branches,⁵ and will contain a bill of rights.⁶

¹The Constitution contains several textual irregularities and errors, which are included, verbatim, in this publication. See II. Notes and Commentary, *infra*.

²Reprinted in CMC at B-101 and 48 U.S.C.A. § 1801 note. The Covenant specifies that it, together with provisions of the United States Constitution, treaties and laws applicable to the Northern Mariana Islands, will be the supreme law of the Northern Mariana Islands. *Id.*, § 102.

³See article III.

⁴See article II.

⁵See article IV.

⁶See article I.

(b) The executive power of the Northern Mariana Islands will be vested in a popularly elected Governor⁷ and such other officials as the Constitution or laws of the Northern Mariana Islands may provide.

(c) The legislative power of the Northern Mariana Islands will be vested in a popularly elected legislature and will extend to all rightful subjects of legislation.⁸ The Constitution of the Northern Mariana Islands will provide for equal representation for each of the chartered municipalities of the Northern Mariana Islands in one house of a bicameral legislature,⁹ notwithstanding other provisions of this Covenant or those provisions of the Constitution or laws of the United States applicable to the Northern Mariana Islands.

(d) The judicial power of the Northern Mariana Islands will be vested in such courts as the Constitution or laws of the Northern Mariana Islands may provide.¹⁰ The Constitution or laws of the Northern Mariana Islands may vest in such courts jurisdiction over all causes in the Northern Mariana Islands over which any court established by the Constitution or laws of the United States does not have exclusive jurisdiction.¹¹

Covenant § 805 requires the Commonwealth government to "regulate the alienation of permanent and long-term interests in real property so as to restrict the acquisition of such interests to persons of Northern Marianas descent" for at least 25 years after termination of the United Nations Trusteeship Agreement.¹²

B. The First Constitutional Convention

A constitutional convention of 39 elected delegates convened on Saipan October 18, 1976, to draft a constitution. On December 5, 1976, 33 delegates signed a proposed Constitution of the Northern Mariana Islands. The Constitution was ratified by Commonwealth voters March 6, 1977.¹³ The Constitution became effective January 9, 1978, under the terms

⁷See article III, §§ 1 and 4.

⁸See article II, §§ 1-3.

⁹See article II, § 2.

¹⁰See article IV, §§ 1-3.

¹¹See article IV, §§ 2 and 3.

¹²See article XII.

¹³The vote was 6,554 in favor of ratification and 258 opposed. Fifty-eight percent of registered voters cast ballots. For accounts of the first constitutional convention, see Howard P. Willens & Deanne C. Siemer, *The Constitution of the Northern Mariana Islands: Constitutional Principles and Innovation in a Pacific Setting*, 65 GEO. L.J. 1373 (1977), and Don A. Farrell, *History of the Northern Mariana Islands* (1991).

of Covenant § 202¹⁴ and Presidential Proclamation 4534.¹⁵

C. Amendments

As of June, 1995, the Constitution has been amended 48 times. Forty-four amendments were proposed by a second constitutional convention in 1985; all were ratified.¹⁶ One 1985 amendment was subsequently ruled invalid in a legal challenge.¹⁷ Four amendments proposed by legislative initiative have been ratified.¹⁸

One amendment proposed by popular initiative failed to win approval in the 1989 general election.¹⁹ This is the only proposed amendment appearing on the ballot that has not been ratified by Commonwealth voters.

For commentary concerning the effective date of constitutional amendments, see notes to article XVIII, § 5.²⁰

II. Notes and Commentary

In this publication, every section of the Constitution is followed by a note concerning legislative history, as follows:

History: Included under this heading are the date of original ratification,²¹ citations to

¹⁴See Schedule on Transitional Matters § 14.

¹⁵*Id.*

¹⁶See comment to article XVIII, § 2.

¹⁷See comment to Schedule on Transitional Matters § 8.

¹⁸See comment to article XVIII, § 3. A fifth amendment proposed by legislative initiative, House Legislative Initiative 9-1, will appear on the general election ballot November 4, 1995. The text of this measure, proposing to amend article II, §§ 16 and 17, is set forth in comments to those sections.

¹⁹See comment to article XVIII, § 4.

²⁰Some amendments have included a transition provision or a delayed effective date. For transition provisions, see notes to article II, § 16 (adopted by Amendment 9), article VI, § 6 (as amended by Amendment 25), and article XX, § 1 (adopted by Amendment 41, which also repealed article III, § 16). For delayed effective dates, see article XV, §§ 1 and 2; Amendment 38 amended the first section, adopted the second and also repealed article III, § 13. Concerning retroactive operation, see *Wabol v. Muna*, 2 CR 963 (Dist. Ct. App. Div. 1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992) (amendments to constitutional provisions apply prospectively, unless there is clear manifestation of intent that they be applied retroactively).

²¹March 6, 1977, effective January 9, 1978, except for 18 new sections proposed by the second constitutional convention and ratified November 3, 1985. See article I, §§ 11 and 12; article II, §§ 16 and 17; article III, §§ 20-23; article V, §§ 6 and 7; article VI, §§ 7 and 8; article XIX, § 1; article XX, § 1; article XXI, § 1; and article XXII, § 1-3. Article III, §§ 13 and 16 of the original constitution were repealed pursuant to convention amendments ratified in

and ratification dates of any amendments,²² a description of changes made by any amendments (with language of the original provision quoted, in some instances), other provisions amended by the same amendment, and a description or quotation of any specified delayed effective date and/or transition provision.

In addition, each section has notes and commentary under one or more of the following headings:

Textual Irregularities and/or Errors: Notes under this heading describe irregularities or errors, almost all of which have arisen in amendments. There are three types of textual irregularities: unusual capitalization of certain words, titles and terms (e.g., "Article," "Section," "Public Auditor," "Code of Ethics"), use of numbers and symbols instead of words (e.g., "\$500,000") and irregular codification signals (e.g., lack of a section number or lack of a subsection (b) when a subsection (a) has been specified). Textual errors are also of three types: misspellings (e.g., "extend" instead of "extent"), incorrect cross references (arising in article II, § 6), and grammatical errors (e.g., omitted words, incorrect pluralization, subject-verb disagreement).

In revising the Commonwealth Code, the Commonwealth Law Revision Commission may make certain minor corrections,²³ but it does not have the authority to correct minor textual irregularities and errors in the Constitution.²⁴ Amendment drafters are urged to follow stylistic conventions established in the original language of the Constitution.

Cross References: Related Constitutional provisions are cited under this heading.

Related Commonwealth Code Sections: Citations to related Commonwealth Code sections are set forth under this heading. Citations to amendments effected since the end of May, 1994 (closing date for the most recent supplement) by public laws, local laws and an executive order are also included.

Scholarly Articles: Citations to pertinent articles published in law reviews and political science periodicals are set forth under this heading.

Comment: Commentary under this heading includes quotations from titles of Constitutional amendments (some of which indicate intent), quotations of pertinent Covenant sections and counterpart U.S. Constitutional provisions, changes in law effected

1985.

²²November 3, 1985, except for amendments in four legislative initiatives ratified in 1987, 1989 and 1993. See article XVIII, § 3.

²³The Commission may, e.g., number sections, change capitalization for the purpose of conformity and correct manifest clerical and typographical errors. 1 CMC § 3806.

²⁴Although it is published with the Commonwealth Code (together with other background documents) the Constitution is not part of the Code. See PL 3-90, §§ 2 and 5 (defining Commonwealth Code), reprinted in CMC Vol. 1 at v-vi.

by Executive Order 94-3 (effective August 23, 1994), notes directing the reader to comments under other provisions, and quotations from two publications: Marianas Political Status Commission, *Section by Section Analysis of the Covenant to Establish a Commonwealth of the Northern Mariana Islands* (Dec. 6, 1976) (hereinafter *Covenant Analysis*) and Northern Marianas Constitutional Convention, *Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands* (Feb. 15, 1975) (hereinafter *Analysis*). Also, in one or a few instances the following are included: a history and description of implementing legislation; judicial rules; quotations from and analysis of judicial decisions; notes regarding Constitutional provisions that are not directly related but have some bearing; reference to any unusual aspect of the provision; and a quotation from a U.S. Presidential proclamation.

Proposed Amendment: Under this heading, in notes to article II, §§ 16 and 17, is the text of House Legislative Initiative 9-1, proposing to amend those sections; analysis is included. House Legislative Initiative 9-1 will appear on the general election ballot November 4, 1995.

Notes of Decisions. Short summaries of judicial rulings relating to the provision are set forth under this heading. See **III. Judicial Interpretation**, below, for a more detailed explanation.

III. Judicial Interpretation

"There are few principles so ingrained in American jurisprudence than that set down by the United States Supreme Court in *Marbury v. Madison*, 1 Cranch 137, 2 L.Ed. 60 (1803), where it held that the judiciary is the ultimate interpreter of the Constitution." *Pangelinan v. Commonwealth*, 2 CR 1148, 1160-61 (Dist. Ct. App. Div. 1987) (interpreting Amendment 9 to article II, §16).²⁵ This fundamental principle has been explicitly or implicitly applied by Commonwealth and U.S. courts²⁶ in numerous rulings concerning the Commonwealth Constitution.

With few exceptions, only summaries of rulings explicitly interpreting or construing a provision in the Constitution are included in this publication.²⁷

Unless they have been reversed on appeal or overruled in later decisions, rulings issued by appellate courts--the Commonwealth Supreme Court, the U.S. Ninth Circuit Court of

²⁵See also *Romisher v. Marianas Pub. Land Corp.*, 1 CR 898 (Trial Ct. 1983) (although it is within power of legislature to enact declaratory and interpretative statutes, it is the obligation of judicial branch, not legislative, to interpret or declare what the Constitution means).

²⁶For the role of federal courts in the Commonwealth judicial scheme, see notes to article IV, §§ 1-3.

²⁷Summaries of rulings concerning the U.S. Constitution and rulings concerning constitutional law that do not specifically cite or necessarily implicate a provision in the Commonwealth Constitution are found in the digest to the Commonwealth Reporter series and indexes at the end of each volume of the Northern Mariana Island Reporter series under the heading 'Constitutional Law.'

Appeals, and the (now defunct) Appellate Division of the U.S. District Court for the Northern Mariana Islands²⁸--are precedent that must be considered in future decisions. Rulings issued by trial courts do not create authoritative precedent, but may nonetheless be considered persuasive authority.

In interpreting provisions of the Constitution, the judiciary seeks to determine the intention of the framers, which is presumed to be expressed in the plain language of the provision.²⁹ Courts have, in several cases, also consulted the *Analysis*,³⁰ the *Covenant Analysis*,³¹ and legislative history.³² Legislative history may be found in documents and recordings from the constitutional convention or legislative session in which the provision was considered or adopted. Research materials are described in IV. **Research Sources**, below.

IV. Research Sources

A. Court Decisions

Each ruling summarized under **Notes of Decisions** is followed by a citation to the decision in which the ruling was made. The citation (e.g. '*Commonwealth v. Bowie*, 3 N.M.I. 462 (1993)') states the case name, the volume number and abbreviation for the reporter series in which the decision was published, the number of the first page the decision appears, and the

²⁸See *Commonwealth v. Superior Court*, 1 N.M.I. 287, 291 (1990) (Commonwealth Supreme Court bound to affirm, modify or reverse decisions of District Court Appellate Division, predecessor appellate court).

²⁹*Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362 (1990); see also *Pangelinan*, *supra*.

³⁰See, e.g., *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992); *Marianas Pub. Land Trust v. Gov. of the Commonwealth of the Northern Mariana Islands*, 838 F.2d 341 (9th Cir. 1988); *Nabors v. Manglona*, 829 F.2d 902 (9th Cir. 1987); *Sablan v. Santos*, 634 F.2d 1153 (9th Cir. 1980); *Estate of Faisao v. Tenorio*, 5 N.M.I. ---, Appeal No. 94-018 (N.M.I. Sup. Ct. April 13, 1995) (Opinion at 10, n.16); *Diamond Hotel Co., Ltd. v. Matsunaga*, 5 N.M.I. ---, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 15, 1995) (Opinion at 5-7); *Taitano v. South Seas Corp.*, Civ. Action No. 92-1260 (N.M.I. Super. Ct. Mar. 7, 1994) (Decision and Order on Defendant Marianas Public Land Trust's Motion for Sanctions Against Plaintiff and his Counsel at 14); *Mafnas v. Yokeno*, Civ. Action No. 90-550 (N.M.I. Super. Ct. Dec. 7, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 10); and *Boddy v. Leon Guerrero*, Civ. Action No. 93-245 (N.M.I. Super. Ct. Nov. 17, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 3-4).

³¹See, e.g., *Commonwealth of the Northern Mariana Islands v. Atalig*, 723 F.2d 682 (9th Cir. 1984), *cert. den.*, 467 U.S. 1244, 104 S.Ct. 3518, 82 L.Ed.2d 826 (1984), and *Marianas Visitors Bureau v. Commonwealth*, Civ. Action No. 94-516 (N.M.I. Super. Ct. June 23, 1994) (Memorandum Decision and Judgment at 27, 36).

³²See, e.g., *Commonwealth of the Northern Mariana Islands v. Magofna*, 919 F.2d 103 (9th Cir. 1990) (quoting committee report concerning article I, § 8); *Camacho v. Northern Mariana Islands Retirement Fund*, 1 N.M.I. 362 (1990) (quoting debate on Amendment 19 to article III, § 20); and *Marianas Visitors Bureau v. Commonwealth*, Civ. Action No. 94-516 (N.M.I. Super. Ct. June 23, 1994) (Memorandum Decision and Judgment at 25) (citing journal and briefing paper). Because the general principles applying to statutory construction are applicable in cases of constitutional construction, *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362 (1990), certain other rules may come into play, including the principle that a court should avoid an interpretation that would defy common sense or lead to absurd results, *Commonwealth Ports Auth. v. Hakubotan Saipan Enters., Inc.*, 2 N.M.I. 212 (1991), and the principle that one provision should not be construed to make another provision inconsistent or meaningless, *In re Estate of Rofag*, 2 N.M.I. 18 (1991).

year the decision was issued. Decisions cited in this annotated edition have been published in three reporters:

- 1) The *Northern Mariana Islands Reporter* series (abbreviation: 'N.M.I. '), decisions issued by the Commonwealth Supreme Court; currently three volumes, 1989-1993.
- 2) The *Commonwealth Reporter* series (abbreviation: 'CR'), decisions issued by the Commonwealth Trial Court (renamed the Commonwealth Superior Court in 1989) and the U.S. District Court for the Northern Mariana Islands when it sat as a Commonwealth trial and appellate court; currently three volumes, 1977-1989.
- 3) The *Federal Reporter*, second and third series (abbreviation: 'F.2d' and 'F.3d'), decisions issued by U.S. Circuit Courts of Appeal, including several decisions issued by the U.S. Ninth Circuit Court of Appeals in appeals from Commonwealth courts.

Opinions that have not been published in a reporter volume ('slip opinions'), include, after the case name, abbreviations indicating the nature of the case (civil, criminal, juvenile, probate, traffic, or an appeal therefrom), the docket number, the court, the date the decision was issued, and a parenthetical reference to the title of the decision and the page number (or numbers) where the ruling is set forth. An example: *Commonwealth v. Evangelista*, Crim. Case No. 93-174 (N.M.I. Super. Ct. Oct. 11, 1994) (Decision and Order on Defendant's Motion to Close Courtroom and Seal Records at 4, n.3). This citation to a Commonwealth Superior Court decision in a criminal case indicates that the ruling is found at page 4, footnote 3 of the decision in parentheses.

B. Analysis of Constitution

Courts have cited the *Analysis*³³ in several decisions. According to the *Analysis*' brief preface:

The purpose of this memorandum is to explain each section of the Constitution of the Commonwealth of the Northern Mariana Islands and to summarize the intent of the Northern Marianas Constitutional Convention in approving each section. This statement was approved by the Convention on December 6, 1976 with the direction that it be available to the people along with the Constitution for their consideration before the referendum on the Constitution.

Id. at 1. The *Analysis* is mentioned in article III, § 23(b) (directing the resident executive for indigenous affairs to "coordinate the translation and distribution of such official documents as the Constitution of the Northern Mariana Islands and the Covenant and analyses thereof").

Comments to many sections in this publication include quotations from the *Analysis*. It is important to note that while courts have often cited the *Analysis* in support of rulings, they are not obligated to follow its interpretation of Constitutional provisions. In short, "the Analysis

³³See note 30, *infra*.

does not have the force of law." *Camacho v. Civil Service Commission*, 666 F.2d 1257, 1264 (9th Cir. 1982) (rejecting *Analysis* interpretation of article III, § 16). According to a Commonwealth Trial Court decision:

The *Analysis* is not the law. It was not voted on by the electorate. At most, it is an attempt to clarify what the law is as stated in the Constitution. To use the *Analysis* as authority to overcome the clear language of the Constitution is not permissible.

Camacho v. Camacho, 1 CR 620, 628-29 (Trial Ct. 1983) (rejecting *Analysis* interpretation of Schedule on Transitional Matters § 4).³⁴

C. Analysis of Covenant

The *Covenant Analysis*, prepared to promote understanding of the Covenant prior to the 1975 plebiscite in which it was ratified, has also been cited in judicial rulings.³⁵ Some comments in this publication include quotations from this source.

D. Convention Journals and Other Records

Documents from the first and second constitutional conventions have been cited and quoted in support of constitutional rulings.³⁶ Among materials available to researchers at the Commonwealth Archives, Northern Marianas College, are:

- 1) *Journal of the Northern Marianas Constitutional Convention* (1976). In this two-volume compilation, Volume I includes, in addition to minutes of daily proceedings of plenary sessions, listings of convention officers, delegates, committee membership and staff, and miscellaneous communications. Volume II contains enabling legislation, procedural rules, delegate proposals, committee reports and adopted resolutions.
- 2) Wilmer, Cutler & Pickering, *Briefing Papers for the Delegates to the Northern Marianas Constitutional Convention* (1976). Background documents on 14 subjects (general overview; executive, legislative and judicial branches of government; local government; representation in Washington, D.C.; bill of rights; eligibility to vote and election procedures; constitutional amendment; taxation and finance; natural resources; restrictions on land alienation; education; and corporations) prepared by legal consultants to the first constitutional convention.
- 3) *Journal of the Second Constitutional Convention of the Northern Mariana Islands* (1985). This seven-volume compilation includes, in Volumes I and II, minutes from convention proceedings; in Volume III, committee recommendations; in Volume IV,

³⁴See also *Commonwealth v. Aulerio*, Crim. Case No. 93-153 (N.M.I. Super. Ct., Jan. 11, 1994) (Order Denying Defendant's Motion to Exclude Evidence at 10) (rejecting *Analysis* interpretation of article I, § 4(a) right to counsel).

³⁵See note 31, *infra*.

³⁶See note 32, *infra*.

legal opinions; in Volume V, delegate proposals and rules of procedure; in Volume VI, public comments on delegate proposals; and in Volume VII, proposed amendments, order of business, correspondence and notices of public hearings.

The Archives also has copies of the *Analysis* and *Covenant Analysis*. Persons wishing to study these documents should contact Commonwealth Archivist Herbert S. Del Rosario or his staff for an appointment:

Commonwealth Archives
Northern Marianas College
As Tarlaje Campus
P.O. Box 1250
Saipan, MP 96950

Tel: (670) 234-7394
Fax: (670) 234-0759

E. Legislative Journals and Other Records

Persons wishing to research legislative initiatives may consult legislative journals, committee reports, recorded committee testimony and other materials on file at the Commonwealth legislature. Contact the librarian: (670) 664-5103.

F. Scholarly Articles

Articles concerning the Constitution have been published in law reviews and political science periodicals.

For an overview, with in-depth analysis of several provisions, *see*:

Howard P. Willens & Deanne C. Siemer, *The Constitution of the Northern Mariana Islands: Constitutional Principles and Innovation in a Pacific Setting*, 65 GEO. L.J. 1373 (1977).³⁷

William E. Tagupa, *The Constitution of the Northern Mariana Islands: Special Issues in Constitutional Law and Governance*, 5 MELANESIAN L.J. 285 (1977).

Concerning article I, § 8 (trial by jury), *see*:

J. McShane, *Is the Jury System Suitable for the Commonwealth of the Northern Mariana Islands?*, 34 POL. SCI. 66 (1982).

Concerning article II, § 2 (composition of senate), in addition to Willens & Siemer, *supra*, *see*:

³⁷This article has been cited in several decisions, including *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992), *Camacho v. Civil Service Commission*, 666 F.2d 1257 (9th Cir. 1982), and *Sablan v. Santos*, 634 F.2d 1153 (9th Cir. 1980).

James A. Branch, Jr., *The Constitution of the Northern Mariana Islands: Does a Different Cultural Setting Justify Different Constitutional Standards?*, 9 J. INT'L L. & POL'Y 35 (1980).

Concerning article XII (land alienation restriction), in addition to Willens & Siemer, *supra*, and Branch, *supra*, see:

Robert Torres, *Ferreira v. Borja: Land Transactions in the Northern Marianas*, 29 NEW ENG. L. REV. 209 (1994).

Other articles which do not cite Constitutional provisions but which are, nonetheless, useful in interpreting particular provisions are cited in notes to article I, § 10 (right to privacy), article XI, §§ 1 and 2 (public lands), and article XIV, § 1 (marine resources).

G. History Book

For an informative overview of both the first and second constitutional conventions, consult Don A. Farrell, *History of the Northern Mariana Islands* (1991). This volume was published by the Commonwealth Public School System.

The impetus for publishing this work was the advent of the "Third Constitutional Convention to Propose Amendments to the Commonwealth of the Northern Mariana Islands Constitution" (the official title, specified in PL 9-18, § 3), which convened on Saipan June 5, 1995, for a session of up to 60 days. See comment to article XVIII, § 2. It is anticipated that future editions of this publication will include an appendix describing judicial rulings concerning separation of powers. A detailed index is also planned. The Commission welcomes comments and suggestions; see address and telephone and fax numbers on copyright page, *infra*.

CONSTITUTION OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Ratified March 6, 1977, effective January 9, 1978; *see* comment to Schedule on Transitional Matters § 1. Forty-four amendments proposed by second constitutional convention ratified November 3, 1985. Amendment 44 subsequently ruled invalid; *see* comment to Schedule on Transitional Matters § 8. Four amendments proposed by legislative initiative ratified November 7, 1987, November 4, 1989, and November 6, 1993; *see* comment to article XVIII, § 3.

PREAMBLE

We the people of the Northern Mariana Islands, grateful to Almighty God for our freedom, ordain and establish this Constitution as the embodiment of our traditions and hopes for our Commonwealth in political union with the United States of America.

Comment: According to the *Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands* (hereinafter *Analysis*; *see* introduction):

The preamble recognizes the bond between the Commonwealth and the United States created by the Covenant to Establish a Commonwealth [of the Northern Mariana Islands] in Political Union with the United States. Implicit in that bond is the respect of the Northern Marianas people for the United States Constitution and their reliance on the principles reflected in that document in drafting the Commonwealth Constitution.

Id. at 1-2.

ARTICLE I: PERSONAL RIGHTS

Comment: Section 203(a) of the COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA (hereinafter "Covenant"; *see* introduction) provides, in part, that the Constitution "will contain a bill of rights." Covenant § 501(a) provides that "[t]o the extent that they are not applicable of their own force" certain provisions of the U.S. Constitution "will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were one of the several States." The provisions cited include the first nine amendments (i.e., the entire federal Bill of Rights except for the Tenth Amendment); pertinent provisions are set forth in comments to the following sections of article I.

Section 1: Laws Prohibited. No law shall be made that is a bill of attainder, an ex post facto law, a law impairing the obligation of contracts, or a law prohibiting the traditional art of healing.

History: Ratified 1977, effective 1978.

Art. I, § 2

Cross Reference: See article III, § 20 (membership in government employee retirement system a contractual relationship, with accrued benefits neither diminished nor impaired).

Related Commonwealth Code Section: See 3 CMC § 2213 (Medical Practice Act of 1982 not to prohibit traditional art of healing).

Comment: One provision of the U.S. Constitution applicable within the Northern Mariana Islands pursuant to Covenant § 501(a) is article I, § 10, clause 1: "[n]o State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts" According to the *Analysis*, this section is "drawn largely" from that provision and "[n]o substantive change from the relevant provisions of article I, section 10, or the interpretations of those provisions by the United States Supreme Court is intended." *Id.* at 2. The *Analysis* also provides:

A law prohibiting the traditional art of healing is one that requires formal education or training as a prerequisite to giving advice with respect to healing. This section does not prohibit the legislature from regulating the substances or practices that can be used in the traditional art of healing. This section is intended to permit the preservation of traditional Chamorro and Carolinian practices with respect to health.

Id. at 3.

Notes of Decisions

Retroactive Legislation

Statute retroactively removing limits for wrongful death actions did not violate constitutional prohibition against enactment of bills of attainder, ex post facto laws, and laws impairing obligation of contracts. 7 CMC § 2101 et seq.; NMI Const. art. I, § 1.

Flowers v. Hong Kong Saipan Hotels & Investment, Ltd., 2 CR 100 (Trial Ct. 1985).

Section 2: Freedom of Religion, Speech, Press and Assembly. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

History: Ratified 1977, effective 1978.

Related Commonwealth Code Sections: See 1 CMC § 2353 (regulation of broadcasting by the Department of Community and Cultural Affairs), 1 CMC § 9906 (media access to public meetings), 1 CMC § 9911 (notice to media of special public meetings), and 3 CMC § 2213 (Medical Practice Act of 1982 not to prohibit religious healers using prayer or other spiritual means in accordance with church tenets).

Comment: One provision of the U.S. Constitution applicable within the Northern Mariana Islands pursuant to Covenant § 501(a) is the First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." According to the *Analysis*, this section is "drawn from" that provision and "[n]o substantive change from the First Amendment or the interpretations of that Amendment by the United States Supreme Court is intended." *Analysis* at 3-4.

Notes of Decisions

- | | |
|------------------------------------|----------------------------------|
| 1. Generally | --Particular Cases |
| 2. Association, Freedom of | 4. Penal Statute, Overbreadth of |
| 3. Judicial Proceedings, Access to | --Particular Cases |

Art. I, § 2

1. Generally

NMI Const. Art. I, § 2 provides the same standard of protection for speech rights as the First Amendment to the U.S. Constitution.

Commonwealth v. Evangelista, Crim. Case No. 93-174 (N.M.I. Super. Ct. Oct. 11, 1994) (Decision and Order on Defendant's Motion to Close Courtroom and Seal Records at 4, n.3).

2. Association, Freedom of

Right of association derives from First Amendment right to freedom of speech and assembly. The right to associate applies where state action may curtail a group's ability to associate with regard to political, economic, religious or cultural beliefs. NMI Const. art. I, § 2.

Taitano v. NMI Softball Ass'n, Civ. Action No. 93-356 (N.M.I. Super. Ct. Feb. 2, 1994) (Order Granting Defendants' Motion for Summary Judgment at 10).

The right to freedom of association does not give an individual the right to be included within an association which has decided it does not want him. Rather, an individual's alleged right to be included in a group is more properly adjudicated through an equal protection claim. U.S. Const. amend. I; NMI Const. art. I, § 2.

Taitano v. NMI Softball Ass'n, Civ. Action No. 93-356 (N.M.I. Super. Ct. Feb. 2, 1994) (Order Granting Defendants' Motion for Summary Judgment at 11).

3. Judicial Proceedings, Access to

The First Amendment to the U.S. Constitution and NMI Const. Art. I, § 2 guarantee a public right of access to pretrial hearings, just as they guarantee access to trials themselves.

Commonwealth v. Evangelista, Crim. Case No. 93-174 (N.M.I. Super. Ct. Oct. 11, 1994) (Decision and Order on Defendant's Motion to Close Courtroom and Seal Records at 4).

Balanced against interests favoring public access to judicial proceedings is the right of every criminal defendant to receive a fair trial. In those few cases where pretrial media reports are likely to engender a pattern of deep and bitter experience, courts are justified in taking steps to limit media access. U.S. Const. amend. I; NMI Const. art. I, § 2.

Commonwealth v. Evangelista, Crim. Case No. 93-174 (N.M.I. Super. Ct. Oct. 11, 1994) (Decision and Order on Defendant's Motion to Close Courtroom and Seal Records at 5).

Criminal defendant seeking closure of judicial proceedings based on asserted violation of right to receive fair trial must satisfy three-step test, demonstrating: (1) a substantial probability that irreparable damage to his fair-trial right will result from conducting the proceeding in public; (2) a substantial probability that alternatives to closure will not adequately protect his right to a fair trial; and (3) a substantial probability that closure will be effective in protecting against the perceived harm. U.S. Const. amend. I; NMI Const. art. I, § 2.

Commonwealth v. Evangelista, Crim. Case No. 93-174 (N.M.I. Oct. 11, 1994) (Decision and Order on Defendant's Motion to Close Courtroom and Seal Records at 6).

—Particular Cases

Court would deny motion by criminal defendant seeking closure of courtroom during hearing on motion to suppress confession and other evidence because defendant failed to demonstrate substantial probability (1) of irreparable damage to his right to a fair trial due to pre-trial publicity or anticipated unfavorable media coverage arising from hearing, (2) that alternatives to closure (such as careful juror voir dire, peremptory challenges and admonitions at time of trial) would not adequately protect his right to a fair trial, and (3) that closure would be effective in protecting defendant against the harm he perceived to his right to a fair trial. U.S. Const. amend. I; NMI Const. art. I, § 2.

Commonwealth v. Evangelista, Crim. Case No. 93-174 (N.M.I. Super. Ct. Oct. 11, 1994) (Decision and Order on Defendant's Motion to Close Courtroom and Seal Records at 6-9).

4. Penal Statute, Overbreadth of

A clear and precise enactment may nevertheless be 'overbroad' if in its reach it prohibits constitutionally protected conduct. In an overbreadth challenge, a party must necessarily demonstrate that constitutionally protected conduct has been prohibited; absent such showing, the challenge fails. NMI Const. art. I, § 5.

Commonwealth v. Bergonia, 3 N.M.I. 22 (1992).

In analyzing whether a criminal statute is unconstitutionally overbroad, a court's first task is to determine whether the enactment reaches a substantial amount of constitutional conduct. If the terms of a statute prohibit a substantial range of conduct protected by the First Amendment to the U.S. Constitution, that statute can be challenged as overbroad, even by someone whose own conduct is not protected by the First Amendment. NMI Const. art. I, § 2.

Commonwealth v. Liarta, Crim. Case No. 93-

Art. I, § 3

133 (N.M.I. Super. Ct. Jan. 20, 1994)
(Decision and Order on Defendant's Motion to
Dismiss Information at 9).

Constitutional protection afforded commercial speech does not extend to solicitations of prostitution; for commercial speech to receive constitutional protection it must concern lawful activity. 6 CMC § 1341 et seq. [PL 8-14]; U.S. Const. amend. I; NMI Const. art. I, § 2.

Commonwealth v. Liarta, Crim. Case No. 93-133 (N.M.I. Super. Ct. Jan. 20, 1994)
(Decision and Order on Defendant's Motion to
Dismiss Information at 12).

-Particular Cases

Anti-prostitution law prohibiting "sexual services," defined as "sexual contact including . . . touching of any person, by oneself or another, for the purpose of sexual arousal or gratification, aggression, degradation or other similar purpose" was not drawn narrowly enough to save statute in overbreadth challenge. Statute was unconstitutionally overbroad because: (1) a non-obscene performance intended to arouse as well as edify its audience could come within ambit of statute, (2) it could have chilling effect on protected free speech, such as theatrical production depicting sexual abuse, and (3) it could prohibit traditional dances performed in Commonwealth. 6 CMC § 1341(c), (e) [PL 8-14, § 2(c), (e)]; U.S. Const. amend. I; NMI Const. art. I, § 2.

Commonwealth v. Liarta, Crim. Case No. 93-133 (N.M.I. Super. Ct. Jan. 20, 1994)
(Decision and Order on Defendant's Motion to
Dismiss Information at 11-12).

Insofar as prohibition on "advancing prostitution" in anti-prostitution law was based on overly-broad and constitutionally-infirm definition of "sexual services," prohibition also violated free-speech rights and would be stricken for overbreadth infirmity. 6 CMC § 1344(a) [PL 8-14, § 5(a)]; U.S. Const. amend. I; NMI Const. art. I, § 2.

Commonwealth v. Liarta, Crim. Case No. 93-133 (N.M.I. Super. Ct. Jan. 20, 1994)
(Decision and Order on Defendant's Motion to
Dismiss Information at 11-12).

Section 3: Search and Seizure. The right of the people to be secure in their persons, houses, papers and belongings against unreasonable searches and seizures shall not be violated.

a) No warrants shall issue except upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.

Art. I, § 3

b) No wiretapping, electronic eavesdropping or other comparable means of surveillance shall be used except pursuant to a warrant.

c) A person adversely affected by an illegal search or seizure has a cause of action against the government within limits provided by law.

History: Ratified 1977, effective 1978.

Cross Reference: See article I, § 10 (right of individual privacy).

Related Commonwealth Code Sections: See generally 6 CMC § 6101 et seq. (6 CMC, Div. 6, criminal procedure), specifically 6 CMC § 6201 et seq. (searches and seizures); see also 2 CMC § 3132, as amended by Executive Order 94-3, § 106(b) (search warrants relating to Commonwealth Environmental Protection Act investigations), 3 CMC § 4312, as amended by Executive Order 94-3, § 301(c) (authority of secretary of Department of Labor and Immigration to issue warrants for arrest of aliens) and 4 CMC § 5428 (warrantless searches relating to enforcement of weights and measures standards).

Comment: One provision of the U.S. Constitution applicable within the Northern Mariana Islands pursuant to Covenant § 501(a) is the Fourth Amendment: "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." According to the *Analysis*, this section, "drawn largely from the Fourth Amendment . . . expands upon the Fourth Amendment by dealing expressly with wiretapping and comparable techniques and by providing remedies to persons who are the victims of illegal searches or seizures." *Id.* at 6.

Notes of Decisions

I. Generally

II. Warrants

1. Oath or Affirmation

--Particular Cases

III. Warrantless Searches

1. Generally

2. Borders

3. Motor Vehicles

--Particular Cases

I. Generally

The Fourth Amendment guarantees the right of persons and their belongings to be secure against unreasonable searches and seizures and prohibits the issuance of warrants except upon probable cause. U.S. Const. amend. IV; NMI Const. art. I, § 3.

United States v. Cuyson, 3 CR 712 (Dist. Ct. 1989).

The Fourth Amendment provides protection against law enforcement activities involving seizures of persons, including brief detentions short of traditional arrests. U.S. Const. amend. IV; NMI Const. art. I, § 3.

United States v. Cuyson, 3 CR 712 (Dist. Ct. 1989).

II. Warrants

1. Oath or Affirmation

In NMI Const. art. I, § 3(a), prohibiting issuance of warrants except upon probable cause supported by oath or affirmation, "oath" means an affirmation of the truth of a statement, which renders one willfully asserting untrue statements punishable for perjury.

Commonwealth v. Bowie, 3 N.M.I. 462 (1993).

--Particular Cases

Despite fact that affidavit supporting issuance of arrest warrant was not notarized, declarant police officer's oral affirmation before judge that contents of affidavit were true and correct satisfied NMI Const. art. I, § 3(a) requirement that request for warrant be supported by oath or affirmation.

Commonwealth v. Bowie, 3 N.M.I. 462 (1993).

III. Warrantless Searches

1. Generally

Not every search requires a warrant. When probable cause exists and there is no adequate opportunity to obtain a warrant, police officers may make searches without

Art. I, § 3

violating NMI Const. art. I, § 3(a).

Commonwealth v. Sablan, Crim. Case No. 94-035 (N.M.I. Super. Ct. Nov. 1, 1994) (Decision and Order on Defendant's Motion to Suppress Evidence at 11).

2. Borders

Warrantless searches made at the borders of any of the Northern Mariana Islands are reasonable under NMI Const. art. I, § 3. Therefore, routine searches of persons and their effects upon arrival in the Commonwealth are not subject to any requirement of reasonable suspicion, probable cause or warrant. Simply by entering the Commonwealth, travelers subject themselves to such routine searches. Activities which constitute routine searches include, but are not limited to: (1) examination of luggage; (2) examination of a vehicle, vessel or other mode of transportation; and (3) searching the contents of an individual's pockets, purse or other bag. Beyond the point of a routine search, some level of suspicion is necessary to justify a more intrusive search.

Commonwealth v. Idip, Crim. Action No. 91-031 (N.M.I. Super. Ct. May 24, 1991) (Decision and Order at 5-6).

3. Motor Vehicles

NMI Const. art. I, § 3 and the analysis to that section in *Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands* (1976) indicate that a case by case analysis should be utilized to determine whether a warrantless search and seizure of an automobile is reasonable.

Commonwealth v. Sablan, Crim. Case No. 94-035 (N.M.I. Super. Ct. Nov. 1, 1994) (Decision and Order on Defendant's Motion to Suppress Evidence at 11).

"[P]apers and belongings" in NMI Const. art. I, § 3 include automobiles and other vehicles.

Commonwealth v. Sablan, Crim. Case No. 94-035 (N.M.I. Super. Ct. Nov. 1, 1994) (Decision and Order on Defendant's Motion to Suppress Evidence at 11).

Characteristics of the islands of Rota, Saipan and Tinian compel interpretation of Commonwealth Constitution search and seizure provision as providing greater protection than Fourth Amendment to the U.S. Constitution with respect to warrantless searches of automobiles. First, because of size and geographical make-up of the islands, it is very difficult to move vehicles out of the jurisdiction in which a warrant is sought. Moreover, although U.S. Supreme Court has held that there is a diminished expectation of privacy with

respect to automobiles, the *Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands* (1976) provides that automobiles are a constitutionally protected area. Therefore, in the Commonwealth, there is still a reasonable expectation of privacy with respect to automobiles which must not be ignored. Those traveling Commonwealth roads have greater protection from unreasonable automobile searches and seizures than provided by the Fourth Amendment. NMI Const. art. I, § 3.

Commonwealth v. Sablan, Crim. Case No. 94-035 (N.M.I. Super. Ct. Nov. 1, 1994) (Decision and Order on Defendant's Motion to Suppress Evidence at 12).

Under Commonwealth Constitution, police may conduct a warrantless search of an automobile as long as there exist: (1) probable cause, (2) exigent circumstances, and (3) no adequate opportunity to obtain a warrant. To determine whether these three factors exist, court must look to totality of circumstances. Inherent mobility of automobile may justify a warrantless search, but it is one factor which must be considered. NMI Const. art. I, § 3.

Commonwealth v. Sablan, Crim. Case No. 94-035 (N.M.I. Super. Ct. Nov. 1, 1994) (Decision and Order on Defendant's Motion to Suppress Evidence at 12).

—Particular Cases

In challenge to admission of evidence seized in warrantless searches of vehicle, although government sustained burden of proving that police had probable cause to believe vehicle contained fruits and instrumentalities of crime, under totality of circumstances government failed to prove existence of exigent circumstances and inability to obtain warrant to justify warrantless searches. First, vehicle was not searched immediately after defendant was arrested and government offered no legitimate reason for delay of first search for three-and-a-half hours; inherent mobility of vehicle alone did not qualify to create exigent circumstances. Moreover, police were in sight of vehicle from time defendant was stopped until first search was conducted; there was no threat that someone would drive vehicle away or take evidence from vehicle. Finally, government failed to show why police did not attempt to obtain warrant from neutral magistrate during period between arrest and first search. Searches were neither valid searches incident to arrest of defendant nor valid inventory searches. Searches were unreasonable under NMI Const. art. I, § 3, and seized evidence would be suppressed.

Commonwealth v. Sablan, Crim. Case No. 94-035 (N.M.I. Super. Ct. Nov. 1, 1994) (Decision

Art. I, § 4

and Order on Defendant's Motion to Suppress Evidence at 12-14).

Section 4: Criminal Prosecutions. In all criminal prosecutions certain fundamental rights shall obtain.

a) The accused has the right to assistance of counsel and, if convicted, has the right to counsel in all appeals.

b) The accused has the right to be confronted with adverse witnesses and to have compulsory process for obtaining favorable witnesses.

c) No person shall be compelled to give self-incriminating testimony.

d) There shall be a speedy and public trial.

e) No person shall be put twice in jeopardy for the same offense regardless of the governmental entity that first institutes prosecution.

f) Excessive bail shall not be required.

g) Excessive fines shall not be imposed.

h) Cruel and unusual punishment shall not be inflicted.

i) Capital punishment is prohibited.

j) Persons who are under eighteen years of age shall be protected in criminal judicial proceedings and in conditions of imprisonment.

History: Ratified 1977, effective 1978.

Cross References: See article I, § 5 (next section, due process) and article I, § 8 (trial by jury).

Related Commonwealth Code Sections: See generally 6 CMC §§ 6105, 6302 and 6303; see also 1 CMC §§ 2203 and 2204 (duties and authority of public defender); 6 CMC § 108 (location of trial); 6 CMC § 4101 et seq. (sentencing), specifically 6 CMC §§ 4101 and 4107 (imposition of fines, default and modification); 6 CMC § 5101 et seq. (juvenile delinquency proceedings); 6 CMC § 6401 et seq. (bail); and 6 CMC § 6502 (immunity for witness providing self-incriminating evidence).

Comment: Provisions of the U.S. Constitution applicable within the Northern Mariana Islands pursuant to Covenant § 501(a) include Article I, § 9, clause 2, and the Fifth, Sixth and Eighth Amendments, with the proviso "that neither trial by jury nor indictment by grand jury shall be required in any civil action or criminal prosecution based on local law, except where required by local law." Article I, § 9, clause 2 provides: "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." The Fifth Amendment provides, in pertinent part: "[n]o person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law" The Sixth Amendment provides: "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be

Art. I, § 4

informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence." The Eighth Amendment provides: "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

With respect to subsection (a), the *Analysis* notes that although it is "based" on the Sixth Amendment, "[t]he Convention intends . . . that the protection afforded by this section is in some respects broader than that currently afforded by the Sixth Amendment as interpreted by the United States Supreme Court." *Id.* at 11. With respect to subsection (b) ("taken directly from the Sixth Amendment"), subsection (c) ("taken directly from the Fifth Amendment"), subsection (d) ("taken directly from the Sixth Amendment"), subsection (f) ("taken from the Eighth Amendment"), subsection (g) ("taken from the Eighth Amendment") and subsection (h) ("taken directly from the Eighth Amendment"), "[n]o substantive change" from relevant U.S. Constitutional provisions "or the interpretation of those provisions by the United States Supreme Court is intended." *Id.* at 13-19 *passim*. No such claim is made for subsection (e), although it "is taken from the Fifth Amendment." *Id.* at 16.

Notes of Decisions

I. Confrontation, Right of

1. Generally
2. Hearsay Evidence
--Particular Cases

provision.

Commonwealth v. Condino, 3 N.M.I. 501 (1993), *aff'd*, 33 F.3d 58 (9th Cir. 1994).

II. Counsel, Right to Assistance of

1. Generally
2. Attachment of Right

2. Hearsay Evidence

Once a witness is shown to be unavailable, his or her statement may be admitted into evidence only if it bears adequate indicia of reliability. Reliability can be inferred, without more, in a case where the hearsay statement falls within a firmly-rooted hearsay exception. If it does not fall within a firmly-rooted hearsay exception, then the evidence must show particularized guarantees of trustworthiness to satisfy confrontation clause. NMI Const. art. I, § 4(b).

Commonwealth v. Condino, 3 N.M.I. 501 (1993), *aff'd*, 33 F.3d 58 (9th Cir. 1994).

III. Double Jeopardy

1. Generally
2. Appeal
3. Attachment of Right
4. Identity of Offenses
--Particular Cases

IV. Juveniles

1. Delinquency Proceedings

Out-of-court statements made by children regarding sexual abuse arise in wide variety of circumstances. Confrontation clause, NMI Const. art. I, § 4(b), does not impose a fixed set of procedural prerequisites for admission of such statements when child is unable to testify in court. Instead, particularized guarantees of trustworthiness must be shown from the totality of the circumstances--i.e., circumstances surrounding the making of the statement that renders the declarant particularly worthy of belief.

Commonwealth v. Condino, 3 N.M.I. 501 (1993), *aff'd*, 33 F.3d 58 (9th Cir. 1994).

V. Self-Incrimination, Privilege Against

1. Generally
2. Attachment of Right
--Particular Cases

VI. Speedy Trial, Right to

1. Generally
--Particular Cases
2. Attachment of Right
--Particular Cases

I. Confrontation, Right of

1. Generally

Because NMI Constitution's confrontation clause (NMI Const. art. I, § 4(b)) is patterned after U.S. Constitution's Confrontation Clause in Sixth Amendment, NMI Supreme Court would resort to U.S. Supreme Court's interpretation of federal provision in interpreting NMI

A number of factors relate to whether hearsay statements made by a child witness in child sexual abuse cases are reliable and therefore admissible: child's spontaneity and consistency in giving statement, child's mental state, use of terminology unexpected of child of similar age, and lack of motive to fabricate. However, these factors are not exclusive and courts have considerable leeway in considering other appropriate factors. NMI Const. art. I,

Art. I, § 4

§ 4(b).

Commonwealth v. Condino, 3 N.M.I. 501 (1993), *aff'd*, 33 F.3d 58 (9th Cir. 1994).

To be admissible under confrontation clause, hearsay evidence used to convict a defendant must possess indicia of reliability by virtue of its inherent trustworthiness, not by reference to other evidence at trial. Corroborating evidence which is not part of the totality of the circumstances may not be considered in determining reliability. NMI Const. art. I, § 4(b).

Commonwealth v. Condino, 3 N.M.I. 501 (1993), *aff'd*, 33 F.3d 58 (9th Cir. 1994).

--Particular Cases

In prosecution for child sexual abuse, admission of child victim's hearsay statements into evidence did not violate defendant's right, under confrontation clause, to be confronted by adverse witness. Statements had sufficient indicia of reliability for admission into evidence, given particularized guarantees of trustworthiness from totality of circumstances: victim (1) was found alone in parked car with defendant, (2) had red marks on neck and thighs, (3) told police officer that she was 16 years old (although appearing younger), apparently to cover up wrongdoing, (4) told officer that she and defendant loved each other and planned to marry, and (5) told officer that she and defendant had had sexual intercourse in defendant's bed a week earlier, and that she had received red marks then. Circumstances were such that victim had no reason to lie, statements appeared to be spontaneous, and victim lacked motive to fabricate statements incriminating person she apparently loved and cared for. NMI Const. art. I, § 4(b).

Commonwealth v. Condino, 3 N.M.I. 501 (1993), *aff'd*, 33 F.3d 58 (9th Cir. 1994).

II. Counsel, Right to Assistance of

1. Generally

The U.S. and NMI Constitutions guarantee to the people of the Commonwealth the right to counsel. The law makes a distinction between the right to counsel arising under Fifth Amendment and NMI Const. art. I, § 4(c) privilege against self-incrimination, and the right to counsel guaranteed by the Sixth Amendment and its counterpart, NMI Const. art. I, § 4(a).

Commonwealth v. Aulerio, Crim. Case No. 93-153 (N.M.I. Super. Ct. Jan. 11, 1994) (Order Denying Defendant's Motion to Exclude Evidence at 3-4).

The NMI Constitution guarantees to the accused the right to assistance of counsel in all criminal prosecutions.

Although NMI Const. art. I, § 4(a) is expressly premised upon the Sixth Amendment to the U.S. Constitution, it affords broader protection to an accused than the Sixth Amendment.

Commonwealth v. Aulerio, Crim. Case No. 93-153 (N.M.I. Super. Ct. Jan. 11, 1994) (Order Denying Defendant's Motion to Exclude Evidence at 8).

2. Attachment of Right

Right to counsel under NMI Const. art. I, § 4(a) attaches at the initiation of adversary proceedings.

Commonwealth v. Aulerio, Crim. Case No. 93-153 (N.M.I. Super. Ct. Jan. 11, 1994) (Order Denying Defendant's Motion to Exclude Evidence at 10).

III. Double Jeopardy

1. Generally

Double jeopardy clause in NMI Constitution is patterned after the Double Jeopardy Clause of the U.S. Constitution. NMI Const. art. I, § 4(e).

Commonwealth v. Oden, 3 N.M.I. 186 (1992), *aff'd*, 19 F.3d 26 (9th Cir. 1994).

Because double jeopardy clause in the NMI Constitution is patterned after the Double Jeopardy Clause of the U.S. Constitution, NMI Supreme Court would resort to federal case law interpreting U.S. Constitution's Double Jeopardy Clause to ensure that NMI Constitution's double jeopardy clause provided at least the same protection granted criminal defendants under federal provision. NMI Const. art. I, § 4(e).

Commonwealth v. Oden, 3 N.M.I. 186 (1992), *aff'd*, 19 F.3d 26 (9th Cir. 1994).

Double jeopardy provision of NMI Constitution is taken from the Fifth Amendment to the U.S. Constitution, which is made applicable to the states by the Fourteenth Amendment, which is in turn made applicable in the Northern Mariana Islands by Covenant § 501. NMI Const. art. I, § 4(e).

Commonwealth v. Tebia, Traff. Case No. 93-980 (N.M.I. Super. Ct. Nov. 22, 1994) (Decision and Order on Defendant's Motions: [1] To Dismiss Based on Double Jeopardy; [2] For Judgment of Acquittal; [3] For Stay of the Proceedings Pending Appeal at 4-5).

2. Appeal

A pretrial denial of a motion to dismiss on double jeopardy grounds is not final in the sense that it

Art. I, § 4

terminates the criminal proceedings. However, ruling falls within collateral order exception to rule requiring final judgment before appeal may be taken because: (1) ruling constitutes complete, formal and final rejection of claim; (2) nature of double jeopardy claim is collateral to and separate from guilt or innocence of accused; and (3) since double jeopardy clause protects individual against being twice put to trial for same offense, claimed denial of right is effectively unreviewable on appeal from final judgement. If defendant is to avoid exposure to double jeopardy, claim must be reviewable before second trial occurs. NMI Const. art. I, § 4(e).

Commonwealth v. Tebia, Traff. Case No. 93-980 (N.M.I. Super. Ct. Nov. 22, 1994) (Decision and Order on Defendant's Motions: [1] To Dismiss Based on Double Jeopardy; [2] For Judgment of Acquittal; [3] For Stay of the Proceedings Pending Appeal at 9-10).

3. Attachment of Right

Jeopardy in a jury trial attaches when the jury is sworn, and when evidence is first heard in a court-tried case. U.S. Const. amend. V; NMI Const. art. I, § 4(e).

Commonwealth v. Ahn, 3 CR 35 (Dist. Ct. App. Div. 1987).

Double jeopardy cannot occur until first proceeding ends with conviction, acquittal, or is dismissed with prejudice. U.S. Const. amend. V; NMI Const. art. I, § 4(e).

Commonwealth v. Ahn, 3 CR 35 (Dist. Ct. App. Div. 1987).

4. Identity of Offenses

Simultaneous prosecution of greater and lesser offenses is valid. U.S. Const. amend. V; NMI Const. art. I, § 4(e).

Commonwealth v. Ahn, 3 CR 35 (Dist. Ct. App. Div. 1987).

It has long been understood that separate statutory crimes need not be identical--either in constituent elements or in actual proof--in order to be the same within the meaning of the double jeopardy clause. U.S. Const. amend. V; NMI Const. art. I, § 4(e).

Commonwealth v. Taitano, 2 CR 356 (Dist. Ct. App. Div. 1985).

In double jeopardy analysis, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether one statute requires proof of an additional fact which the other does not. U.S. Const. amend. V; NMI Const. art. I, § 4(e).

Commonwealth v. Taitano, 2 CR 356 (Dist. Ct. App. Div. 1985).

--Particular Cases

Defendant's conviction for sexual abuse of child and criminal oral copulation did not violate double jeopardy clause's prohibition of multiple punishments for the same offense. Evidence showed that defendant not only performed oral copulation with child victim, violating 6 CMC § 1307(b), but that he engaged, for purposes of sexual arousal or gratification, in exhibitionism by both exposing his genitals and engaging in sexual acts with his girlfriend in presence of child victim, violating 6 CMC § 1311. Since record showed that each offense was based on separate acts, defendant's conviction for each offense did not constitute double jeopardy. NMI Const. art. I, § 4(e).

Commonwealth v. Oden, 3 N.M.I. 186 (1992), *aff'd*, 19 F.3d 26 (9th Cir. 1994).

That defendant was tried by a judge and found guilty of misdemeanor that contained one element in addition to those contained in felony count decided simultaneously by a jury did not subject defendant to double jeopardy because offenses were not identical and original jeopardy was terminated simultaneously for both offenses.

Commonwealth v. Ahn, 3 CR 35 (Dist. Ct. App. Div. 1987).

Where 'riot' is defined as placing others in fear or danger and 'disturbing the peace' is defined as unreasonably annoying or disturbing another person, the offense of disturbing the peace requires proof of an element (awareness of the victim) not required by the offense of riot subject to double jeopardy and defendant convicted of both was not. U.S. Const. amend. V; NMI Const. art. I, § 4(e).

Commonwealth v. Taitano, 2 CR 356 (Dist. Ct. App. Div. 1985).

IV. Juveniles

1. Delinquency Proceedings

Due process provision in the NMI Constitution requires that when a juvenile is charged in a delinquency proceeding with what would be a crime for an adult, the charge must be proved beyond a reasonable doubt. This is especially so because of the specific provision for protection of minors in criminal judicial proceedings in NMI Const. art. I, § 4(j). NMI Const. art. I, § 5.

In re "C.T.M.", 1 N.M.I. 410 (1990).

The protection provided juveniles in criminal proceedings under NMI Constitutional provision centers on shielding them from the harsh glare of publicity, helping them to avoid the life-long stigma of a criminal record, minimizing their contact with adult criminals, and

Art. I, § 4

rehabilitation. NMI Const. art. I, § 4(j).
Commonwealth v. Cabrera, 2 CR 1092 (Dist. Ct. App. Div. 1987).

V. Self-Incrimination, Privilege Against

1. Generally

The Fifth Amendment of the United States Constitution and NMI Const. art. I, § 4(c) secure the privilege against self-incrimination. This privilege ensures that no person shall be compelled to be a witness against himself or herself in a criminal case, and applies only to communicative or testimonial acts. It applies at every stage of police or other investigations, pre-trial hearings, and trials.

Commonwealth v. Aulerio, Crim. Case No. 93-153 (N.M.I. Super. Ct. Jan. 11, 1994) (Order Denying Defendant's Motion to Exclude Evidence at 4).

Since *Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands* (1976) states that no substantive change from relevant provision of Fifth Amendment or interpretation of that provision by U.S. Supreme Court was intended by drafters of NMI Const. art. I, § 4(c) privilege against self-incrimination, court would turn to case law interpreting Fifth Amendment in analyzing criminal defendant's motion to exclude evidence based on alleged violation of NMI Const. art. I, § 4(c).

Commonwealth v. Aulerio, Crim. Case No. 93-153 (N.M.I. Super. Ct. Jan. 11, 1994) (Order Denying Defendant's Motion to Exclude Evidence at 4, n.1).

The prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. Custodial interrogation means questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. U.S. Const. amend. V; NMI Const. art. I, §4(c).

Commonwealth v. Aulerio, Crim. Case No. 93-153 (N.M.I. Super. Ct. Jan. 11, 1994) (Order Denying Defendant's Motion to Exclude Evidence at 5).

2. Attachment of Right

A determination as to whether a person is in custody, triggering privilege against self-incrimination, turns upon the perception of a reasonable person in the suspect's position. An individual is not in custody simply because

he or she is the focus of an investigation. U.S. Const. amend. V; NMI Const. art. I, § 4(c).

Commonwealth v. Aulerio, Crim. Case No. 93-153 (N.M.I. Super. Ct. Jan. 11, 1994) (Order Denying Defendant's Motion to Exclude Evidence at 5).

--Particular Cases

Because defendant challenging admission of incriminating statement made during police investigation of homicide before warning regarding privilege against self incrimination had been given him (1) had not been placed under arrest at time he made statement, nor did it appear that the manner in which investigating officers treated him was the functional equivalent of a formal arrest, (2) officer's alleged suspicion of defendant and intention to arrest him were not communicated to defendant, (3) defendant was neither secluded nor separated from his family and friends during period preceding his arrest, and (4) defendant's freedom of movement was not restricted in a significant way, defendant's privilege against self-incrimination was not violated. U.S. Const. amend. V; NMI Const. art. I, § 4(c).

Commonwealth v. Aulerio, Crim. Case No. 93-153 (N.M.I. Super. Ct. Jan. 11, 1994) (Order Denying Defendant's Motion to Exclude Evidence at 6-8).

VI. Speedy Trial, Right to

1. Generally

NMI Const. art. I, § 4(d) and Sixth Amendment to the U.S. Constitution guarantee an accused in all criminal prosecutions the right to speedy trial. The right is intended to ensure early and proper disposition of the criminal case.

Commonwealth v. Flores, Crim. Case No. 92-197 (N.M.I. Super. Ct. Mar. 22, 1993) (Opinion and Order at 3).

Determination of whether length of delay has violated a defendant's right to a speedy trial must be made on a case-by-case basis. Test for whether right has been violated requires analysis of: (1) length of the delay, (2) reason for delay, (3) defendant's assertion of his right, and (4) prejudice to the defendant. U.S. Const. amend. VI; NMI Const. art. I, § 4(d).

Commonwealth v. Flores, Crim. Case No. 92-197 (N.M.I. Super. Ct. Mar. 22, 1993) (Opinion and Order at 3-4).

Failure to assert right to speedy trial does not constitute waiver of right. U.S. Const. amend. VI; NMI Const. art. I, § 4(d).

Art. I, § 4

Commonwealth v. Flores, Crim. Case No. 92-197 (N.M.I. Super. Ct. Mar. 22, 1993) (Opinion and Order at 4, n.1).

NMI Const. art. I, § 4(d) mandates that criminal defendants are entitled to a speedy trial. This right is also protected by the Sixth Amendment to the U.S. Constitution.

Commonwealth v. Aquino, Crim. Action No. 90-127 (N.M.I. Super. Ct. April 24, 1991) (Order of Dismissal at 3).

Four factors must be considered in determining whether a criminal defendant's right to a speedy trial has been violated: (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his right, and (4) prejudice to the defendant. U.S. Const. amend. VI; NMI Const. art. I, § 4(d).

Commonwealth v. Aquino, Crim. Action No. 90-127 (N.M.I. Super. Ct. April 24, 1991) (Order of Dismissal at 4).

-Particular Cases

In prosecution in which there was (1) four-and-one-half month delay between execution of warrant for arrest of defendant and commencement of trial, with (2) government and defendant conducting pre-trial discovery and filing pre-trial motions in intervening period, facilitating proper disposition of case, where (3) defendant did not make formal assertion of right to speedy trial before filing motion to dismiss for violation of right, and (4) defendant did not show that delay prejudiced him in any way, defendant's right to speedy trial was not violated. U.S. Const. amend. VI; NMI Const. art. I, § 4(d).

Commonwealth v. Flores, Crim. Case No. 92-197 (N.M.I. Super. Ct. Mar. 22, 1993) (Opinion and Order at 4-5).

Where defendant in drug and burglary prosecution was arrested and subsequently released, and (1) government waited five months before filing information, (2) without explanation for delay, (3) defendant asserted right to speedy trial in a timely fashion, and (4) defendant claimed prejudice to the extent that he was unable to return to employment as customs official until matter was resolved and claimed that he was unable to obtain alternative employment because of distrust arising from his arrest, defendant faced actual prejudice and his right to speedy trial was violated. U.S. Const. amend. VI; NMI Const. art. I, §4(d).

Commonwealth v. Aquino, Crim. Action No. 90-127 (N.M.I. Super. Ct. April 24, 1991) (Order of Dismissal at 4-5).

2. Attachment of Right

Right to speedy trial attaches when individual has been accused of committing a criminal offense, including indictment. An individual becomes an "accused" upon execution of an arrest warrant. NMI Const. art. I, § 4(d).

Commonwealth v. Flores, Crim. Case No. 92-197 (N.M.I. Super. Ct. Mar. 22, 1993) (Opinion and Order at 3).

Right to speedy trial does not attach until an individual has been accused of a crime. In the Commonwealth, this accusatory period begins at the time an arrest warrant has been issued. NMI Const. art. I, § 4(d).

Commonwealth v. Aquino, Crim. Action No. 90-127 (N.M.I. Super. Ct. April 24, 1991) (Order of Dismissal at 3).

-Particular Cases

Where warrant was issued for defendant's arrest, and warrant was executed and defendant was jailed, forced to post bond and later released, defendant's right to a speedy trial was triggered. NMI Const. art. I, § 4(d).

Commonwealth v. Aquino, Crim. Action No. 90-127 (N.M.I. Super. Ct. April 24, 1991) (Order of Dismissal at 4).

Art. I, § 5

Section 5: Due Process. No person shall be deprived of life, liberty or property without due process of law.

History: Ratified 1977, effective 1978.

Cross References: See article I, § 3 (search and seizure), article I, § 4 (preceding section, rights in criminal prosecutions), and article I, § 8 (trial by jury).

Comment: One provision of the U.S. Constitution applicable in the Northern Mariana Islands pursuant to Covenant § 501(a) is section 1 of the Fourteenth Amendment, which provides, in part, that no state may "deprive any person of life, liberty, or property, without due process of law . . ." According to the *Analysis*, this section is "taken directly from" that provision and "[n]o substantive change from section 1 of the Fourteenth Amendment or the interpretation of that section by the United States Supreme Court is intended." *Id.* at 20.

Notes of Decisions

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|---|--|
| I. Generally | N.M.I. 436 (1993). |
| 1. Interpretation | |
| 2. Procedural and Substantive Due Process | Due process guarantee in NMI Const. art. I, § 5 is similar to due process guarantee in Fourteenth Amendment to the U.S. Constitution. |
| II. Procedural Due Process | <i>Office of the Attorney General v. Dealda</i> , 3 N.M.I. 110 (1992). |
| 1. Administrative Proceedings | |
| 2. Civil Actions | |
| 3. Deportation | |
| --Particular Cases | NMI Const. art. I, § 5 provides prohibition similar to the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, but specifically against the Commonwealth government. NMI Supreme Court would apply NMI Const. art. I, § 5 using the same analysis it would apply under Fourteenth Amendment. |
| 4. Illegitimate Children | <i>Commonwealth v. Bergonia</i> , 3 N.M.I. 22 (1992). |
| --Particular Cases | |
| 5. Impartial Judiciary | |
| --Particular Cases | |
| 6. Indictment | |
| --Particular Cases | |
| 7. Juvenile Delinquency Proceedings | |
| 8. Land Alienation Restriction | |
| --Particular Cases | Due process provision in the NMI Constitution is patterned after the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. NMI Const. art. I, § 5. |
| 9. Licensing | <i>In re "C.T.M."</i> , 1 N.M.I. 410 (1990). |
| --Particular Cases | |
| 10. Penal Statutes | |
| 11. Probate Proceedings | |
| --Particular Cases | |
| 12. Workers' Compensation | |
| III. Substantive Due Process | According to the <i>Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands</i> (1976), NMI Const. art. I, § 5 is taken directly from section 1 of the Fourteenth Amendment to the U.S. Constitution and no substantive change from that provision or the interpretations thereof by the U.S. Supreme Court was intended by the drafters. |
| 1. Generally | <i>Bernal v. J.C. Tenorio Enters., Inc.</i> , Civil Action No. 93-890 (N.M.I. Super. Ct. May 25, 1994) (Order Granting Summary Judgment at 6). |
| 2. Fundamental Rights | |
| 3. Nonfundamental Rights | |
| 4. Involuntary Commitment | |
| I. Generally | |
| 1. Interpretation | |

Due process provision of NMI Constitution affords the same protection as Due Process Clause of U.S. Constitution. NMI Const. art. I, § 5; U.S. Const. amend. XIV.

Office of the Attorney General v. Rivera, 3

2. Procedural and Substantive Due Process

Like the due process provisions of the Fifth and Fourteenth Amendments to the U.S. Constitution, NMI Const. art. I, § 5, providing that no person shall be

Art. I, § 5

deprived of life, liberty or property without due process of law, contains both procedural and substantive components.

In re Seman, 3 N.M.I. 57 (1992).

II. Procedural Due Process

1. Administrative Proceedings

In an administrative proceeding where a person's life, liberty or property is at stake, NMI Const. art. I, § 5 requires, at a minimum, that the person be accorded meaningful notice and a meaningful opportunity to a hearing, appropriate to the nature of the case.

Office of the Attorney General v. Paran, 4 N.M.I. ---, Appeal No. 93-014 (N.M.I. Sup. Ct. Oct. 6, 1994) (Opinion at 5).

In an administrative proceeding where a person's life, liberty or property is at stake, NMI Const. art. I, § 5 requires, at a minimum, that the person be accorded meaningful notice and an opportunity to a hearing, appropriate to the nature of the case.

Office of the Attorney General v. Rivera, 3 N.M.I. 436 (1993).

In an administrative proceeding where a person's life, liberty or property is at stake, NMI Const. art. I, § 5 requires, at a minimum, that the person be accorded meaningful notice and a meaningful opportunity to a hearing, appropriate to the nature of the case.

Office of the Attorney General v. Deala, 3 N.M.I. 110 (1992).

2. Civil Actions

A property right in any cause of action does not vest until a final unreviewable judgment is obtained. U.S. Const. amend. XIV; NMI Const. art. I, § 5.

Mafnas v. Laureta, Civ. Action No. 88-696 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Plaintiff's Motion for Summary Judgment at 10).

3. Deportation

Commonwealth Constitution guarantees nonimmigrant aliens the right to resolve disputed claims against their employers before becoming subject to deportation. NMI Const. art. I, § 5.

Office of the Attorney General v. Paran, 4 N.M.I. ---, Appeal No. 93-014 (N.M.I. Sup. Ct. Oct. 6, 1994) (Opinion at 9).

NMI Superior Court must exercise jurisdiction over deportation matters within confines of due process

provision of NMI Constitution. NMI Const. art. I, § 5. *Office of the Attorney General v. Rivera*, 3 N.M.I. 436 (1993).

While a valid wage claim is pending, a deportation order must be stayed until, at the very least, an aggrieved nonresident worker is provided a meaningful opportunity to a hearing. Failure to stay order would violate due process provision of NMI Constitution. NMI Const. art. I, § 5.

Office of the Attorney General v. Rivera, 3 N.M.I. 436 (1993).

Three CMC § 4334(g), allowing a nonresident worker to remain in Commonwealth 30 days after employment contract has expired to pursue action against an employer for failure to pay contract wages, does not violate due process guarantee in NMI Const. art. I, § 5. Nonresident worker is adequately provided with notice and an opportunity for a hearing before statute becomes applicable. Thirty-day period does not commence until Director of Department of Commerce and Labor makes a determination on employee's claim, after notice and an opportunity for a hearing.

Office of the Attorney General v. Deala, 3 N.M.I. 110 (1992).

-Particular Cases

Nonresident worker's claimed due process entitlement to stay of deportation proceedings while she sought authorization from Division of Labor for transfer to another employer would have been viable only if she had brought civil action against former employer for damages resulting from alleged assault and battery. Because nonresident worker did not file action prior to apparent expiration of filing period under statute of limitations, she was precluded from making colorable argument that trial court's decision not to stay deportation proceeding violated her right to due process. Deportation order was proper because nonresident worker's permit had expired and there was no legal basis for her to remain in the Commonwealth. NMI Const. art. I, § 5.

Office of the Attorney General v. Paran, 4 N.M.I. ---, Appeal No. 93-014 (N.M.I. Sup. Ct. Oct. 6, 1994) (Opinion at 7-9).

In deportation proceeding, nonresident workers who filed claims with NMI Division of Labor for unpaid wages had property at stake in NMI Constitution due process analysis. Workers were denied due process right to meaningful opportunity to hearing concerning their wage claims under trial court deportation order requiring them to leave NMI immediately but permitting them to return for brief visits, not to exceed a total of 90 days, to pursue their wage claims. Due process was not satisfied by

Art. I, § 5

placing a time limit on workers' opportunity for a hearing. Further, opportunity for hearing was not meaningful when workers were required to leave NMI and then return for hearing when it was undisputed that workers lacked financial means to return. NMI Const. art. I, § 5.

Office of the Attorney General v. Rivera, 3 N.M.I. 436 (1993).

4. Illegitimate Children

—Particular Cases

Eight CMC § 1707 of Uniform Parentage Act, providing that action to determine existence of father and child relationship may not be brought more than three years after child reaches age of majority (18 years), did not bar claims of illegitimate children to father's estate simply because children had reached age of 21 when the Act became effective in 1985. Because: (1) father of illegitimate children died in 1971, when no requirement existed for children to file paternity action within certain period; (2) when children reached age of 21 years in 1977 and 1981, respectively, no such requirement existed; and (3) action to probate father's estate--triggering illegitimate children's claims--was not filed until 1990, over three years after Act became effective, it would be violation of due process to preclude by statute children's rights as illegitimate children to claim their inheritance. NMI Const. art. I, § 5.

In re Estate of Aldan, 2 N.M.I. 288 (1991).

5. Impartial Judiciary

—Particular Cases

Claim by defendant charged with traffic infraction that Judicial Building Fund Act of 1990, providing that criminal and civil fines and revenues collected by Commonwealth courts were to be credited to fund for renovating and furnishing existing and new judicial facilities, violated his due process rights by giving judges improper incentive to levy heavy fines lacked merit under: (1) direct, personal, substantial pecuniary interest test, because judges were not paid from fund and lacked control over expenditures from fund; (2) possible temptation to the average man test, because most of construction would actually be funded by sources other than fines or court revenue; and (3) appearance of partiality test, because objective, fully informed disinterested observer would not entertain significant doubts that defendant would receive impartial justice. 1 CMC § 3405; U.S. Const. amend. XIV; NMI Const. art. I, § 5.

Commonwealth v. Kaipat, Traff. Case No. 93-7529 (N.M.I. Super. Ct. Sept. 20, 1994)

(Memorandum Decision on Defendant's Motion to Reconsider Sentence at 2-7).

6. Indictment

In ascertaining whether pre-indictment delay constitutes denial of due process, defendant must: (1) show actual prejudice, and (2) prove that length of delay, when balanced against government's reasons for the delay, offends fundamental conceptions of justice which lie at base of civil and political institutions. NMI Const. art. I, § 5.

Commonwealth v. Flores, Crim. Case No. 92-197 (N.M.I. Super. Ct. Mar. 22, 1993) (Opinion and Order at 5-6).

Mechanism by which an individual is generally protected from the bringing of stale charges is the applicable statute of limitations. The statute of limitations is not, however, a crutch to be used by the government in order to justify prolonged disruptions of citizens' lives without explanation. Therefore, the due process clause contained in NMI Const. art. I, § 5 must be considered in conjunction with the statute of limitations in order to determine whether pre-indictment delay is unduly oppressive.

Commonwealth v. Aquino, Crim. Action No. 90-127 (N.M.I. Super. Ct. April 24, 1991) (Order of Dismissal at 5).

To determine whether pre-indictment delay is unduly oppressive, a defendant must first show actual prejudice resulting from undue delay. Second, to comply with the requirements of due process, the prejudice caused to the defendant must be weighed against the reasons for the prosecutorial delay. NMI Const. art. I, § 5.

Commonwealth v. Aquino, Crim. Action No. 90-127 (N.M.I. Super. Ct. April 24, 1991) (Order of Dismissal at 5).

—Particular Cases

Where defendant in child sexual abuse prosecution merely speculated as to how pre-indictment delay prejudiced him, failing to demonstrate how his ability to defend himself was impaired, defendant's due process rights were not violated. NMI Const. art. I, § 5.

Commonwealth v. Flores, Crim. Case No. 92-197 (N.M.I. Super. Ct. Mar. 22, 1993) (Opinion and Order at 6-7).

Where defendant in drug and burglary prosecution was prejudiced by pre-indictment delay and government offered no explanation for delay, defendant's right to due process was violated. NMI Const. art. I, § 5.

Commonwealth v. Aquino, Crim. Action No.

Art. I, § 5

90-127 (N.M.I. Super. Ct. April 24, 1991)
(Order of Dismissal at 5-6).

7. Juvenile Delinquency Proceedings

Due process provision in the NMI Constitution requires that when a juvenile is charged in a delinquency proceeding with what would be a crime for an adult, the charge must be proved beyond a reasonable doubt. This is especially so because of the specific provision for protection of minors in criminal judicial proceedings in NMI Const. art. I, § 4(j). NMI Const. art. I, § 5.

In re "C.T.M.", 1 N.M.I. 410 (1990).

In NMI society, in both Chamorro and Carolinian cultures, children are held in high esteem; every effort should be made to ensure that they are protected by due process of law in any possible deprivation of life, liberty or property. At a minimum, this is required under concept of fundamental fairness and protection for children. NMI Const. art. I, § 5.

In re "C.T.M.", 1 N.M.I. 410 (1990).

Based on due process provision in NMI Constitution and on the clear language of Com.R.Juv.Del.P. 6(4), adjudication of delinquency in juvenile delinquency proceeding should be based on proof beyond a reasonable doubt. NMI Const. art. I, § 5.

In re "C.T.M.", 1 N.M.I. 410 (1990).

8. Land Alienation Restriction

—Particular Cases

Retroactive application of statute calling for automatic enforcement of severability clauses in agreements found to transgress NMI Const. art. XII did not infringe due process rights of plaintiff in action challenging validity of property sale and subsequent lease. Claim that original landowner remained vested with title by operation of NMI Const. art. XII, § 6, providing that violative transaction is void *ab initio*, failed because only a court can declare a transaction to be violative of NMI Const. art. XII, and until that is done, no voiding of transaction takes place. Alleged rights of original landowner could not vest until there had been final, unreviewable judgment, which had not occurred. 2 CMC § 4982(c); U.S. Const. amend. XIV; NMI Const. art. I, § 5.

Mafnas v. Laureta, Civ. Action No. 88-696 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Plaintiff's Motion for Summary Judgment at 10).

9. Licensing

—Particular Cases

Cockfighting franchise license awarded by Tinian Cockfighting Board was property right of which licensee could not be deprived without due process of law. NMI Const. art. I, § 5.

Aquino v. Tinian Cockfighting Bd., 3 N.M.I. 284 (1992).

10. Penal Statutes

Due process of law requires that a penal statute or ordinance state with reasonable clarity the act it proscribes and provide fixed standards for adjudging guilt, or it is void for vagueness. Penal statutes must give a person of ordinary intelligence reasonable opportunity to know what conduct is prohibited so that he or she may choose between lawful and unlawful conduct. NMI Const. art. I, § 5.

Commonwealth v. Bergonia, 3 N.M.I. 22 (1992).

A clear and precise enactment may nevertheless be 'overbroad' if in its reach it prohibits constitutionally protected conduct. In an overbreadth challenge, a party must necessarily demonstrate that constitutionally protected conduct has been prohibited; absent such showing, the challenge fails. NMI Const. art. I, § 5.

Commonwealth v. Bergonia, 3 N.M.I. 22 (1992).

Six CMC § 1311, prohibiting sexual contact with any child under the age of 16 years who is not the spouse of the perpetrator, requires proof of specific intent of contact "for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purposes." Given this requirement, the statute is not unconstitutionally vague; it gives adequate notice of the prohibited conduct. NMI Const. art. I, § 5.

Commonwealth v. Bergonia, 3 N.M.I. 22 (1992).

In analyzing whether a criminal statute is unconstitutionally vague, a court's first task is to determine whether the enactment reaches a substantial amount of constitutional conduct. U.S. Const. amend. XIV; NMI Const. art. I, § 5.

Commonwealth v. Liarta, Crim. Case No. 93-133 (N.M.I. Super. Ct. Jan. 20, 1994) (Decision and Order on Defendant's Motion to Dismiss Information at 9).

A statute is unconstitutionally vague, violating a defendant's right to due process of law, if it fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by statute, or is so indefinite that it encourages arbitrary and erratic arrests and convictions. U.S. Const. amend. XIV; NMI Const.

Art. I, § 5

art. I, § 5.

Commonwealth v. Liarta, Crim. Case No. 93-133 (N.M.I. Super. Ct. Jan. 20, 1994) (Decision and Order on Defendant's Motion to Dismiss Information at 13).

Constitutional challenges based on vagueness and overbreadth are logically related doctrines. However, they differ in a key respect. While anyone accused of violating a criminal statute may complain of its overbreadth, vagueness can only be asserted by one who can claim that the law did not clearly prohibit his or her actual behavior. U.S. Const. amend. XIV; NMI Const. art. I, § 5.

Commonwealth v. Liarta, Crim. Case No. 93-133 (N.M.I. Super. Ct. Jan. 20, 1994) (Decision and Order on Defendant's Motion to Dismiss Information at 13).

Provision in anti-prostitution law prohibiting "any touching of any person, by oneself or another, for the purpose of sexual arousal or gratification, aggression, degradation or other similar purpose" swept so broadly, conferring unfettered discretion on law enforcement officers and giving citizens almost no guidance as to what was prohibited, that it was unconstitutionally vague. 6 CMC § 1341(e) [PL 8-14, § 2(e)]; U.S. Const. amend. XIV; NMI Const. art. I, § 5.

Commonwealth v. Liarta, Crim. Case No. 93-133 (N.M.I. Super. Ct. Jan. 20, 1994) (Decision and Order on Defendant's Motion to Dismiss Information at 16).

The vagueness doctrine applies with the same force to the penalty provisions of a law as it does to provisions delineating the offense. U.S. Const. amend. XIV; NMI Const. art. I, § 5.

Commonwealth v. Liarta, Crim. Case No. 93-133 (N.M.I. Super. Ct. Jan. 20, 1994) (Decision and Order on Defendant's Motion to Dismiss Information at 17).

Because, by their terms, penalties applicable to all "violators" of anti-prostitution law could apply to customers, prostitutes, pimps, business owners, or anyone else found guilty of offense under statute, and penalties were applicable to single act of prostitution otherwise punishable as a misdemeanor, without any guidelines as to how or when they could be levied, they were vulnerable to erratic and discriminatory application, forbidden under vagueness doctrine, and were therefore unconstitutional. 6 CMC § 1346(d) [PL 8-14, § 7(d)]; U.S. Const. amend. XIV; NMI Const. art. I, § 5.

Commonwealth v. Liarta, Crim. Case No. 93-133 (N.M.I. Super. Ct. Jan. 20, 1994) (Decision and Order on Defendant's Motion to

Dismiss Information at 17).

11. Probate Proceedings

Due process right against improper deprivation of a property interest may be enforced by interested person in probate proceeding but not by estate, which is merely legal description of decedent's assets. 8 CMC § 2107; NMI Const. art. I, § 5.

Estate of Faisao v. Tenorio, Appeal No. 94-018 (N.M.I. Sup. Ct. April 13, 1995) (Opinion at 7, n.13).

An heir's rights are abridged by a change in law only where such rights to vested interests are retroactively altered.

Estate of Faisao v. Tenorio, Appeal No. 94-018 (N.M.I. Sup. Ct. April 13, 1995) (Opinion at 16).

--Particular Cases

Vesting of decedent's property interest in homestead in his spouse after decedent's death, pursuant to land commission's transference of title to spouse under Marital Homestead Title Act, did not violate decedent's or heirs' due process rights. First, decedent's interest or right to alienate that interest was not retroactively impeded by Act; Act only affected succession to the property. Second, decedent's children had no interest or potential interest in homestead when it was held by decedent; that Act may have altered heirs' expectations of acquiring property did not make Act violative of due process. Finally, because property interest passed to decedent's spouse, subject to her perfection of title under Act, interest was not part of decedent's estate and no interest in property vested in decedent's heirs under intestate succession laws. Heirs had no interest of which they could have been unconstitutionally deprived. NMI Const. art. I, § 5.

Estate of Faisao v. Tenorio, Appeal No. 94-018 (N.M.I. April 13, 1995) (Opinion at 16-17).

12. Workers' Compensation

Given that: (1) NMI Const. art. I, § 5 was taken directly from section 1 of the Fourteenth Amendment to the U.S. Constitution, and, according to *Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands* (1976) no substantive change from that provision or interpretations thereof by U.S. Supreme Court was intended by the drafters, and (2) U.S. Supreme Court had upheld constitutionality of workers' compensation systems in Fourteenth Amendment challenges, court could find no basis for striking down provision in NMI Workers' Compensation Act in due

Art. I, § 5

process challenge. 4 CMC § 9305; NMI Const. art. I, § 5.

Bernal v. J.C. Tenorio Enters., Inc., Civil Action No. 93-890 (N.M.I. Super. Ct. May 25, 1994) (Order Granting Summary Judgment at 6).

III. Substantive Due Process

1. Generally

A statute violates substantive due process when a litigant with standing shows that a challenged statute adversely affects a recognized life, liberty or property entitlement and in doing so does not promote a legitimate state objective by reasonable means. NMI Const. art. I, § 5.

In re Seman, 3 N.M.I. 57 (1992).

2. Fundamental Rights

When the individual interest restricted by statute is a fundamental right, the appropriate test, in determining the constitutionality of a challenged statute on substantive due process grounds, is the compelling state interest test--i.e., whether there is a compelling need or justification for the state action, by statute or otherwise, to override the personal right asserted.

In re Seman, 3 N.M.I. 57 (1992).

Under NMI Const. art. I, § 5, guaranteeing substantive as well as procedural due process rights, the right of personal liberty--the right to live in freedom from unwarranted interference by the state--is a fundamental right.

In re Seman, 3 N.M.I. 57 (1992).

3. Nonfundamental Rights

A due process infringement of an individual's nonfundamental life, liberty or property entitlement occurs only when it amounts to an arbitrary deprivation of that entitlement. NMI Const. art. I, § 5.

In re Seman, 3 N.M.I. 57 (1992).

4. Involuntary Commitment

Involuntary civil commitment for mental illness is a massive curtailment of the fundamental right of personal liberty. It can be justified only by a compelling government interest. NMI Const. art. I, § 5.

In re Seman, 3 N.M.I. 57 (1992).

Three elements must be satisfied under compelling state interest test before a person may be involuntarily committed for mental illness: (1) the person must be mentally ill; (2) the person must pose a serious threat of

substantial harm to him or herself or to others; and (3) this threat of harm must have been evidenced by a recent overt act or threat. The threat of harm to oneself may be through neglect or inability to care for oneself. NMI Const. art. I, § 5.

In re Seman, 3 N.M.I. 57 (1992).

Loss of liberty pursuant to involuntary civil commitment for mental illness calls for a showing that the individual suffers from something more serious than is demonstrated by idiosyncratic behavior. NMI Const. art. I, § 5.

In re Seman, 3 N.M.I. 57 (1992).

Even if it is established that a person is mentally ill, it is impermissible to involuntarily commit him or her merely because the public welfare or the interest of the person demands the commitment. Mentally ill persons may not be involuntarily committed unless they are dangerous to other persons or themselves. It is unconstitutional to confine a nondangerous individual who is capable of surviving safely in freedom by him or herself or with the help of willing and responsible family members or friends. NMI Const. art. I, § 5.

In re Seman, 3 N.M.I. 57 (1992).

The degree of dangerousness constitutionally required before one may be involuntarily deprived of his or her liberty pursuant to civil commitment for mental illness must be great enough to justify such a massive curtailment of liberty. This involves a balancing test in which the state must prove that there is an extreme likelihood that if the person is not confined he will do immediate harm to himself or others. The proper standard is that which requires a finding of imminent and substantial danger as evidenced by a recent overt act, attempt or threat. NMI Const. art. I, § 5.

In re Seman, 3 N.M.I. 57 (1992).

The state has a legitimate interest under its *parens patriae* powers in providing care to its citizens who are unable, because of emotional disorders, to care for themselves. The state also has authority under its police power to protect the community from the dangerous tendencies of some who are mentally ill. NMI Const. art. I, § 5.

In re Seman, 3 N.M.I. 57 (1992).

Three CMC § 2513, permitting involuntary commitment of any person for observation of possible mental illness, facially violates due process guarantee in NMI Const. art. I, § 5 and is void. The statute, providing that the only requirement for commitment is that the public welfare or the interest of the person demands the commitment, does not satisfy three-factor compelling state interest test requiring showing that person is (1) mentally ill and (2) poses a serious threat of substantial harm to him or herself or to others, as (3) evidenced by recent overt act.

Art. I, § 6

Statute's scope is overbroad, encompassing persons who are not mentally ill; it is not drawn narrowly enough to satisfy test.

In re Seman, 3 N.M.I. 57 (1992).

Section 6: Equal Protection. No person shall be denied the equal protection of the laws. No person shall be denied the enjoyment of civil rights or be discriminated against in the exercise thereof on account of race, color, religion, ancestry or sex.

History: Ratified 1977, effective 1978.

Cross Reference: See article VII, § 2 (right to vote may not be denied based on literacy requirement).

Related Commonwealth Code Sections: See 4 CMC § 5120 (prohibiting discrimination in commerce), 4 CMC § 7302 (prohibiting discriminatory insurance practices), and 7 CMC § 3105 (prohibiting exclusion from jury service due to race, color or religion).

Comment: Provisions of the U.S. Constitution applicable within the Northern Mariana Islands pursuant to Covenant § 501(a) include section 1 of the Fourteenth Amendment and the Thirteenth, Fifteenth, Nineteenth and Twenty-Sixth Amendments. Section 1 of the Fourteenth Amendment provides, in part, that a state may not "make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . nor deny to any person within its jurisdiction the equal protection of the laws." The Thirteenth Amendment provides: "[n]either slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." The Fifteenth Amendment provides: "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." The Nineteenth Amendment provides: "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex." The Twenty-Sixth Amendment provides: "[t]he right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age."

Regarding the first sentence of this section, which "was taken from section 1 of the Fourteenth Amendment . . . [n]o substantive change from section 1 of the Fourteenth Amendment or the interpretation of that section by the United States Supreme Court is intended." *Analysis* at 21.

With respect to the second sentence of this section, the *Analysis* provides:

The second sentence provides additional protection against classifications based on race, color, religion, ancestry or sex. Mere rationality will not suffice to justify classifications that use these criteria; rather, such classifications are invalid, unless compelling reasons, sufficient to withstand the strictest scrutiny, are adduced to sustain them. This section applies to private action as well as government action. The interest for which the classification is used must be legitimate and very important and there must be no less restrictive classification that could accomplish that objective. This section forbids discrimination only with respect to the exercise of civil rights, but may be extended by legislation to cover other forms of discrimination.

Id. at 22.

Notes of Decisions

- | | |
|--------------------------|-------------------------|
| I. Generally | 7. Strict Scrutiny |
| 1. Interpretation | |
| 2. Prima Facie Case | II. Applications |
| 3. State Action | 1. Alienage |
| 4. Governmental Interest | 2. Athletics |
| 5. Rational Basis | --Particular Activities |
| 6. Intermediate Scrutiny | 3. Domicile |

Art. I, § 6

4. Illegitimate Children
--Particular Cases
5. Immigration
--Particular Cases
6. Land Alienation Restriction
7. Marital Property
--Particular Cases
8. Nonresident Workers
9. Racial Discrimination
--Particular Cases
10. Reapportionment
--Particular Cases
11. Retroactive Application of Statute
--Particular Cases
12. Selective Prosecution
--Particular Cases
13. Sexual Discrimination

I. Generally

The Equal Protection Clause guarantees that any government-created classification will not be based upon impermissible criteria or arbitrarily used to burden a group of individuals. U.S. Const. amend. XIV; NMI Const. art. I, § 6.

Taitano v. NMI Softball Ass'n, Civ. Action No. 93-356 (N.M.I. Super. Ct. Feb. 2, 1994) (Order Granting Defendants' Motion for Summary Judgment at 12).

1. Interpretation

The equal protection clause of the Constitution of the Northern Mariana Islands is to be given the same meaning and interpretation as the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. NMI Const. art. I, § 6.

Sablan v. Board of Elections, 1 CR 741 (Dist. Ct. App. Div. 1983).

Court must give equal protection clause of the Commonwealth Constitution the same meaning and interpretation as the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. NMI Const. art. I, § 6.

Taitano v. NMI Softball Ass'n, Civ. Action No. 93-356 (N.M.I. Super. Ct. Feb. 2, 1994) (Order Granting Defendants' Motion for Summary Judgment at 12).

2. Prima Facie Case

A viable equal protection claim requires that the plaintiff either belong to a suspect classification or have suffered an infringement of a fundamental right. NMI Const. art. I, § 6.

Mafnas v. Laureta, Civ. Action No. 88-696 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Plaintiff's Motion for Summary Judgment at 10).

3. State Action

The Equal Protection Clause only applies to action by the state or officials and those significantly involved with them. U.S. Const. amend. XIV; NMI Const. art. I, § 6. *Taitano v. NMI Softball Ass'n*, Civ. Action No. 93-356 (N.M.I. Super. Ct. Feb. 2, 1994) (Order Granting Defendants' Motion for Summary Judgment at 13).

When determining whether state action is implicated in suit based on asserted violation of equal protection rights, court is obliged to sift facts and weigh circumstances to determine extent of Commonwealth's non-obvious involvement in conduct of apparently private defendant. U.S. Const. amend. XIV; NMI Const. art. I, § 6.

Taitano v. NMI Softball Ass'n, Civ. Action No. 93-356 (N.M.I. Super. Ct. Feb. 2, 1994) (Order Granting Defendants' Motion for Summary Judgment at 13).

4. Governmental Interest

There is no bright line test to determine what is an important governmental interest; it is one that falls within a continuum of interests ranging from very important interests, like protecting the welfare of the citizenry, to interests of minimal importance, like regulating sex between consenting adults. U.S. Const. amend. XIV; NMI Const. art. I, § 6.

Kin v. Commonwealth, 3 CR 608 (Dist. Ct. 1989).

5. Rational Basis

State action that does not employ suspect classifications or impinge on fundamental rights must be upheld against equal protection attack when the means employed is rationally related to a legitimate government purpose. U.S. Const. amend. XIV; NMI Const. art. I, § 6.

Taitano v. NMI Softball Ass'n, Civ. Action No. 93-356 (N.M.I. Super. Ct. Feb. 2, 1994) (Order Granting Defendants' Motion for Summary Judgment at 15).

The Fourteenth Amendment to the U.S. Constitution allows the state to act within a wide scope of discretion, and statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it under rational basis analysis. NMI Const. art. I, § 6.

Taitano v. NMI Softball Ass'n, Civ. Action No.

Art. I, § 6

93-356 (N.M.I. Super. Ct. Feb. 2, 1994) (Order Granting Defendants' Motion for Summary Judgment at 16).

In rational basis analysis, when the record is void of any indication that a classification is invidious and valid reasons for the classification appear to exist, a court cannot find the classification violative of the Equal Protection Clause of the Fourteenth Amendment. NMI Const. art. I, § 6.

Taitano v. NMI Softball Ass'n, Civ. Action No. 93-356 (N.M.I. Super. Ct. Feb. 2, 1994) (Order Granting Defendants' Motion for Summary Judgment at 17-18).

6. Intermediate Scrutiny

Intermediate standard of equal protection analysis applies in situations where classifications burden interests which, although not necessarily fundamental, are considered important, or where classifications affect a semi-suspect class. Under this review, classification must serve important governmental objectives and must be related to the achievement of those objectives. U.S. Const. amend. XIV; NMI Const. art. I, § 6.

Sirilan v. Castro, 1 CR 1082, 1125 (Dist. Ct. App. Div. 1984).

Intermediate scrutiny equal protection analysis involves five factors: (1) importance of objective justifying otherwise undesirable discrimination; (2) whether classification is substantially related to achievement of stated government interest; (3) whether justification is stated and urged in defense of classification; (4) whether justification actually provided basis on which legislation was supported; and (5) whether statute allows rebuttal in individual cases to show that application of classification will not achieve stated objectives. Unless it is convincingly shown to court that first four factors have been met, or that opportunity for rebuttal sufficiently saves statute, legislative classification cannot stand. U.S. Const. amend. XIV; NMI Const. art. I, § 6.

Sirilan v. Castro, 1 CR 1028, 1125-26 (Dist. Ct. App. Div. 1984).

Legislation which discriminates among non-citizens or which infringes upon important individual interests will survive constitutional review only upon a convincing, well-supported showing that the classification substantially serves to achieve important government interests. NMI Const. art. I, § 6.

Sirilan v. Castro, 1 CR 1028, 1130 (Dist. Ct. App. Div. 1984).

To pass constitutional muster under intermediate scrutiny, the challenged law must have been enacted to achieve an

important governmental interest and the means employed must have a substantial relation to the stated purpose of the law. U.S. Const. amend. XIV; NMI Const. art. I, § 6.

Kin v. Commonwealth, 3 CR 608 (Dist. Ct. 1989).

7. Strict Scrutiny

Under both the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and NMI Const. art. I, § 6, governmental classifications based on race or ancestry must be narrowly tailored and necessary to protect a compelling state interest. Classifications based on sex are likewise subject to heightened judicial scrutiny.

Commonwealth v. Liarta, Crim. Case No. 93-133 (N.M.I. Super. Ct. Jan. 20, 1994) (Decision and Order on Defendant's Motion to Dismiss Information at 18-19).

Under NMI Const. art. I, § 6, gender classifications are subjected to the same strict scrutiny test used for racial classifications.

Commonwealth v. Liarta, Crim. Case No. 93-133 (N.M.I. Super. Ct. Jan. 20, 1994) (Decision and Order on Defendant's Motion to Dismiss Information at 19, n.6).

II. Applications

1. Alienage

A classification based on alienage is suspect. NMI Const. art. I, § 6.

Sirilan v. Castro, 1 CR 1082, 1121 (Dist. Ct. App. Div. 1984).

2. Athletics

—Particular Cases

In opposing summary judgment proceeding, plaintiff challenging amateur softball association rule on basis of alleged equal protection violation met threshold state action requirement by claiming that (1) association received government discounts on playing field user fees, (2) to extent that fields were used by association they were unavailable to general public, (3) government paid for additions to playing field that were not entirely funded by user fees, and (4) based on federal Equal Protection Clause analysis, private athletic league could take on semi-official character in public consciousness tantamount to state action where fields were designed to league specifications and occupied by league most of the time. U.S. Const. amend. XIV; NMI Const. art. I, § 6.

Taitano v. NMI Softball Ass'n, Civ. Action No.

Art. I, § 6

93-356 (N.M.I. Super. Ct. Feb. 2, 1994) (Order Granting Defendants' Motion for Summary Judgment at 13-14).

Because plaintiff challenging amateur softball association rule prohibiting players competing in baseball league from competing in association league failed to present evidence of invidious or arbitrary conduct on part of softball association, and court could find that challenged rule bore rational relationship to legitimate state interest, classification within rule did not violate equal protection guarantee. U.S. Const. amend. XIV; NMI Const. art. I, § 6.

Taitano v. NMI Softball Ass'n, Civ. Action No. 93-356 (N.M.I. Super. Ct. Feb. 2, 1994) (Order Granting Defendants' Motion for Summary Judgment at 15-18).

3. Domicile

Provision of permanent residency law stating that persons who before effective date of Commonwealth Constitution were present in the Commonwealth through work or other temporary permit were not domiciled in NMI violated equal protection guarantees of Commonwealth Constitution and Trust Territory Code. 1 CMC § 6203(f) [DL 5-19, § 6(c)(6)]; 1 TTC § 7; NMI Const. art. I, § 6.

Pablo v. Board of Elections, 1 CR 381 (Trial Ct. 1983).

4. Illegitimate Children

—Particular Cases

Eight CMC § 1707 of Uniform Parentage Act, providing that action to determine existence of father and child relationship may not be brought more than three years after child reaches age of majority (18 years) did not bar claims of illegitimate children to father's estate simply because children had reached age of 21 when the Act became effective in 1985. Because: (1) it would be violation of due process under NMI Const. art. I, § 5 to preclude, by statute, rights of illegitimate children to claim inheritance under such circumstances; (2) NMI probate code contains no limitation of action, and illegitimate children had not had opportunity to claim inheritance unless and until probate of their father's estate was filed; (3) Uniform Parentage Act applies prospectively, only; and (4) since, under Chamorro customary law governing inheritance rights (applicable prior to passage of Act), an illegitimate child ordinarily inherits from his or her natural father, to cut off illegitimate children's inheritance rights because they did not file paternity claim before they reached age of 21 would violate their right to equal protection of the laws under NMI Constitution. NMI Const. art. I, § 6.

In re Estate of Aldan, 2 N.M.I. 288 (1991).

5. Immigration

Right of alien to remain in Commonwealth is not so fundamental as to be implicitly protected by Commonwealth Constitution. NMI Const. art. I, § 6.

Sirilan v. Castro, 1 CR 1082, 1122 (Dist. Ct. App. Div. 1984).

Although interest of alien to remain in Commonwealth is not fundamental, aliens have significant and constitutionally protectable interest in the freedom from being torn from their chosen communities—their work, families and friends—without proof that such action serves countervailing government interests. Where government classification burdens interest, intermediate standard of review applies in equal protection analysis. NMI Const. art. I, § 6.

Sirilan v. Castro, 1 CR 1082, 1125 (Dist. Ct. App. Div. 1984).

Commonwealth legislation dealing with immigration matters is subject to an intermediate scrutiny analysis when challenged on constitutional grounds. U.S. Const. amend. XIV; NMI Const. art. I, § 6.

Kin v. Commonwealth, 3 CR 608 (Dist. Ct. 1989).

—Particular Cases

Where law immediately repealing statute authorizing grant of permanent resident permits to certain qualifying aliens: (1) was not finely tuned to balance competing government and individual interests; (2) was not supported by facts demonstrating that immediate repeal was substantially related to prevention of asserted economic and social ills; (3) significantly burdened aliens in arbitrary fashion; and (4) could not be justified by asserted ease of interpretation and enforcement, law violated equal protection guarantee. 3 CMC § 4202 [PL 2-17, §2]; NMI Const. art. I, § 6.

Sirilan v. Castro, 1 CR 1082, 1127-30 (Dist. Ct. App. Div. 1984).

Law requiring immediate relatives of non-resident workers to depart from Commonwealth if their sponsor earned less than \$20,000 had no relation to control and regulation of non-resident alien workers because it controlled and regulated their immediate relatives, not what the law was intended to do; nor did law fulfill its second articulated purpose, to facilitate local participation in the management of local businesses. Therefore, law would be struck down under equal protection clauses of both the United States and Commonwealth Constitutions. 3 CMC § 4437(f) [PL 5-32, § 11(c)]; U.S. Const. amend. XIV; NMI Const. art. I, § 6.

Art. I, § 6

Kin v. Commonwealth, 3 CR 608 (Dist. Ct. 1989).

6. Land Alienation Restriction

NMI Const. art. XII, restricting acquisition of permanent and long-term interests in land in the NMI to persons of NMI descent, does not violate equal protection guarantee in NMI Constitution. NMI Const. art. I, § 6.

Ferreira v. Borja, 2 N.M.I. 514 (1992),
vacated, 1 F.3d 960 (9th Cir. 1993).

NMI Constitutional restriction on the alienation of land based on the traditions, the cultures, the importance of the ownership of land and the potential for exploitation by more powerful economic sources can withstand scrutiny under the equal protection provision of the Fourteenth Amendment and the restriction is a fair and reasonable result of the direction and authority of the U.S. Congress. U.S. Const. art. IV, § 3, cl. 2; U.S. Const. amend. XIV; NMI Const. art. 1, § 6.

Wabol v. Muna, 2 CR 231 (Trial Ct. 1985),
rev'd in part, 2 CR 963 (Dist. Ct. App. Div. 1987),
aff'd sub nom., *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990),
cert. den. sub nom., *Philippine Goods, Inc. v. Wabol*, --- U.S. ---,
113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

7. Marital Property

By virtue of the prohibition on discrimination based on sex under art. I, § 6 of the NMI Constitution, the abolition of the common law principles under which married women have no interest in property acquired during marriage, and Chamorro custom, both husband and wife have an ownership interest in any property acquired during marriage unless it is shown that such property belongs solely to one party. Upon divorce, this "marital property" is subject to equitable distribution under 8 CMC § 1311.

Ada v. Sablan, 1 N.M.I. 415 (1990).

—Particular Cases

Antiquated common law principles under which married women have no interest in property acquired during marriage discriminate on the basis of sex; NMI Supreme Court could not find any compelling state interest to justify their application as NMI rules of decision. Trial court erred in applying them. NMI Const. art. I, § 6.

Ada v. Sablan, 1 N.M.I. 415 (1990).

8. Nonresident Workers

Controlling and regulating nonresident workers is an important governmental interest and advancing

participation of local workers in management aspects of industry is also an important governmental interest. U.S. Const. amend. XIV; NMI Const. art. I, § 6.

Kin v. Commonwealth, 3 CR 608 (Dist. Ct. 1989).

9. Racial Discrimination

Statutes need not expressly refer to race in order to be racially discriminatory. Even a law which is neutral on its face and which serves some legitimate purpose is invalidated where there is proof that racial discrimination was the primary—or "but for"—motivation for the law's enactment. U.S. Const. amend. XIV; NMI Const. art. I, § 6.

Commonwealth v. Liarta, Crim. Case No. 93-133 (N.M.I. Super. Ct. Jan. 20, 1994)
(Decision and Order on Defendant's Motion to Dismiss Information at 19-20).

Fourteenth Amendment to U.S. Constitution's prohibition of race discrimination is among rights deemed fundamental in the sense of being the basis of all free government. NMI Const. art. I, § 6.

Commonwealth v. Liarta, Crim. Case No. 93-133 (N.M.I. Super. Ct. Jan. 20, 1994)
(Decision and Order on Defendant's Motion to Dismiss Information at 21).

—Particular Cases

Where anti-prostitution law provided that person could not be convicted of permitting prostitution solely upon uncorroborated testimony of person whose prostitution activity he or she was alleged to have advanced, and legislative history of provision indicated that it was intended to protect an innocent landowner from frivolous or malicious allegations of permitting prostitution on his or her property, given fact that land ownership is limited to persons of Northern Marianas descent by NMI Const. art. XII, provision was unconstitutional because it effectively discriminated on basis of race without being necessary to protect a compelling state interest. 6 CMC § 1347 [PL 8-14, § 8]; U.S. Const. amend. XIV; NMI Const. art. I, § 6.

Commonwealth v. Liarta, Crim. Case No. 93-133 (N.M.I. Super. Ct. Jan. 20, 1994)
(Decision and Order on Defendant's Motion to Dismiss Information at 19-22).

10. Reapportionment

A fundamental principle of equal protection is that each person's vote be given equal weight in the election of representatives, i.e., "one person, one vote," and this requires that election districts be of nearly equal

Art. I, § 6

population, such that no person's vote is given less weight. NMI Const. art. I, § 6.

Sablan v. Board of Elections, 1 CR 741 (Dist. Ct. App. Div. 1983).

Some deviations from population equality may be consistent with the demand of the equal protection clause where necessary to pursue other legitimate objectives such as maintaining the integrity of political subdivisions and providing for compact and contiguous districts. NMI Const. art. I, § 6.

Sablan v. Board of Elections, 1 CR 741 (Dist. Ct. App. Div. 1983).

-Particular Cases

Court would not strike down law providing for district elections although there were variances from equal populations among districts and place in its stead an at-large system where people of NMI considered an at-large system and chose district representation instead, and where at-large system had come into disrepute due to its glaring faults, and where there was no evidence of invidious discrimination or bad faith in design of law. 1 CMC §§ 1501-1503 [PL 3-78]; NMI Const. art. I, § 6.

Sablan v. Board of Elections, 1 CR 741 (Dist. Ct. App. Div. 1983).

Legislature's interest in preserving the cultural traditions of Saipan by preserving to the greatest extent possible political subdivisions and in protecting the interests of minority Carolinian population provided adequate justification for statistical deviations from "one person one vote" rule. 1 CMC §§ 1501-1503 [PL 3-78]; NMI Const. art. I, § 6.

Sablan v. Board of Elections, 1 CR 741 (Dist. Ct. App. Div. 1983).

Taken in conjunction with constitutionally-mandated constraints: (1) that number of representatives not exceed 20, and (2) that districts be compact and contiguous; and given inherent limitations imposed by separation of islands and distribution of population in the Commonwealth, variances relating to public law enacting reapportionment scheme were well within constitutionally permissible level and did not violate equal protection requirement of "one person, one vote." 1 CMC §§ 1501-1503 [PL 3-78]; NMI Const. art. I, § 6.

Sablan v. Board of Elections, 1 CR 741 (Dist. Ct. App. Div. 1983).

11. Retroactive Application of Statute

-Particular Cases

In action challenging validity of land transaction under

NMI Const. art. XII, restricting ownership of long-term interests in real property to persons of NMI descent, claim by plaintiff that retroactive application of statute calling for automatic enforcement of severability clauses in agreements transgressing NMI Const. art. XII violated his equal protection rights because it was designed to discriminate against NMI Const. art. XII plaintiffs failed because plaintiff was neither within suspect classification nor infringed of fundamental right. 2 CMC § 4982(c); U.S. Const. amend. XIV; NMI Const. art. I, § 6.

Mafnas v. Laureta, Civ. Action No. 88-696 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Plaintiff's Motion for Summary Judgment at 10-11).

12. Selective Prosecution

Selective prosecution claims are judged on ordinary equal protection standards. In order to succeed on a claim of selective prosecution, a defendant must demonstrate two facts: that persons similarly situated have not been prosecuted, and that the decision to prosecute was made on the basis of an unjustifiable standard such as race, or that the prosecution was intended to prevent her exercise of a fundamental right. The defendant bears the burden of proof for both of these factors. U.S. Const. amend. XIV; NMI Const. art. I, § 6.

Commonwealth v. Liarta, Crim. Case No. 93-133 (N.M.I. Super. Ct. Jan. 20, 1994) (Decision and Order on Defendant's Motion to Dismiss Information at 23).

-Particular Cases

Although 16 defendants prosecuted under anti-prostitution law were all (save one) female and none were persons of Northern Marianas descent or Caucasian, selective prosecution claim would be rejected based on evidence that: (1) investigatory difficulties prevented arrest and prosecution of women of Northern Marianas descent, Caucasian women and male clients, (2) government had initially focused enforcement efforts on those profiting from prostitution rather than those providing its market, and (3) enforcement of prostitution ban was in its initial stage. 6 CMC § 1341 et seq. [PL 8-14]; U.S. Const. amend. XIV; NMI Const. art. I, § 6.

Commonwealth v. Liarta, Crim. Case No. 93-133 (N.M.I. Super. Ct. Jan. 20, 1994) (Decision and Order on Defendant's Motion to Dismiss Information at 23-25).

13. Sexual Discrimination

Because NMI Const. art. I, § 6 expressly prohibits discrimination based on sex, any discrimination based thereon is suspect and must withstand strict judicial

scrutiny. Unless justified by a compelling state interest, it is invalid.

Ada v. Sablan, 1 N.M.I. 415 (1990).

Section 7: Quartering Soldiers. No soldier in time of peace may be quartered in any house without the consent of the owner, nor in time of war except as provided by law.

History: Ratified 1977, effective 1978.

Comment: One provision of the U.S. Constitution applicable within the Northern Mariana Islands pursuant to Covenant § 501(a) is the Third Amendment: "[n]o Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law." According to the *Analysis*, this section "is taken from" that provision, and "[n]o substantive change from the Third Amendment or the interpretation of that Amendment by the United States Supreme Court is intended." *Id.* at 22-23.

Section 8: Trial by Jury. The legislature may provide for trial by jury in criminal or civil cases.

History: Ratified 1977, effective 1978.

Related Commonwealth Code Sections: *See generally* 7 CMC § 3101; *see also* 6 CMC § 2150 (right to jury trial in certain criminal prosecutions involving potential property forfeiture); 7 CMC §§ 2253 (no right to jury in actions against Commonwealth) and 2214 (waiver of jury bar by Commonwealth); and 8 CMC § 1714 (no right to jury in paternity actions).

Scholarly Article: *See* J. McShane, *Is the Jury System Suitable for the Commonwealth of the Northern Mariana Islands?*, 34 POL. SCI. 66 (1982).

Comment: Covenant § 501(a) provides that "neither trial by jury nor indictment by grand jury shall be required in any civil action or criminal prosecution based on local law, except where required by local law." According to the *Section by Section Analysis of the Covenant to Establish a Commonwealth of the Northern Mariana Islands* (hereinafter *Covenant Analysis*; see introduction):

This is a matter left entirely to the local legislature and the Northern Marianas Constitution. . . . This . . . flexibility permits the local legislature to mold the procedures to fit local conditions and experience. . . . Federal cases, however, will have to be tried before juries when required under federal law.

Id. at 46.

In *Commonwealth of the Northern Mariana Islands v. Magofna*, 919 F.2d 103 (9th Cir. 1990) (see *Notes of Decisions*, below), the U.S. Ninth Circuit Court of Appeals considered the legislative history of article I, § 8:

In 1976, the [constitutional convention] considered adopting a constitutional amendment guaranteeing the right to trial by jury in the NMI. The committee debate which considered and rejected the amendment contains the most explicit statement of the policy concerns surrounding jury trials:

The Committee does not want to guarantee the right to trial by jury in all cases in the Northern Mariana Islands because of the expenses associated with juries, the difficulty of finding jurors unacquainted with the facts of a case, and the fear that the small, closely-knit population in the Northern Mariana Islands might lead to acquittals of guilty persons in criminal cases. Nonetheless, the Committee believes that in some cases, especially those where defendants face serious criminal charges and long terms of imprisonment, the right to jury trial should be guaranteed.

Report No. 4 of the Committee on Personal Rights and Natural Resources (Oct. 29, 1976), reprinted in Vol. II, *Journal of the Northern Mariana Islands Constitutional Convention* 506 (1976).

Art. I, § 8

Magofna, 919 F.2d at 106.

The District Court's ruling in *Fleming v. Dept. of Public Safety*, 2 CR 308 (Dist. Ct. 1985), *rev'd*, 837 F.2d 401 (9th Cir. 1988), *cert. den.* 488 U.S. 889, 109 S.Ct. 222, 102 L.Ed.2d 212 (1988) (see **Notes of Decisions**, below), to the effect that actions enforcing federal statutory rights carry with them the right to jury trial was reversed on other grounds.

Notes of Decisions

1. Generally (Dist. Ct. 1985), *rev'd*, 837 F.2d 401 (9th Cir. 1988), *cert. den.*, 488 U.S. 889, 109 S.Ct. 222, 102 L.Ed.2d 212 (1988).
2. U.S. Constitutional Challenge
3. Federal Statutory Actions
4. Multiple Charges

1. Generally

Under Covenant § 501 and NMI Const. art. I, § 8, only the NMI Legislature has the authority to make the right to a jury trial the same as in the continental United States.

Commonwealth v. Peters, 1 N.M.I. 466 (1991).

Right to trial by jury in the Commonwealth is statutory, not constitutional. NMI Const. art. I, § 8.

Santos v. Santos, Civ. Action No. 89-1008 (N.M.I. Super. Ct. Mar. 26, 1992) (Order at 2).

2. U.S. Constitutional Challenge

Neither Covenant § 501, authorizing jury right in cases based on local law to be determined by local law, nor 5 TTC § 501(1), providing jury right in criminal cases only for offenses punishable by more than five years imprisonment or \$2,000 fine, violate either U.S. Const. amend. VI right to jury trial or U.S. Const. amend. XIV Due Process Clause.

Commonwealth of the Northern Mariana Islands v. Atalig, 723 F.2d 682 (9th Cir. 1984), *cert. den.*, 467 U.S. 1244, 104 S.Ct. 3518, 82 L.Ed.2d 826 (1984)

Sixth Amendment right to jury trial applies in the Commonwealth and any contrary provision of the Covenant is unconstitutional to the extent that it denies that right. 5 TTC § 501; Covenant § 501; U.S. Const. amend. VI.

Commonwealth v. Atalig, 1 CR 552 (Dist. Ct. App. Div. 1983), *rev'd*, 723 F.2d 682 (9th Cir. 1984), *cert. den.*, 467 U.S. 1244, 104 S.Ct. 3518, 82 L.Ed.2d 826 (1984).

3. Federal Statutory Actions

Actions enforcing federal statutory rights carry with them the right to jury trial in the Commonwealth. U.S. Const. amend. VII.

Fleming v. Dept. of Public Safety, 2 CR 308

The statutory bar to jury trials against the Commonwealth government does not prevent a plaintiff from exercising his or her right to jury trial under the Seventh Amendment in an action under the federal Civil Rights Act. 7 CMC § 3101(b); 42 U.S.C. § 1983; Covenant § 102; U.S. Const. amend. VII.

Fleming v. Dept. of Public Safety, 2 CR 133 (Dist. Ct. 1985), *rev'd*, 837 F.2d 401 (9th Cir. 1988), *cert. den.*, 488 U.S. 889, 109 S.Ct. 222, 102 L.Ed.2d 212 (1988).

4. Multiple Charges

Commonwealth statute providing jury right in criminal cases only for offenses punishable by more than five years imprisonment or \$2,000 fine did not require all charges to be submitted to jury if any one charge entitled defendant to jury trial. Statute means that when trial by jury is required on one count, it shall be on that count only. 7 CMC § 3101.

Commonwealth of the Northern Mariana Islands v. Magofna, 919 F.2d 103 (9th Cir. 1990).

Art. I, § 9

Section 9: Clean and Healthful Environment. Each person has the right to a clean and healthful public environment in all areas, including the land, air, and water. Harmful and unnecessary noise pollution, and the storage of nuclear or radioactive material and the dumping or storage of any type of nuclear waste within the surface or submerged lands and waters of the Northern Mariana Islands, are prohibited except as provided by law.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 1. This section originally provided: "[e]ach person has the right to a clean and healthful public environment."

Cross Reference: See article XIV (natural resources).

Related Commonwealth Code Sections: See 2 CMC § 3101 et seq., as amended by Executive Order 94-3 (Commonwealth Environmental Protection Act); see also 1 CMC § 1402 (local laws), 1 CMC § 2605, as amended by Executive Order 94-3, § 105 (regulatory authority of Department of Public Health), 2 CMC § 1301 et seq., as amended by Executive Order 94-3 (Commonwealth Nuclear and Chemical Free Zone Act), and 2 CMC § 1501 et seq., as amended by Executive Order 94-3 (Coastal Resources Management Act of 1983).

Comment: "This section permits a public or private cause of action to enjoin activities that adversely affect the environment in ways prohibited by this section and to recover damages for injuries sustained." *Analysis* (concerning the original language) at 24.

Notes of Decisions

1. Generally
2. Actions
--Particular Cases

1. Generally

NMI Const. art. I, § 9, guaranteeing each person's right to clean and healthful public environment, is self-executing.

Torres v. Marianas Pub. Land Corp., 3 N.M.I. 484 (1993).

NMI Const. art. I, § 9, granting NMI citizens right to a clean and healthful public environment, is self-executing.

Govendo v. Marianas Pub. Land Corp., 2 N.M.I. 482 (1992).

2. Actions

All persons affected in Commonwealth have constitutional right to a clean and healthful public environment within the Commonwealth. Substances, objects or harmful and unnecessary noise pollution may not be added to or cast upon the air or water by government or private activities that adversely affect the cleanliness of the air, land or water. If this right is violated by either a private person, private entity or a government agency, then a private person or the government may bring an action to enjoin such violation and recover damages for injuries sustained. NMI Const. art. I, § 9.

Govendo v. Marianas Pub. Land Corp., 2 N.M.I. 482 (1992).

A proposed government or private activity which, if allowed, would adversely and unconstitutionally affect the cleanliness of the air, land or water may be enjoined. NMI Const. art. I, § 9.

Govendo v. Marianas Pub. Land Corp., 2 N.M.I. 482 (1992).

--Particular Cases

Complaint alleging that construction and operation of hotel by developer would result in adverse environmental impact, violating plaintiff's right to clean and healthful public environment guaranteed under NMI Const. art. I, § 9, stated cause of action sufficient to withstand Com.R.Civ.P. 12(b)(6) motion to dismiss for failure to state a claim.

Torres v. Marianas Pub. Land Corp., 3 N.M.I. 484 (1993).

Although NMI Coastal Resources Management Office would have to grant development permit before hotel could be erected, agency's permitting authority did not preempt trial court from considering in advance whether project would have unremediable impact on environment. NMI Const. art. I, § 9.

Torres v. Marianas Pub. Land Corp., 3 N.M.I. 484 (1993).

Art. I, § 10

Section 10: Privacy. The right of individual privacy shall not be infringed except upon a showing of compelling interest.

History: Ratified 1977, effective 1978.

Cross Reference: See article I, § 3 (search and seizure).

Related Commonwealth Code Sections: See 1 CMC §§ 9903, 9912, 9917 and 9918 (limitation on public access to government meetings and records to protect right of privacy); 1 CMC § 9918 and 4 CMC § 1812 (privacy of tax reports and returns); 4 CMC §§ 6453 and 6454 (privacy of financial information in banks); and 7 CMC §§ 2411 and 2412 (action for invasion of privacy).

Scholarly Article: See Keith Highet, George Kahale III and William S. Fields, *International Decision*, 88 AM. J. INT'L L. 337 (1994) (concerning U.S. Ninth Circuit Court of Appeals decision cited in comment, below).

Comment: With respect to this section, the *Analysis* notes: "[a]ny time an individual believes his or her privacy has been intruded upon, that individual has a right to seek judicial action stopping the intrusion, preventing future intrusions of the same kind, and granting compensation for the harm caused by the intrusion." *Id.* at 25-26.

The ruling in *Sablan v. Inos*, 2 N.M.I. 388 (1991) (see **Notes of Decisions**, below), was effectively reversed in *United States ex rel. Richards v. Guerrero*, 4 F.3d 749 (9th Cir. 1993) (enforcement of administrative subpoena compelling production of individual tax returns did not impermissibly intrude upon Commonwealth internal affairs and was proper based on substantial interest of federal government).

Notes of Decisions

Government Records

—Particular Cases

Commonwealth taxpayers seeking to enjoin NMI Director of Finance from disclosing confidential tax documents and related information to Inspector General of U.S. Department of the Interior had right to privacy in returns under NMI Const. art. I, § 10. Since information in returns was property of taxpayers, only taxpayers had right to authorize release of information.

Sablan v. Inos, 2 N.M.I. 388 (1991).

Section 11: Victims of Crime. The right of the people to be secure in their persons, houses, and belongings against crime shall be recognized at sentencing. Restitution to the crime victim shall be a condition of probation and parole except upon a showing of compelling interest.

History: Adopted 1985 by Amendment 2.

Cross Reference: See article I, § 4 (rights in criminal proceedings).

Related Commonwealth Code Sections: See generally 6 CMC § 4109 (restitution or compensation to victim, property forfeiture to government); see also 6 CMC § 4101 (alternative sentencing may include restitution to victim).

Section 12: Abortion. The abortion of the unborn child during the mother's pregnancy is prohibited in the Commonwealth of the Northern Mariana Islands, except as provided by law.

Art. II, § 1

History: Adopted 1985 by Amendment 3.

Comment: According to Amendment 3's title, it sought to "mak[e] abortion illegal in the Northern Mariana Islands."

ARTICLE II: LEGISLATIVE BRANCH

Section 1: Legislative Power. The legislative power of the Commonwealth shall extend to all rightful subjects of legislation and shall be vested in a Northern Marianas Commonwealth legislature composed of a senate and a house of representatives.

History: Ratified 1977, effective 1978.

Textual Irregularity: Failure to capitalize "legislature" in "Northern Marianas Commonwealth legislature" (compare article II, § 17).

Cross References: *See*, for legislative authority, article II, § 3(a) (increase in membership of house of representatives), article II, § 4 (reapportionment and redistricting), article II, § 5 (appropriation and revenue bills), article II, § 6 (local laws), article III, § 11 (senate confirmation of attorney general appointee), article III, § 12 (confirmation of public auditor appointee by each house), article III, § 14 (senate confirmation of executive branch department heads), article III, § 15 (reallocation of executive branch agencies and alteration of duties), article IV, § 2 (determination of number of trial court judges), article IV, § 3 (authority to establish appeals court), article IV, § 4 (senate confirmation of judges), article IV, § 5 (compensation of judges), article IV, § 8 (disapproval of proposed judicial rules), article VII, § 1 (citizenship qualification for voters), article VII, § 3 (domicile and residence criteria for voters), article VIII, § 3 (election procedures), article X, § 1 (definition of public purpose regarding taxation), article X § 3 (public debt authorization), article X, § 7 (government employment ceiling), article XI, § 2 (management and disposition of submerged lands), article XI, § 6 (authorization of Marianas development bank), article XII, § 6 (enforcement of land alienation restriction with respect to corporations), article XIII, § 1 (eminent domain standards), article XIV, § 1 (management and preservation of marine resources), article XIV, § 2 (specification of protected, uninhabited islands), article XIV, § 3 (preservation of cultural and historical sites and artifacts), article XV, § 1 (operations and duties of board of education), article XV, § 2 (composition, operations and duties of Northern Marianas College Board of Regents), article XVI, § 1 (regulation of corporations), article XVIII, § 2 (proposing or affirming proposal of constitutional convention), article XVIII, § 3 (constitutional amendment proposed by legislative initiative), article XIX, § 1 (specification of terms of code of ethics), article XXI, § 1 (exemptions to gambling prohibition), and article XXII, § 3 (regulations concerning official languages).

Related Commonwealth Code Sections: *See generally* 1 CMC § 1101 et seq. (1 CMC, Div. 1, legislative branch).

Comment: Covenant § 203(a) provides, in part: "[t]he Constitution [of the Northern Mariana Islands] will provide for a republican form of government with separate executive, legislative and judicial branches" Covenant § 203(c) provides, in part: "[t]he legislative power of the Northern Mariana Islands will be vested in a popularly elected legislature and will extend to all rightful subjects of legislation." According to the *Analysis*:

The phrase "all rightful subjects of legislation" gives the legislature a general grant of power to pass laws on any subject. The same phrase was used in the Covenant and its repetition here reflects the intention of the delegates to give the legislature the broadest possible grant of legislative authority. It includes the authority to pass general laws that apply throughout the Commonwealth, special laws that apply to particular individuals or entities, and local laws that apply to particular localities. The power to pass laws is limited only by the Covenant, the provisions of the United States Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands, and by other articles of this Constitution.

Id. at 27.

Notes of Decisions

Generally

Commonwealth Constitution contains no authorization for one house of the legislature to act unilaterally, outside of

Art. II, § 2

the senate's traditional role of confirming executive nominations.

Marianas Visitors Bureau v. Commonwealth, Civ. Action No. 94-516 (N.M.I. Super. Ct. June 23, 1994) (Memorandum Decision and Judgment at 37).

Section 2: Composition of the Senate.

a) The senate shall consist of nine members with three members elected at large from each of three senatorial districts. The first senatorial district shall consist of Rota, the second senatorial district shall consist of Tinian and Aguiguan, and the third senatorial district shall consist of Saipan and the islands north of it. The senate shall be increased to twelve members and three members shall be elected at large from a fourth senatorial district consisting of the islands north of Saipan at the first regular general election after the population of these islands exceeds one thousand persons.

b) The term of office for senator shall be four years except that the candidate receiving the third highest number of votes in the first election in each senatorial district shall serve a term of two years.

c) A senator shall be qualified to vote in the Commonwealth, at least twenty-five years of age, and a resident and domiciliary of the Commonwealth for at least five years immediately preceding the date on which the senator takes office. A longer residency and domicile requirement may be provided by law.

d) A candidate for the senate shall be a registered voter in the senatorial district where he or she is a candidate.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 4. Amendment 4 added subsection (d). Amendment 4 also amended article II, § 3 (next section) to impose a similar requirement for candidates for the house of representatives.

Cross References: See article II, § 14 (each house final judge of election and qualification of members) and article VII (eligibility to vote).

Related Commonwealth Code Sections: See generally 1 CMC § 1102; see also 1 CMC §§ 6332 and 6334 (nomination of candidates), 1 CMC § 6341 (campaign financing disclosure), and 1 CMC § 6421 et seq. (election contests).

Scholarly Articles: See James A. Branch, Jr., *The Constitution of the Northern Mariana Islands: Does a Different Cultural Setting Justify Different Constitutional Standards?*, 9 J. Int'l L. & Pol'y 35 (1980); and Howard P. Willens & Deanne C. Siemer, *The Constitution of the Northern Mariana Islands: Constitutional Principles and Innovation in a Pacific Setting*, 65 Geo. L.J. 1373 (1977).

Comment: Covenant § 203(c) provides, in part: "[t]he Constitution of the Northern Mariana Islands will provide for equal representation for each of the chartered municipalities of the Northern Mariana Islands in one house of a bicameral legislature, notwithstanding other provisions of this Covenant or those provisions of the Constitution or laws of the United States applicable to the Northern Mariana Islands." According to the *Covenant Analysis*:

The establishment of the commonwealth involves compromise and concessions which reflect the different historical and geographic interests of the major islands in the Northern Marianas group, as well as population.

Art. II, § 2

[Covenant § 203(c)] will require the Northern Marianas to have a two-house legislature analogous to the Congress of the United States. If this sentence were not included, Tinian and Rota would be limited to representation in the new commonwealth which is based entirely on population. The [Marianas Political Status] Commission concluded that, in light of the past experience of the people of Tinian and Rota and the need for their support of the Covenant, the protection afforded them by Section 203(c) was entirely appropriate and desirable. If the people do not approve such a distribution of the membership of the legislature in the Constitution of the Northern Mariana Islands after the Covenant has been approved by both parties, it would be necessary to obtain the approval of the Congress of the United States to any revision of Section 203(c), since it is covered by the mutual consent provision of the Covenant [§ 105].

Id. at 25-26. According the *Analysis* of the Constitution:

The composition of the senate fails to meet the strict standard of one man-one vote imposed by *Reynolds v. Sims*, 377 U.S. 533 (1964). Nonetheless, this form of representation does not violate the Equal Protection Clause of the Fourteenth Amendment.

The requirement of a bicameral legislative branch reflected in the Covenant was worked out in negotiations between the Marianas Political Status Commission and the United States government. The Marianas Political Status Commission represented the people who would comprise the new Commonwealth. It included representatives from the islands of Rota, Saipan and Tinian. The acquiescence of the representatives and the people of Rota and Tinian was necessary to achieving agreement as to the Covenant. Article II, section 203(c) of the Covenant reflected a compromise satisfactory to all representatives that the populous island of Saipan not dominate the legislature.

Sound reasons of public policy support the constitutionality of the legislative arrangement established by the Covenant and implemented by the Constitution. First, unlike the underrepresented voters in *Reynolds v. Sims*, *supra*, the people of Saipan in the plebiscite on the Covenant freely and overwhelmingly approved the provision that gave Rota and Tinian a majority of the members in one house of the legislature. The people of Saipan relinquished the degree of control that its population alone would permit in order to achieve a form of government acceptable to all the people of the Commonwealth. This relinquishing of power was done by the people themselves and not by representatives. The form of government created in this compromise gives the people of Saipan control of the lower house on the basis of population and an equal voice in the upper house. In adopting the Covenant the Congress recognized the necessity for, and the value of, an equal apportionment of senators among the three municipalities.

Second, the islands of Rota and Tinian differ from the rural counties whose control of the Alabama legislature was held unconstitutional by the Court in *Reynolds*. Rota, Saipan and Tinian are island communities separated by ocean and characterized by different customs and history. The people of each of these islands have a substantial need to protect their traditions. The Commonwealth shares the compelling interest to safeguard each of its indigenous island-societies. An equal voice in the senate for Rota, Saipan and Tinian is the means most narrowly tailored to the realization of this objective.

Id. at 30-31.

Notes of Decisions

Generally

Like the federal government, the Commonwealth was founded on a "Great Compromise" between the islands of Saipan, Rota and Tinian, resulting in two houses of the legislature based on quite different principles of representation. In order to address concerns of the less-populated islands that they would have no voice in a legislature based on population only, drafters of Covenant established a bicameral system with a senate whose

membership would be equally divided among the three principal islands, while the house of representatives would be apportioned on a population basis.

Marianas Visitors Bureau v. Commonwealth, Civ. Action No. 94-516 (N.M.I. Super. Ct. June 23, 1994) (Memorandum Decision and Judgment at 36).

NMI Const. art. II, § 2(a) provides guarantee that each senate district be perpetually represented and have a voice

Art. II, § 3

in the senate on every measure that comes before it, whatever its nature may be.

Mafnas v. Inos, Civ. Action No. 90-031 (N.M.I. Super. Ct. Jan. 22, 1990) (Memorandum Decision on Order to Show Cause for Declaratory Relief at 17-18), *aff'd*, 1 N.M.I. 101 (1990).

Section 3: Composition of the House of Representatives.

a) The house of representatives shall consist of fourteen members with twelve members elected from Saipan and the islands north of it, one member elected from Rota and one member elected from Tinian and Aguiguan. The number of representatives may be increased by law to not more than twenty. The term of office for representative shall be two years.

b) For purposes of electing representatives Rota shall constitute one district, Tinian and Aguiguan shall constitute one district, and Saipan and the islands north of it shall constitute six districts. The legislature may change the number and boundaries of these districts only pursuant to its duties under section 4 of this article. When the population of the islands north of Saipan equals or exceeds the number of persons represented by any member of the house of representatives these islands shall constitute a separate district electing one representative.

c) A representative shall be qualified to vote in the Commonwealth, at least twenty-one years of age, and a resident and domiciliary of the Commonwealth for at least three years immediately preceding the date on which the representative takes office. A longer residency and domicile requirement may be provided by law.

d) A candidate for the house of representatives shall be a registered voter of the election precinct where he or she is a candidate.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 4. Amendment 4 added subsection (d). Amendment 4 also amended article II, § 2 (preceding section) to impose a similar requirement for candidates for the senate.

Cross References: See article II, § 4 (reapportionment or redistricting of house of representatives), article II, § 14 (each house final judge of election and qualification of members), and article VII (eligibility to vote).

Related Commonwealth Code Sections: See generally 1 CMC § 1103; see also 1 CMC § 1501 et seq. (Reapportionment Act of 1991), 1 CMC §§ 6332-6334 (nomination of candidates), 1 CMC § 6341 (campaign financing disclosure) and 1 CMC § 6421 et seq. (election contests).

Comment: According to 1 CMC § 6333, "[t]he term 'elected from' used in Article II, Section 3(a) of the Constitution relating to the election of Representatives refers to the election district in which the person or persons covered by the term are registered to vote." With respect to subsection (a), the *Analysis* notes: "[t]o the fullest extent possible, the Convention concluded that districts for the lower house should not encompass more than one island because of the difficulties in communication and transportation between islands and the different interests of separate islands." *Id.* at 33-34.

With respect to subsection (b), the *Analysis* provides:

Art. II, § 4

Some or all of the representative districts created by this section may be multi-member districts. In any district the representatives are elected at large within the district. This section requires a single vote system under which each voter has one vote for each representative to be elected. If there are three members to be elected from a district, each voter has three votes but may not cast more than one vote for a single candidate. A voter may decline to use all three votes and may vote for only two or fewer candidates. The three candidates with the highest number of votes are elected. There is no requirement that any candidate receive a majority of the votes cast. In the event of a tie between two candidates for the last seat to be filled, a run-off election would be held limited to those two candidates.

Id. at 35.

Notes of Decisions

Generally

Like the federal government, the Commonwealth was founded on a "Great Compromise" between the islands of Saipan, Rota and Tinian, resulting in two houses of the legislature based on quite different principles of representation. In order to address concerns of the less-populated islands that they would have no voice in a legislature based on population only, drafters of Covenant established a bicameral system with a senate whose membership would be equally divided among the three principal islands, while the house of representatives would be apportioned on a population basis.

Marianas Visitors Bureau v. Commonwealth, Civ. Action No. 94-516 (N.M.I. Super. Ct. June 23, 1994) (Memorandum Decision and Judgment at 36).

Section 4: Reapportionment and Redistricting.

a) At least every ten years and within one hundred twenty days following publication of the results of a decennial census, the legislature shall reapportion the seats in the house of representatives or revise the districts for electing representatives as required by changes in Commonwealth population or by law. A reapportionment or redistricting plan shall provide for contiguous and compact districts and for representation by each member of the house of representatives of approximately the same number of residents to the extent permitted by the separate islands and the distribution of population in the Commonwealth.

b) If the legislature fails to act pursuant to section 4(a), the governor shall promulgate a reapportionment or redistricting plan within one hundred twenty days after the expiration of the time for the legislature to act. The governor's plan shall be published in the same manner as an act of the legislature and upon publication shall have the force of law. Upon the petition of any person qualified to vote, the Commonwealth appeals court or the United States District Court if no Commonwealth appeals court has been created under section 3 of article IV has original and exclusive jurisdiction to review a plan and to amend it to comply with the requirements of this Constitution or to establish a plan if the governor has failed to act within the time provided.

Art. II, § 4

History: Ratified 1977, effective 1978.

Cross Reference: *See*, in addition to cited section, article II, § 3 (preceding section, composition of house of representatives).

Related Commonwealth Code Sections: *See* 1 CMC § 1501 et seq. (Reapportionment Act of 1991); *see also* 1 CMC § 2484 (censuses).

Comment: According to the *Analysis*:

[subsection (a)] does not demand that each representative represent approximately equal numbers of *voters*. There may be fluctuations in the population so that a relatively higher percentage of persons in one district are qualified to vote than in another district. Those fluctuations would not affect the requirements of this section so long as the representatives continue to represent approximately equal numbers of *residents*.

Id. at 37.

Notes of Decisions

1. Equal Protection Requirements

--Particular Cases

2. Time Limit

--Particular Cases

1. Equal Protection Requirements

A fundamental principle of equal protection is that each person's vote be given equal weight in the election of representatives, i.e., "one person, one vote," and this requires that election districts be of nearly equal population, such that no person's vote is given less weight. NMI Const. art. I, § 6.

Sablan v. Board of Elections, 1 CR 741 (Dist. Ct. App. Div. 1983).

Some deviations from population equality may be consistent with the demand of the equal protection clause where necessary to pursue other legitimate objectives such as maintaining the integrity of political subdivisions and providing for compact and contiguous districts. NMI Const. art. I, § 6.

Sablan v. Board of Elections, 1 CR 741 (Dist. Ct. App. Div. 1983).

--Particular Cases

Court would not strike down law providing for district elections although there were variances from equal populations among districts and place in its stead an at-large system where people of NMI considered an at-large system and chose district representation instead, and where at-large system had come into disrepute due to its glaring faults, and where there was no evidence of invidious discrimination or bad faith in design of law. 1 CMC §§ 1501-1503 [PL 3-78]; NMI Const. art. I, § 6.

Sablan v. Board of Elections, 1 CR 741 (Dist.

Ct. App. Div. 1983).

Legislature's interest in preserving the cultural traditions of Saipan by preserving to the greatest extent possible political subdivisions and in protecting the interests of minority Carolinian population provided adequate justification for statistical deviations from "one person one vote" rule. 1 CMC §§ 1501-1503 [PL 3-78]; NMI Const. art. I, § 6.

Sablan v. Board of Elections, 1 CR 741 (Dist. Ct. App. Div. 1983).

Taken in conjunction with constitutionally-mandated constraints: (1) that number of representatives not exceed 20, and (2) that districts be compact and contiguous; and given inherent limitations imposed by separation of islands and distribution of population in the Commonwealth, variances relating to public law enacting reapportionment scheme were well within constitutionally permissible level and did not violate equal protection requirement of "one person, one vote." 1 CMC §§ 1501-1503 [PL 3-78]; NMI Const. art. I, § 6.

Sablan v. Board of Elections, 1 CR 741 (Dist. Ct. App. Div. 1983).

2. Time Limit

The "publication" of the census referred to in the Commonwealth Constitution occurs when an official counting of the people, showing the population figures broken down into usable data (census enumeration districts), has been officially released to the public or been made available for the use of the general assembly. NMI Const. art. II, § 4.

Sablan v. Board of Elections, 1 CR 741 (Dist. Ct. App. Div. 1983).

–Particular Cases

The legislature acted well within constitutionally mandated 120-day period in enacting reapportionment scheme on September 22, 1983, where June 20, 1983, was the earliest the legislature could be held to have received the results of decennial census. 1 CMC §§ 1501-1503 [PL 3-78]; NMI Const. art. II, § 4.

Sablan v. Board of Elections, 1 CR 741 (Dist. Ct. App. Div. 1983).

Section 5: Enactment of Legislation.

a) **Appropriation and revenue bills may be introduced only in the house of representatives. Other bills may be introduced in either house of the legislature.**

b) **A bill shall be confined to one subject except bills for appropriations or bills for the codification, revision or rearrangement of existing laws. Appropriation bills shall be limited to the subject of appropriations. Legislative compliance with this subsection is a constitutional responsibility not subject to judicial review.**

c) **The legislature may not enact a law except by bill and no bill may be enacted without the approval of at least a majority of the votes cast in each house of legislature.**

d) **The legislature shall enact no law which increases the class of nonaliens, except as to those persons defined in Covenant Section 506(c).**

History: Ratified 1977, effective 1978; amended 1985 by Amendment 5. Amendment 5 added subsection (d).

Cross References: *See* article II, § 1 (general grant of legislative authority), article II, § 7 (override of governor's veto and supermajority requirement for enactment of certain bills during lame duck session), article II, § 14(b) (rules of legislative procedure), and Schedule on Transitional Matters § 8 (interim definition of citizenship).

Related Commonwealth Code Sections: *See* 1 CMC § 7201 et seq. (legislative review and approval of annual operating budget).

Comment: With respect to subsection (b), the *Analysis* notes:

The legislature has the responsibility for ensuring compliance with these rules in any way it chooses. This section expressly forbids judicial review of these matters. This means that if a bill enacted by the legislature deals with more than [one] subject it cannot be declared unconstitutional by a court.

Id. at 42.

Covenant § 506(c), to which subsection (d) refers, provides, in part:

With respect to aliens who are "immediate relatives" (as defined in Subsection 201(b) of the [Immigration and Nationality] Act) of United States citizens who are permanently residing in the Northern Mariana Islands all the provisions of the said Act will apply, commencing when a claim is made to entitlement to "immediate relative" status. A person who is certified by the Government of the Northern Mariana Islands both to have been a lawful permanent resident of the Northern Mariana Islands and to have had the "immediate relative" relationship denoted herein on the effective date of this Section [November 4, 1986, under Presidential

Art. II, § 6

Proclamation 5564] will be presumed to have been admitted to the United States for lawful permanent residence as of that date without the requirement of any of the usual procedures set forth in the said Act.

Notes of Decisions

1. Appropriations
 2. Unilateral Action
- Particular Cases

1. Appropriations

Although an allocation of funds is specifically earmarked for capital improvement projects on Rota, these funds belong to the government of the Northern Marianas and, as such, must be appropriated by legislative action as provided by the Constitution; there is no requirement that they be appropriated for Rota's use each fiscal year. Covenant §§ 702, 704; NMI Const. art. II, § 5(a).

Atalig v. Camacho, 1 CR 93 (Dist. Ct. 1980),
rev'd sub nom., Taisacan v. Camacho, 660 F.2d
411 (9th Cir. 1981).

2. Unilateral Action

Commonwealth Constitution contains no authorization for one house of the legislature to act unilaterally, outside of the senate's traditional role of confirming executive nominations.

Marianas Visitors Bureau v. Commonwealth,
Civ. Action No. 94-516 (N.M.I. Super. Ct.
June 23, 1994) (Memorandum Decision and
Judgment at 37).

--Particular Cases

Commonwealth Senate lacked power to reconsider joint resolution rejecting executive order, after resolution had been adopted by both houses and transmitted to governor, without first securing agreement of house of representatives to recall resolution from governor. Senate's failure to follow recall procedure violated NMI Const. art. II, § 5(c) and art. III, § 15, rendering subsequent senate resolution approving executive order void. Consequently, earlier joint resolution rejecting executive order remained in full force from date of transmittal to governor, and executive order--which sought to reorganize executive branch--was void.

Marianas Visitors Bureau v. Commonwealth,
Civ. Action No. 94-516 (N.M.I. Super. Ct.
June 23, 1994) (Memorandum Decision and
Judgment at 38-40).

Section 6: Local Laws. Laws that relate exclusively to local matters within one senatorial district may be enacted by the legislature or by the affirmative vote of a majority of the members representing that district. The legislature shall define the local matters that

Art. II, § 7

may be the subject of laws enacted by the members from the respective senatorial districts, laws enacted through initiative by the voters of a senatorial district under article IX, section 1, regulations promulgated by a mayor under article VI, section 3(e), or local ordinances adopted by agencies of local government established under article VI, section 6(b).

History: Ratified 1977, effective 1978.

Textual Errors: Citations to article VI, §§ 3(e) and 6(b) became incorrect after Amendment 25 was ratified in 1985. *See* article VI, §§ 3 and 6, and notes thereto.

Cross References: *See*, in addition to article IX, § 1, article XXI, § 1 (gambling authorized by local initiative).

Related Commonwealth Code Sections: *See generally* 1 CMC § 1401 et seq. (Local Law Act of 1983, defining matters that may be the subject of local laws); *see also* 6 CMC § 2227 (permitting local firearm control laws). Local laws are codified in title 10.

Comment: According to the *Analysis*: "[i]f laws passed by different levels of government should conflict, it is intended that laws passed by initiative take precedence over laws passed by the legislature, which take precedence over laws passed by delegations within the legislature, which take precedence over regulations enacted by mayors or ordinances enacted by other agencies of local governments under article VI." *Id.* at 45.

Notes of Decisions

1. Generally
2. Local Initiatives

1. Generally

If each senatorial district were to enact local laws that unilaterally carved out special exceptions from the application of Commonwealth-wide laws, the unifying thread that holds the Commonwealth together would be weakened and ultimately destroyed. To ensure that this disaster will not occur, NMI Const. art. II, § 6 empowers the Commonwealth Legislature to define the local matters that may be the subject of local laws. Acting pursuant to this grant of authority, the legislature enacted the Local Law Act of 1983. 1 CMC § 1401 et seq.

Commonwealth v. Tinian Casino Gaming Control Comm'n, 3 N.M.I. 134 (1992).

2. Local Initiatives

See Notes of Decisions to article IX, § 1.

Section 7: Action on Legislation by the Governor.

a) Every bill enacted shall be signed by the presiding officer of the house in which the bill originated and transmitted to the governor. If the governor signs the bill, it shall become law. If the governor vetoes the bill, it shall be returned to the presiding officer of each house of the legislature with a statement of the reasons for the veto. The governor may veto an item, section, or part in an appropriation bill and sign the remainder of the bill; provided that the governor may not veto an item, section, or part governing the

Art. II, § 7

manner in which an appropriation may be expended if any appropriation affected by the item, section, or part is approved.

b) The governor shall have twenty days in which to consider appropriation bills and forty days in which to consider other bills. If the governor fails either to sign or veto a bill within the applicable period, it shall become law.

c) A bill or an item, section, or part of a bill vetoed by the governor may be reconsidered by the legislature. The legislature shall have sixty days from the receipt of the governor's veto message in the house of origin of the vetoed bill, item, section or part of a bill to reconsider the vetoed legislation. If two-thirds of the members in each house vote upon reconsideration to pass the bill, item, section or part, it shall become law.

d) Any appropriation bill, or any bill affecting spending authority, government financial management, or organization of the government, enacted in the period between a regular general election and the second Monday of January of the following year shall be void unless enacted by the affirmative vote of three-fourths of the members of each house of the legislature.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 6; amended 1993 by Senate Legislative Initiative 7-1 (ratified November 6, 1993). Amendment 6 revised the last sentence of subsection (a), which originally provided: "[t]he governor may veto an item or section in an appropriation bill and sign the remainder of the bill." In addition, Amendment 6 revised subsection (c), which originally provided:

(c) A bill or item of a bill vetoed by the governor may be reconsidered by the legislature. If two-thirds of the members in each house vote upon reconsideration to pass the bill or item, it shall become law.

Finally, Amendment 6 added subsection (d). Senate Legislative Initiative 7-1 added the second sentence of subsection (c) and deleted a comma after "section" in the last sentence of subsection (c).

Textual Irregularity: Inconsistency in comma placement ("item, section, or part" and "item, section or part") in subsections (a) and (c).

Cross References: See article II, § 5 (enactment of legislation, including appropriation and revenue bills), article II, § 14(b) (rules of legislative procedure), article XVIII, § 2 (governor prohibited from vetoing legislation calling for voter approval of proposed constitutional convention), and article XVIII, § 3 (governor prohibited from vetoing legislative initiative proposing constitutional amendment).

Related Commonwealth Code Sections: See 1 CMC § 7101 et seq., as amended by Executive Order 94-3 (Planning and Budget Act of 1983).

Comment: With respect to subsection (a), the *Analysis* provides: "[t]he term 'item' as it is used in this section means a single amount appropriated for any purpose." *Id.* at 47. According to Amendment 6's title, the purpose of subsection (d) is "to prohibit certain types of bills during the period of a lame-duck legislature." According to Senate Legislative Initiative 7-1's title, it sought "to establish a time period for the Legislature to consider a bill or item, section, or part of a bill vetoed by the governor."

Notes of Decisions

Veto

line item veto authority.

The Governor of the Northern Mariana Islands possesses

Bradshaw v. Camacho, 1 CR 165 (Dist. Ct. 1981).

Art. II, § 8

The governor's veto exercise is not unlimited and will be reviewed for abuse of discretion. NMI Const. art. II, § 7.

Bradshaw v. Camacho, 1 CR 165 (Dist. Ct. 1981).

No authority is granted to the Governor of the Northern Mariana Islands which would permit him to reduce the amounts for specific items appropriated by the legislature. NMI Const. art. II, § 7.

Atalig v. Camacho, 1 CR 93 (Dist. Ct. 1980), *rev'd sub nom.*, *Taisacan v. Camacho*, 660 F.2d 411 (9th Cir. 1981).

The exercise of discretion in the area of executive veto power over appropriations is not reviewable by the judiciary since the governor's and legislature's actions, as permitted by the Constitution, are political in the generic sense.

Atalig v. Camacho, 1 CR 93 (Dist. Ct. 1980), *rev'd sub nom.*, *Taisacan v. Camacho*, 660 F.2d 411 (9th Cir. 1981).

-Particular Cases

Resident of Rota asserting that Rota citizens would be denied benefit of improved services as a result of governor's veto of Rota appropriations who failed to specify manner in which he personally had suffered concrete harm lacked standing to challenge veto.

Taisacan v. Camacho, 660 F.2d 411 (9th Cir. 1981).

Whether the executive's constitutionally-delegated line item veto authority, when used to veto appropriation for office of the public auditor, is limited by Commonwealth Constitution mandate that executive appoint a public auditor was non-justiciable political question. NMI Const. art. III, § 12.

Bradshaw v. Camacho, 1 CR 38 (Dist. Ct. 1980).

Section 8: Impeachment. The legislature may impeach those executive and judicial officers of the Commonwealth subject to impeachment under this Constitution. The house of representatives may initiate impeachment proceedings by the affirmative vote of two-thirds of its members and the senate may convict after hearing by the affirmative vote of two-thirds of its members.

History: Ratified 1977, effective 1978.

Cross References: See article III, § 19 (impeachment of governor and lieutenant governor), article III, § 23(a) (impeachment of resident executive for indigenous affairs), article IV, § 6 (impeachment of judges), article V, § 7 (impeachment of resident representative to the U.S.), and article III, § 9(c) (prohibiting governor from granting reprieve, commutation or pardon in case involving impeachment).

Art. II, § 9

Comment: Grounds for impeachment are the same for all officers subject to impeachment: treason, commission of a felony, corruption or neglect of duty. The resident representative for indigenous affairs is, in addition, subject to impeachment for "incompetence" (article III, § 23(a)). Members of the legislature are not subject to impeachment, but may be expelled by the house in which they serve for "commission of treason, a felony, breach of the peace, or violation of the rules of that house" (article II, § 14(a)). All elected public officials are subject to recall pursuant to article IX, § 3.

Section 9: Vacancy. A vacancy in the legislature shall be filled by special election if one-half or more of the term remains. If less than one-half of the term remains, the governor shall fill the vacancy by appointing the unsuccessful candidate for the office in the last election who received the largest number of votes and is willing to serve or, if no candidate is available, a person qualified for the office from the district represented.

History: Ratified 1977, effective 1978.

Cross Reference: See article VIII, § 2 (special elections).

Related Commonwealth Code Sections: See 1 CMC § 6432 (special elections set by legislature).

Comment: With respect to special elections to fill vacancies, see comment to article VIII, § 2.

Section 10: Compensation. The members of the legislature shall receive an annual salary of eight thousand dollars and reasonable allowances for expenses provided by law. The salary of members may be changed no more than once every four years and only upon the recommendation of an advisory commission established by law to make recommendations concerning the compensation of Commonwealth executive, legislative and judicial officers. No change in the salary may be made that exceeds the percentage change in an accepted composite price index for the period since the last change. An increase in salary may not apply to the legislature that enacted it.

History: Ratified 1977, effective 1978.

Cross References: See article III, § 5 (compensation of governor and lieutenant governor), article IV, § 5 (compensation of judges), article V, § 5 (compensation of resident representative to the U.S.), article VI, § 4 (compensation of mayors), and article VI, § 7(a) (compensation of municipal council members).

Related Commonwealth Code Sections: See 1 CMC § 1251 (per diem compensation), 1 CMC § 1271 (setting salary of \$39,300) and 1 CMC § 8221 (government housing for president of senate and speaker of house).

Section 11: Other Government Employment. A member of the legislature may not serve in any other Commonwealth government position including other elective office or an independent board, agency, authority or commission established by this Constitution or by Commonwealth law. A person, having been a member of the legislature, may not serve in any elective or appointive Commonwealth Government position created by statute during the term for which he or she was elected, for a period of one year following the expiration of the term during which the position was created.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 7. Amendment 7 inserted the phrase "other elective office or" after "including" in the first sentence and added the second sentence. Amendment 7 also amended article II, § 14.

Art. II, § 12

Textual Irregularity: Capitalization of "Government" in second sentence (compare, e.g., article III, § 15).

Cross References: See article III, § 6 (restriction on other government employment for governor and lieutenant governor) and article XIX, § 1 (mandating enactment of comprehensive code of ethics).

Section 12: Immunity. A member of the legislature may not be questioned in any other place for any written or oral statement in the legislature and a member of the legislature may not be subject to arrest while going to or coming from a meeting of the legislature except for commission of treason, a felony or breach of the peace.

History: Ratified 1977, effective 1978.

Section 13: Sessions. The legislature shall meet for organizational purposes on the second Monday of January in the year following the regular general election at which members of the legislature are elected and shall be a continuous body for the two years between these organizational meetings. Each house shall meet in regular sessions for no more than ninety days each year, sixty days before April 1 and thirty days after July 31 of each calendar year, and may be convened at other times for not more than ten consecutive days upon request by its presiding officer or by the governor. When meeting pursuant to a call by the governor, the legislature shall consider only those subjects described in the call.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 8. Amendment 8 revised the second sentence of this section, which originally provided: "[e]ach house shall meet in regular sessions as provided by its rules of procedure and may be convened at other times by its presiding officer or by the governor."

Cross References: See article II, § 5 (enactment of legislation), article II, § 14 (organization and procedure) and article VIII, § 4 (taking office after election).

Related Commonwealth Code Sections: See 1 CMC § 1104 (organization and procedure).

Comment: According to the *Analysis*, "[t]his section does not require the governor to specify the subjects to be considered" in a special session called by the governor; "if the governor's call does not contain any such specification, the legislature may consider any subject." *Id.* at 55.

Notes of Decisions

1. Generally
2. Organizing Session
--Particular Cases

1. Generally

The NMI Legislature is a continuously-meeting body only for two years, after which it is adjourned *sine die* and replaced by a new legislature. NMI Const. art. II, § 13.
Mafnas v. Inos, 1 N.M.I. 101 (1990).

Under NMI Const. art. II, § 13, each senate meets in session for a period of two years and is then adjourned and replaced by a new senate. The new senate is a different body from the old senate. The senate is not a continuous body but one which is of limited duration.

Mafnas v. Inos, Civ. Action No. 90-031 (N.M.I. Super. Ct. Jan. 22, 1990) (Memorandum Decision on Order to Show Cause for Declaratory Relief at 13), *aff'd*, 1 N.M.I. 101 (1990).

2. Organizing Session

For organizational purposes, the term "members" in NMI Constitution and statutes includes all nine members of the NMI Senate, not just holdover members.

Mafnas v. Inos, 1 N.M.I. 101 (1990).

All duly-elected senators regardless of tenure or status enter senate on equal footing in organizing session. NMI Const. art. I, § 13.

Art. II, § 13

Mafnas v. Inos, Civ. Action No. 90-031
(N.M.I. Super. Ct. Jan. 22, 1990)
(Memorandum Decision on Order to Show
Cause for Declaratory Relief at 13), *aff'd*, 1
N.M.I. 101 (1990).

Issuance of certificate of election to one who has qualified to the position of senator by a vote of franchised voters implicates NMI Const. art. VIII, § 4, providing that officers elected at regular general election shall take office on second Monday of January of year following year in which election was held. This constitutional directive makes it abundantly clear that there is no distinction to be made between members and members-elect of Commonwealth Senate in organizing session. 1 CMC § 6427; NMI Const. art. II, § 13.

Mafnas v. Inos, Civ. Action No. 90-031
(N.M.I. Super. Ct. Jan. 22, 1990)
(Memorandum Decision on Order to Show
Cause for Declaratory Relief at 19), *aff'd*, 1
N.M.I. 101 (1990).

--Particular Cases

Fact that certain senators-elect who had been issued certificates of election by board of elections were involved in election contests had no bearing on their right to be seated as members of Seventh Commonwealth Senate and to participate in organizational meeting and all subsequent matters. NMI Const. art. II, §13.

Mafnas v. Inos, Civ. Action No. 90-031
(N.M.I. Super. Ct. Jan. 22, 1990)
(Memorandum Decision on Order to Show
Cause for Declaratory Relief at 24), *aff'd*, 1
N.M.I. 101 (1990).

Organizing session that did not comprise a majority of the members of Seventh Commonwealth Senate (a quorum under common law) acted without authority and any resolution or vote by those in attendance was without effect.

Mafnas v. Inos, Civ. Action No. 90-031
(N.M.I. Super. Ct. Jan. 22, 1990)
(Memorandum Decision on Order to Show
Cause for Declaratory Relief at 25-26), *aff'd*, 1
N.M.I. 101 (1990).

Procedures used and method by which they were adopted by quorum of members of Seventh Commonwealth Senate in organizing session were within exclusive province of senate, beyond judicial inquiry.

Mafnas v. Inos, Civ. Action No. 90-031
(N.M.I. Super. Ct. Jan. 22, 1990)
(Memorandum Decision on Order to Show
Cause for Declaratory Relief at 26), *aff'd*, 1
N.M.I. 101 (1990).

Section 14: Organization and Procedures.

(a) Each house of the legislature shall be the final judge of the election and qualifications of its members and the legislature may vest in the courts the jurisdiction to determine contested elections of members. Each house may compel the attendance of absent members, discipline its members and, by the affirmative vote of three-fourths of its members, expel a member for commission of treason, a felony, breach of the peace, or violation of the rules of that house.

b) Each house of the legislature shall choose its presiding officer from among its members, establish the committees necessary for the conduct of its business, and promulgate rules of procedure. Each house may compel the attendance and testimony of witnesses and the production of books and papers before the house or its committees. The legislature shall keep a journal of its proceedings that shall be published from day to day.

c) The meetings of the legislature and its committees shall be public except that each house of the legislature or a legislative committee may meet in executive session if authorized by the affirmative vote of two-thirds of the members of the house. Final action on any legislative matter may not be taken in executive session.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 7. Amendment 7 revised the second sentence of subsection (a) by inserting "and, by the affirmative vote three-fourths of its members" after "discipline its members." Amendment 7 also amended article II, § 11 to prohibit legislators from serving in any other elective office.

Cross Reference: See article II, § 5 (enactment of legislation).

Related Commonwealth Code Sections: See 1 CMC § 1104 (organization and procedure), 1 CMC § 1105 (election of officers), 1 CMC § 1301 et seq. (investigative authority, including subpoena powers), and 1 CMC § 6421 et seq. (election contests).

Comment: According to Amendment 7's title, the amendment to subsection (a) related to "the vote required to expel a member of the Legislature."

All elected public officials, including legislators, are subject to recall pursuant to NMI Const. art. IX, § 3.

Notes of Decisions

- I. Election Contests
 - 1. Generally
 - 2. Judiciary, Authority of
 - Particular Cases
 - 3. Members-Elect, Rights of
 - Particular Cases
- II. Procedure, Rules of
 - 1. Generally
 - 2. Common Law
 - Particular Cases
 - 3. Effect
 - 4. Promulgation
 - Particular Cases

- III. Subpoena Authority
 - 1. Generally
- I. Election Contests
 - 1. Generally

After a member has been sworn in based on certificate of election issued by Board of Elections, the Commonwealth Senate, through its credentials committee and members of that body, can declare a member unqualified for office. NMI Const. art. II, § 14(a).
Mafnas v. Inos, Civ. Action No. 90-031 (N.M.I. Super. Ct. Jan. 22, 1990) (Memorandum Decision on Order to Show

Art. II, § 14

Cause for Declaratory Relief at 24-25), *aff'd*, 1 N.M.I. 101 (1990).

2. Judiciary, Authority of

Absolute authority of the legislature to decide upon the seating of its members, and to determine whether courts shall play any role in that process, is expressly set forth in NMI Const. art. II, § 14(a). While the legislature may authorize courts to review legislative elections and determine their outcomes, nothing requires it to grant courts such jurisdiction.

Nabors v. Manglona, 829 F.2d 902 (9th Cir. 1987).

Under NMI Const. art. II, § 14(a) only the legislature has the power to seat its members, and only if the legislature delegates some or all of its power to the courts do courts obtain jurisdiction to determine contested legislative elections. In repealing judicial review provisions in the Northern Mariana Islands Election Act pursuant to PL 5-7, the legislature made it clear that it did not want judicial review of legislative elections. 1 CMC § 6421 et seq.

Manglona v. Benavente, 829 F.2d 899 (9th Cir. 1987).

–Particular Cases

Party challenging results of legislative races in 1985 general election would have to contest House election before House and Senate election before Senate because, under Northern Mariana Islands Election Act as amended by PL 5-7, no court had jurisdiction to hear legislative contest or appeal from one. 1 CMC § 6421 et seq.

Nabors v. Manglona, 829 F.2d 902 (9th Cir. 1987).

3. Members-Elect, Rights of

Under NMI Const. art. VIII, § 4, which makes no distinction for members of legislature against whom an election contest is filed, once a successful candidate has received his or her certificate of election, that person is entitled to take office.

Mafnas v. Inos, Civ. Action No. 90-031 (N.M.I. Super. Ct. Jan. 22, 1990) (Memorandum Decision on Order to Show Cause for Declaratory Relief at 24), *aff'd*, 1 N.M.I. 101 (1990).

–Particular Cases

Senators-elect who had been issued certificates of election by board of elections were members of Seventh Commonwealth Senate notwithstanding pending election contests against them, and were entitled to same rights

and privileges accorded other senators. NMI Const. art. II, § 14(a).

Mafnas v. Inos, Civ. Action No. 90-031 (N.M.I. Super. Ct. Jan. 22, 1990) (Memorandum Decision on Order to Show Cause for Declaratory Relief at 25), *aff'd*, 1 N.M.I. 101 (1990).

II. Procedure, Rules of

1. Generally

Each house of the NMI Legislature is constitutionally mandated to promulgate its own rules of procedure. NMI Const. art. II, § 14(b).

Mafnas v. Inos, 1 N.M.I. 101 (1990).

2. Common Law

Under applicable common law rules, a majority of the members of the NMI Senate constitutes a quorum. "Majority" means a number greater than half of the total membership.

Mafnas v. Inos, 1 N.M.I. 101 (1990).

–Particular Cases

In absence of adopted procedural rules or applicable provisions in the NMI Constitution and statutes, trial court correctly applied common law rules of parliamentary procedure in suit for declaratory judgment to determine which of two senators claiming to be President of NMI Senate was legally elected to the position. 7 CMC § 3401.

Mafnas v. Inos, 1 N.M.I. 101 (1990).

3. Effect

Once promulgated, NMI Senate rules are binding and enforceable, and a member of the senate may be expelled for violating them. NMI Const. art. II, § 14(a).

Mafnas v. Inos, 1 N.M.I. 101 (1990).

Senate rules are merely promulgations of internal rules governing the functioning of that body. They are not voted on by the house of representatives and are not codified. Therefore, in absence of any law specifically authorizing judicial inquiry, court has no authority to inquire into or police administration of senate's internal rules.

Mafnas v. Inos, Civ. Action No. 90-031 (N.M.I. Super. Ct. Jan. 22, 1990) (Memorandum Decision on Order to Show Cause for Declaratory Relief at 27, n.16), *aff'd*, 1 N.M.I. 101 (1990).

Art. II, § 14

4. Promulgation

The rules of an NMI Senate do not apply to a succeeding senate unless they are adopted by the succeeding senate. NMI Const. art. II, § 14(b).

Mafnas v. Inos, 1 N.M.I. 101 (1990).

An NMI Senate cannot require the succeeding senate to adopt its rules as temporary rules. NMI Const. art. II, § 14(b).

Mafnas v. Inos, 1 N.M.I. 101 (1990).

The rules of an NMI Senate cannot be used to select the presiding officer for the succeeding senate, especially if the person selected is not from among the members of the succeeding senate. But if the succeeding senate promulgates the rules of the preceding senate, the presiding officer will be selected as provided therein. NMI Const. art. II, § 14(b).

Mafnas v. Inos, 1 N.M.I. 101 (1990).

In NMI Const. art. II, § 14(b), providing that each house of the legislature shall promulgate its rules of procedure, term "each" must mean not only the respective houses of the bicameral legislature but also every new legislature which is organized on the second Monday of January in the year following the regular general election.

Mafnas v. Inos, Civ. Action No. 90-031 (N.M.I. Super. Ct. Jan. 22, 1990) (Memorandum Decision on Order to Show Cause for Declaratory Relief at 14), *aff'd*, 1 N.M.I. 101 (1990).

-Particular Cases

Procedural rule adopted by Sixth Commonwealth Senate purporting to designate who the presiding officer would be for organization of succeeding senates did not comport with NMI Const. art. II, § 14(b), which directs that each house shall select its presiding officer from among its members. Membership of Sixth Commonwealth Senate was not the same as the Seventh Commonwealth Senate; members of one senate could not decide matters for membership of another senate.

Mafnas v. Inos, Civ. Action No. 90-031 (N.M.I. Super. Ct. Jan. 22, 1990) (Memorandum Decision on Order to Show Cause for Declaratory Relief at 13-14), *aff'd*, 1 N.M.I. 101 (1990).

Unless Seventh Commonwealth Senate properly adopted rules of Sixth Commonwealth Senate, it was not bound by its predecessor's rules. NMI Const. art. II, § 14(b).

Mafnas v. Inos, Civ. Action No. 90-031 (N.M.I. Super. Ct. Jan. 22, 1990) (Memorandum Decision on Order to Show

Cause for Declaratory Relief at 18), *aff'd*, 1 N.M.I. 101 (1990).

III. Subpoena Authority

1. Generally

A Commonwealth House of Representatives special committee has the power to issue a subpoena. NMI Const. art. II, § 14(b).

Millard v. House of Representatives, 2 CR 1142 (Dist. Ct. 1987).

For the legislature to invoke its constitutional subpoena power, it is enough that the legislature assert a legislative need to compel the attendance of a witness before one of its committees.

Millard v. House of Representatives, 2 CR 1142 (Dist. Ct. 1987).

Art. II, § 15

Section 15: Conduct of Members. A member of the legislature who has a financial or personal interest in a bill before the legislature shall disclose that interest and may not debate on or vote on the bill.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 40. Amendment 40 inserted "debate on or" after "may not" and deleted a second sentence, which provided: "[t]he legislature shall enact a comprehensive code of conduct for its members that includes a definition of proper conduct for members with conflicts of interest and a definition of the proper scope of debate in the legislature." Amendment 40 incorporated much of the deleted language in a new article XIX (requiring enactment of a comprehensive code of ethics applying to elected and appointed officials). Amendment 40 also amended article III, § 6 (deleting a requirement that a code of conduct be enacted for the governor, lieutenant governor, and heads of executive departments) to conform with the new article XIX.

Cross Reference: See article XIX, § 1 (mandating comprehensive code of ethics, including provisions defining proper conduct of legislators with respect to conflict of interest and scope of debate).

Related Commonwealth Code Sections: See generally 1 CMC § 8501 et seq. (Government Ethics Code Act of 1992) and specific restrictions concerning decision-making in 1 CMC § 8535 (relating to pecuniary interest or potential benefit), 1 CMC § 8542 (relating to interest in public contract), and 1 CMC § 8544 (relating to interest involving current or potential employer); see also 1 CMC § 9411 et seq. (Lobbying Disclosure Act).

Section 16: Budget Ceiling. There shall be a ceiling on the budget of the legislature.

a) Appropriations, or obligations and expenditures, exclusive of the salaries of the members of the legislature, for the operations and activities of the legislature may not exceed two million eight hundred thousand dollars in any fiscal year. This ceiling on the legislative budget shall be divided equally between the Senate and the House of Representatives.

b) Obligations and expenditures for the operations and activities of the legislature for the period October 1 through the second Monday in January of a fiscal year in which there is a regular general election, may not exceed seven hundred thousand dollars or the spending authority otherwise available by law, whichever is less. This ceiling shall apply to the various offices and activities in the same proportions as the annual spending authority provided by law.

History: Adopted 1985 by Amendment 9; amended 1989 by Legislative Initiative 2 (House Legislative Initiative 6-2), ratified November 4, 1989. Legislative Initiative 2 added the clause "exclusive of the salaries of the members of the legislature," to the first sentence of subsection (a). Legislative Initiative 2 also amended article II, § 17 (next section), adding subsection (f) to exempt the legislative bureau from the budget ceiling.

Amendment 9 included the following language:

Transition Provision. Upon ratification, the ceilings imposed by this amendment shall apply to the legislature on a pro rata basis computed with respect to the number of days remaining in the periods specified.

Textual Irregularity: Capitalization of "Senate" and "House of Representatives" in subsection (a) (compare, e.g., article II, §§ 2 and 3).

Cross Reference: See article II, § 17(f) (exempting legislative bureau from budget ceiling).

Proposed Amendment: House Legislative Initiative 9-1, proposing to amend this section and article II, § 17 (next section), has been approved by the legislature and will appear on the general election ballot November 4, 1995. The

Art. II, § 16

proposed amendment increases the budget ceilings for the legislature and legislative bureau, sets a two-year term for the legislative bureau director and requires the director to annually submit an itemized budget. Legislative Initiative 9-1 proposes to amend this section as follows (deleted language indicated by ~~strikeout type~~, added language indicated by underlined type):

a) Appropriations or obligations and expenditures, ~~exclusive of the salaries~~ of the members of the legislature, for the operations and activities of the legislature, may not exceed ~~two million eight hundred thousand dollars~~ the budget ceiling in any fiscal year. This amount is exclusive of the salaries and those personnel benefits of the members of the legislature that are routinely provided to other Commonwealth government employees and includes housing and inter-island travel expenses. This ceiling may be changed annually to reflect but not to exceed the percentage change in the accepted composite price index prepared by the Director of Commerce and Labor. Each member of the legislature shall receive 10,000 dollars for official representation expenses inclusive of the member's allocation. All official representation amounts shall be inclusive of the ceiling on the legislative budget. Dues necessary for the representation of the legislature in regional and international organizations for the benefit of the Commonwealth shall be exclusive of the ceiling on the legislative budget. This ceiling on the legislative budget shall be divided equally between the Senate and the House of Representatives.

b) Obligations and expenditures for the operations and activities of the legislature for the period October 1 through the second Monday in January of a fiscal year in which there is a regular general election, may not exceed ~~seven hundred thousand dollars~~ 25 percent of the annual legislative appropriation or the spending authority otherwise available by law, whichever is less. This ceiling shall apply to the various offices and activities in the same proportions as the annual spending authority provided by law.

(c) There shall be a minimum allotment of 100 thousand dollars to each member of the Legislature, and 200 thousand dollars to each majority member of the Legislature for the operations and activities of their individual offices.

This proposed amendment contains a typographical error at the beginning of the fourth sentence of subsection (a): "members" is incorrectly pluralized. It also contains a now-incorrect reference to the "Director of Commerce and Labor." Under Executive Order 94-3, §§ 301 and 302 (effective August 23, 1994), the Department of Commerce and Labor was split into two agencies, the Department of Labor and Immigration and the Department of Commerce. Executive Order 94-3, § 106(a) also redesignated department directors as "secretaries." Finally, the proposed amendment contains textual irregularities: capitalization of "Legislature" in subsection (c) and use of numbers rather than words in all three sections (compare, e.g., article III, § 5).

Notes of Decisions

1. Generally
2. Taxpayer Actions
--Particular Cases

Generally

In light of fact that constitutional amendment placing ceiling on budget of legislature was restriction on legislative authority, combined with fact that it was approved by the electorate, who were left to define those words for themselves, trial court's determination that term "operations and activities" in amendment included legislators' salaries was not unreasonable under circumstances and would be affirmed. NMI Const. art. II, § 16.

Pangelinan v. Commonwealth, 2 CR 1148 (Dist. Ct. App. Div. 1987).

In adopting Amendment 9, the people of the Commonwealth mandated that the legislative budget should be divided equally between the house of representatives and the senate. NMI Const. art. II, § 16.

House of Representatives v. Senate, 3 CR 256 (Trial Ct. 1987).

Taxpayer Actions

--Particular Cases

Where money was taken from general fund to pay legislators' salaries in excess of constitutional mandate, and money could not be utilized for other constitutionally or statutorily permitted purposes, there was harm suffered by taxpayer and others similarly situated. NMI Const. art. II, § 16.

Pangelinan v. Commonwealth, 2 CR 1148 (Dist.

Art. II, § 17

Ct. App. Div. 1987).

Section 17: Legislative Bureau. There is hereby established a legislative bureau in the Northern Marianas Commonwealth Legislature.

a) The bureau shall be headed by a director to be appointed by the joint leadership of the legislature consisting of the presiding officers, vice presiding officers, floor leaders, and the chairmen of the standing committees.

b) The director shall employ all necessary staff, other than personal staff of the members of the legislature, pursuant to budgetary allocations. The staff members shall include legal counsel and other administrative staff.

c) The bureau shall provide all required services to the legislature in connection with duties and responsibilities during sessions and committee meetings. It shall maintain all records, files, library and other documents of the legislature.

d) The director may be removed by a majority of the members of each house of the legislature with or without cause.

e) The bureau shall be free from any political harassment or pressure.

f) The legislative bureau shall have a budget sufficient to permit it to fully and adequately perform its duties as specified in this section. The funds budgeted shall be independent of the budget ceiling established for the legislature under Section 16 of this Article, but in no event shall the funds appropriated exceed eight hundred thousand dollars in any fiscal year.

History: Adopted 1985 by Amendment 10; amended by Legislative Initiative 2 (House Legislative Initiative 6-2), ratified November 4, 1989. Legislative Initiative 2 added subsection (f). Legislative Initiative 2 also amended article II, § 16 (preceding section), to exclude legislator's salaries from legislative budget ceiling.

Textual Irregularities and Errors: Capitalization of "Section" and "Article" in subsection (f); grammatical error in subsection (c) ("shall maintain all . . . library . . .").

Related Commonwealth Code Sections: See 1 CMC § 1106 (legislative branch contracts to be reviewed by legislative counsel's office) and 1 CMC § 1614 (bureau may provide staff services to youth congress).

Proposed Amendment: House Legislative Initiative 9-1, proposing to amend this section and article II, § 16 (preceding section), has been approved by the legislature and will appear on the general election ballot November 4, 1995. The proposed amendment increases the budget ceilings for the legislature and legislative bureau, sets a two-year term for the legislative bureau director and requires the director to annually submit an itemized budget. Legislative Initiative 9-1 proposes to amend this section as follows (deleted language indicated by ~~strikeout type~~, added language indicated by underlined type, except for heading):

Section 17: Legislative Bureau. There is hereby established a legislative bureau in the Northern Marianas Commonwealth Legislature.

a) The bureau shall be headed by a director to be appointed by the joint leadership of the legislature consisting of the presiding officers, vice presiding officers, floor leaders, and the chairmen of the standing

Art. III, § 1

committees. The term of office for the director shall be two years, subject to renewal by the joint leadership of the legislature.

b) The director shall employ all necessary staff, other than personal staff of the members of the legislature, pursuant to budgetary allocations. The staff members shall include legal counsel and other administrative staff.

c) The bureau shall provide all ~~required~~ necessary services to the legislature in ~~connection with order to assist the legislature in fulfilling its~~ duties and responsibilities ~~during sessions and committee meetings~~. It shall maintain all records, files, library and other documents of the legislature.

d) The director may be removed by a majority of the members of each house of the legislature with or without cause.

e) The bureau shall be free from any political harassment or pressure.

f) The legislative bureau shall have a budget sufficient of at least two million dollars to permit it to fully and adequately perform its duties as specified in this Section. The budget of the legislative bureau may be changed annually to reflect but not exceed the percentage change in the accepted composite price index prepared by the Director of Commerce and Labor. The funds budgeted shall be independent of the budget ceiling established for the legislature under Section 16 of this Article, ~~but in no event shall the funds appropriated exceed eight hundred thousand dollars in any fiscal year.~~ Dues necessary for the representation of the legislature in regional and international organizations for the benefit of the Commonwealth shall be exclusive of the ceiling on the Legislative Bureau.

g) The director of the bureau shall submit an itemized bureau budget ceiling for the following fiscal year to the presiding officers of each house no later than September 1 for adoption by the legislature through joint resolution.

This proposed amendment contains a now-incorrect reference to the "Director of Commerce and Labor." Under Executive Order 94-3, §§ 301 and 302 (effective August 23, 1994), the Department of Commerce and Labor was split into two agencies, the Department of Labor and Immigration and the Department of Commerce. Executive Order 94-3, § 106(a) also redesignated department directors as "secretaries." Finally, the proposed amendment contains a textual irregularity: capitalization of "Legislative Bureau" in the last sentence of subsection (f).

ARTICLE III: EXECUTIVE BRANCH

Section 1: Executive Power. The executive power of the Commonwealth shall be vested in a governor who shall be responsible for the faithful execution of the laws.

History: Ratified 1977, effective 1978.

Cross References: *See*, regarding executive power, article II, § 4 (promulgation of reapportionment or redistricting plan for house of representatives), article II, § 7 (action on legislation, including veto), article II, § 9 (filling of legislative vacancy by appointment), article II, § 13 (calling special legislative session), article III, § 9 (preparation of budget and submission to legislature, annual report to legislature, and reprieves, commutations and pardons), article III, § 10 (powers in emergency), article III, § 11 (appointment of attorney general), article III, § 12 (appointment and removal of public auditor), article III, § 14 (appointment and supervision of department heads), article III, § 15 (executive branch reorganization, executive orders), article III, § 17 (delegation of authority to mayors), article III, § 18 (appointment of executive assistant for Carolinian affairs), article III, § 21 (appointment and removal of board and commission members), article III, § 22 (appointment of special assistant for women's affairs), article III, § 23 (appointment of resident executive for indigenous affairs), article IV, § 4 (appointment of judges), article IV, § 6 (sanction of judges), article V, § 6 (appointment of resident representative to the U.S. to fill vacancy), article VI, § 5 (governor's council), article X, § 2 (report and recommendation to legislature regarding tax exemptions), article XI, § 4 (appointment of directors of Marianas Public Land Corporation), article XI, § 6 (appointment of trustees of Marianas Public Land Trust), article XV,

Art. III, § 1

§ 1 (appointment of nonvoting ex-officio members of board of education), article XV, § 2 (appointment of regents of Northern Marianas College), article XVIII, § 2 (submission of proposal to convene constitutional convention to voters), and article XX, § 1 (appointment of members of civil service commission).

Related Commonwealth Code Sections: See generally 1 CMC § 2001 et seq., as amended by Executive Order 94-3 (1 CMC, Div. 2, organization of executive branch); see also CMC index for citations to numerous sections concerning governor's duties and authority.

Comment: Covenant § 203(a) provides, in part: "[t]he Constitution [of the Northern Mariana Islands] will provide for a republican form of government with separate executive, legislative and judicial branches . . ." Covenant § 203(b) provides: "[t]he executive power of the Northern Mariana Islands will be vested in a popularly elected Governor and such other officials as the Constitution or laws of the Northern Mariana Islands may provide."

Notes of Decisions

1. Generally
2. Immigration
--Particular Cases
3. Liaison Offices
4. Personnel
--Particular Cases
5. Visitors Bureau

1. Generally

The duties of the office of the governor encompass the broadest range of discretionary and policy-making functions of any official in the Commonwealth. NMI Const. art. III, § 1.

Izuka v. Camacho, 1 CR 724 (Dist. Ct. 1983).

2. Immigration

--Particular Cases

The governor, as chief executive of the Commonwealth, was within his powers when he promulgated rules and regulations pertaining to Commonwealth immigration matters. 53 TTC § 54.

Office of the Attorney General v. Arriola, 3 CR 1 (Trial Ct. 1985).

Since delegation of authority by governor to chief of immigration with respect to promulgation of amendments to or issuance of new immigration regulations was invalid, regulations made pursuant to that delegation were invalid.

Office of the Attorney General v. Arriola, 3 CR 1 (Trial Ct. 1985).

3. Liaison Offices

Functions of liaison offices in Guam and Hawaii were more akin to the administrative and executive functions of governor's office than to office of Washington representative and therefore were appropriately placed

under control of governor.

Tenorio v. Commonwealth, 2 CR 725 (Dist. Ct. App. Div. 1986).

3. Personnel

It is clear from the constitutional history and the Northern Marianas Constitution as adopted that a strong executive branch was created, and in the area of legislative confirmation requirements, only those specified in the Constitution demand legislative oversight.

Mafnas v. Camacho, Civ. Action No. 80-012 (Dist. Ct. Oct. 21, 1980) (Partial Summary Judgment at 5).

The appointment of executive offices is an executive function.

Mafnas v. Camacho, Civ. Action No. 80-012 (Dist. Ct. Oct. 21, 1980) (Partial Summary Judgment at 6).

Confirmation of executive appointments is not a distinct legislative power, but rather a part of the executive power of appointment which has in turn been delegated in some specific instances by the Constitution to the legislative branch of the government.

Mafnas v. Camacho, Civ. Action No. 80-012 (Dist. Ct. Oct. 21, 1980) (Partial Summary Judgment at 6).

--Particular Cases

Governor established enforceable guidelines under which personnel contracts were to be created by issuing a memorandum to "All Department and Activity Heads" of governor's office, and thus had valid authority to disapprove plaintiff's contract. 1 CMC § 2151 et seq. [PL 1-8]; NMI Const. art. III, §§ 14, 16.

Hill v. Commonwealth, 1 CR 981 (Dist. Ct. 1984).

Art. III, § 2

Legislation requiring senate confirmation of governor's special assistants for administration, planning and budgeting, programs and legislative review and the public information and protocol officer was improper attempt to usurp authority of executive branch. Positions were not heads of executive departments within meaning of NMI Const. art. III, § 14, authorizing confirmation by senate. Legislation violated separation of powers doctrine and was unconstitutional. 1 CMC § 2051 [PL 1-8, ch.1, § 1].

Mafnas v. Camacho, Civ. Action No. 80-012 (Dist. Ct. Oct. 21, 1980) (Partial Summary Judgment at 6-9).

4. Visitors Bureau

Following judicially-mandated functional analysis, functions and duties of Marianas Visitors Bureau, as listed in 4 CMC § 2106, are primarily executive, as opposed to regulatory or quasi-judicial--in particular constructing, licensing and maintaining tourist sites, maintaining reception booths, promoting indigenous culture, conducting advertising campaigns, accepting gifts on behalf of government, and coordinating government's tourism promotion efforts. Bureau is part of the executive branch of Commonwealth government and subject to governor's reorganization power under NMI Const. art. III, § 15.

Marianas Visitors Bureau v. Commonwealth, Civ. Action No. 94-516 (N.M.I. Super. Ct. June 23, 1994) (Memorandum Decision and Judgment at 34).

Section 2: Qualifications of the Governor. The governor shall be qualified to vote in the Commonwealth, at least thirty-five years of age, and a resident and domiciliary of the Commonwealth for at least ten years immediately preceding the date on which the governor takes office. A different period of residence and domicile may be provided by law. No person convicted of a felony in the Commonwealth or in any area under the jurisdiction of the United States may be eligible for this office unless a full pardon has been granted.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 11. Amendment 11 revised the minimum age from 30 to 35 and changed the minimum residency and domicile period from seven years to 10 years.

Cross References: See article III, § 7 (succession to governorship) and article III, § 8 (absence or disability of governor).

Section 3: Lieutenant Governor. The lieutenant governor shall have the same qualifications as required for the office of governor and shall perform those duties specified in this article and those assigned by the governor or provided by law. Whenever the office of lieutenant governor is vacant, the governor shall appoint a successor with the advice and consent of the senate.

Art. III, § 4

History: Ratified 1977, effective 1978.

Cross Reference: *See* article III, § 2 (preceding section, qualifications of governor), article III, § 7 (succession to governorship and lieutenant governorship), and article III, § 8 (absence or disability of governor).

Related Commonwealth Code Sections: *See generally* 1 CMC §§ 2101-2103 (office of lieutenant governor); *see also* 1 CMC § 6608 (inauguration) and 1 CMC § 8221 et seq. (housing).

Section 4: Joint Election of the Governor and Lieutenant Governor. The governor and lieutenant governor shall be elected at large within the Commonwealth for a term of office of four years. The governor and lieutenant governor shall be elected jointly with each voter casting a single vote applicable to both offices. No person may be elected governor more than twice.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 12. Amendment 12 revised the last sentence, which originally provided: "[n]o person may be elected governor more than three times."

Related Commonwealth Code Sections: *See* 1 CMC § 6311 et seq. (nominating procedure), 1 CMC § 6341 (campaign financing disclosure), and 1 CMC § 6421 et seq. (election contests).

Section 5: Compensation. The governor shall receive an annual salary of twenty thousand dollars and the lieutenant governor an annual salary of eighteen thousand dollars. Both shall receive reasonable allowances for expenses provided by law. Upon the recommendation of the advisory commission on compensation provided for by article II, section 10, the legislature may change the salary of the governor or lieutenant governor. Neither salary may be changed during a term of office.

History: Ratified 1977, effective 1978.

Cross References: *See*, in addition to cited section, article II, § 10 (compensation of legislators), article IV, § 5 (compensation of judges), article V, § 5 (compensation of resident representative to the U.S.), article VI, § 4 (compensation of mayors), and article VI, § 7(a) (compensation of municipal council members).

Related Commonwealth Code Sections: *See* 1 CMC § 8244 (setting salaries of governor at \$70,000 and lieutenant governor at \$60,000); *see also* 1 CMC § 8221 et seq. (housing).

Section 6: Other Government Employment. The governor or lieutenant governor may not serve in another Commonwealth position or receive compensation for performance of official duties or from any governmental body except as provided by Section 5.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 40. Amendment 40 capitalized "Section" and deleted a second sentence, which provided: "[t]he legislature shall enact a code of conduct for the governor, lieutenant governor and heads of executive departments that includes a requirement of disclosure of financial or personal interests sufficient to prevent conflicts of interest in the performance of official duties." Amendment 40 incorporated much of the deleted language in a new article XIX (requiring enactment of a comprehensive code of ethics applying to elected and appointed officials). Amendment 40 also amended article II, § 15 (deleting requirement that a code of ethics be enacted for members of legislature) to conform with the new article XIX.

Textual Irregularity: Capitalization of "Section."

Cross Reference: *See* article II, § 11 (restricting government employment of current and former legislators) and article XIX, § 1 (mandating enactment of comprehensive code of ethics).

Art. III, § 7

Section 7: Succession to the Governorship and Lieutenant Governorship. In case of the removal, death, or resignation of the governor, the lieutenant governor shall become governor and the president of the senate shall become lieutenant governor. If the offices of governor and lieutenant governor are both vacant, the president of the senate shall become acting governor and the speaker of the house shall become acting lieutenant governor. An acting governor or lieutenant governor who assumes office when more than one year remains in the term may serve only until a governor or lieutenant governor is chosen in a special election provided by law.

History: Adopted 1985; amended 1985 by Amendment 13. Amendment 13 added "and the president of the senate shall become lieutenant governor" at the end of the first sentence, "and the speaker of the house shall become acting lieutenant governor" at the end of the second sentence, and "or lieutenant governor" (both references) in the third sentence.

Cross References: See article III, § 8 (next section, succession to office due to governor's absence or disability) and article VIII, § 2 (special elections).

Related Commonwealth Code Sections: See 1 CMC § 2101 (succession to governorship by lieutenant governor).

Comment: With respect to special elections to fill vacancies, see comment to article VIII, § 2.

Section 8: Absence or Disability of the Governor.

a) When the governor is physically absent from the Commonwealth, the lieutenant governor shall be acting governor. If the lieutenant governor is also absent or is otherwise unavailable, the presiding officer of the senate shall be acting governor.

b) When the governor is unable to discharge the duties of the office by reason of physical or mental disability, the lieutenant governor shall be acting governor. If the lieutenant governor is unavailable, the presiding officer of the senate shall be acting governor. If the person next in succession to the governor has reason to believe that the governor is unable to discharge the duties of the office, that person shall file a petition to declare a vacancy with the Commonwealth appeals court or the United States District Court if no Commonwealth appeals court has been created under article IV, section 3. The court has original and exclusive jurisdiction to determine all questions regarding the disability of the governor and the existence of a vacancy in the office of governor.

History: Ratified 1977, effective 1978.

Cross Reference: See, in addition to cited section, article III, § 7 (preceding section, succession to governorship and lieutenant governorship).

Related Commonwealth Code Sections: See 1 CMC § 2101 (succession to governorship by lieutenant governor) and 1 CMC § 3101 et seq. (establishing Commonwealth Supreme Court, NMI appeals court).

Section 9: Executive Functions.

a) The governor shall submit to the legislature a proposed annual balanced budget for the following fiscal year. The proposed balanced budget shall describe anticipated revenues of the Commonwealth and recommend expenditures of Commonwealth

Art. III, § 9

funds. The anticipated revenues may not be increased by the legislature without the consent of the governor. In preparing the proposed balanced budget, the governor shall consider submissions made by the mayors of Rota, Saipan, Tinian and Aguiguan, and the islands north of Saipan as to the budgetary needs of those islands and by the executive assistant appointed under section 18 of this article. The governor's submission to the legislature with respect to the budget shall state the governor's disposition of the budgetary requests contained in these submissions and may include recommended legislation with respect to taxation. If a balanced budget is approved by the legislature, the governor may not reallocate appropriated funds except as provided by law. If a balanced budget is not approved before the first day of the fiscal year, appropriations for government operations and obligations shall be at the level for the previous fiscal year.

b) The governor shall report at least annually to the legislature regarding the affairs of the Commonwealth and new measures that are necessary or desirable. The report shall include a comprehensive annual financial report prepared in accordance with generally accepted governmental accounting principles.

c) The governor shall have the power to grant reprieves, commutations and pardons after conviction for offenses after consultation with a board of parole to be established by law. This power shall not apply to impeachment.

History: Adopted 1985; amended 1985 by Amendment 14. Amendment 14 added the word "balanced" before "budget" in the first, second, fourth, sixth and seventh sentences in subsection (a), and added the second sentence of subsection (b).

Cross References: See article III, § 12 (annual report by public auditor to legislature), article VI, § 3(d) (recommendations by mayors regarding annual budget) and article VI, § 5 (governor's council).

Related Commonwealth Code Sections: See generally 1 CMC § 7101 et seq., as amended by Executive Order 94-3 (Planning and Budgeting Act of 1983, concerning preparation and submission of annual operating budget, and procedure for reallocation of appropriated funds); see also 1 CMC § 2051, as amended by Executive Order 94-3, § 101 (special assistant for management and budget), and 6 CMC § 4251 (procedure for granting reprieves, commutations and/or pardons).

Comment: According to its title, Amendment 14 sought to "mandate a balanced budget for the Commonwealth . . . in every fiscal year."

Notes of Decisions

Balanced Budget

Despite ambiguity of Amendment 14, intention of drafters, evidenced by committee recommendation to second constitutional convention, was to bind legislature to balanced budget. The Commonwealth Legislature is constitutionally prohibited from appropriating funds in excess of identified revenues for the fiscal year in question. NMI Const. art. III, § 9(a).

Rayphand v. Tenorio, Civ. Action No. 94-912 (N.M.I. Super. Ct. Apr. 5, 1995) (Memorandum Decision and Order on Defendants' Motion to Dismiss at 10-11).

While legislature may enact appropriations ratifying past expenditures made by government, in order to be constitutionally effective such appropriations must draw from a source of available funds--i.e., funds which have not already been allocated up to the limit of identified revenues for the fiscal year in question. NMI Const. art. III, § 9(a).

Rayphand v. Tenorio, Civ. Action No. 94-912 (N.M.I. Super. Ct. Apr. 5, 1995) (Memorandum Decision and Order on Defendants' Motion to Dismiss at 14).

When government is operating under continuing

Art. III, § 10

appropriations based on budget enacted in prior year, NMI Const. art. III, § 9(a) clearly forbids any legislative appropriations over and above the overall spending limit in prior fiscal year budget.

Rayphand v. Tenorio, Civ. Action No. 94-912 (N.M.I. Super. Ct. Apr. 5, 1995) (Memorandum Decision and Order on Defendants' Motion to Dismiss at 15).

--Particular Cases

During pendency of action challenging constitutionality of governor's reprogramming and expenditure of funds for certain items while government was operating under continuing appropriations based on budget enacted in prior year, public law ratifying expenditures and making specific appropriations to fund expenditures was possibly unconstitutional--failing to satisfy constitutional provision prohibiting legislature from appropriating funds in excess of identified revenues for the fiscal year in question--if there were no funds from available sources in either prior or current fiscal year operating budgets to offset expenditures. If unconstitutional, appropriations in public law were a nullity. As court lacked sufficient evidentiary record to make determination, motion to dismiss action for mootness would be denied. PL 9-23; NMI Const. art. III, § 9(a).

Rayphand v. Tenorio, Civ. Action No. 94-912 (N.M.I. Super. Ct. Apr. 5, 1995) (Memorandum Decision and Order on Defendants' Motion to Dismiss at 11-14).

Provision in public law purporting to release government employees from liability for exceeding overall budgetary spending limit while government was operating under continuing appropriations based on budget enacted in prior year violated NMI Const. art. III, § 9(a), forbidding legislative appropriations above overall spending limit in prior fiscal year budget during continuing appropriation period. Unconstitutional language would be stricken from act under act's severability clause. PL 9-23, §§ 6, 7.

Rayphand v. Tenorio, Civ. Action No. 94-912 (N.M.I. Super. Ct. Apr. 5, 1995) (Memorandum Decision and Order on Defendants' Motion to Dismiss at 15-16).

Section 10: Emergency Powers. The governor may declare a state of emergency in the case of invasion, civil disturbance, natural disaster, or other calamity as provided by law, and may mobilize available resources to respond to that emergency.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 15. Amendment 15 added a comma after "natural disaster" and inserted "as provided by law," after "calamity."

Related Commonwealth Code Sections: See generally 3 CMC § 5121 et seq., as amended by PL 9-37, § 4 (governor's authority in disaster emergencies) and 1 CMC § 7406, as amended by PL 9-37, § 3 (authorizing governor to mobilize

Art. III, § 11

use of government vehicles during disasters); *see also* Executive Order 94-3, § 216 (consolidating disaster control office and office of civil defense into division of emergency operations within office of governor, headed by director of emergency operations).

Section 11: Attorney General. The governor shall appoint an Attorney General with the advice and consent of the Senate. The Attorney General shall be a resident and a domiciliary of the Commonwealth of the Northern Mariana Islands for at least three years immediately preceding the date on which the Attorney General is confirmed. The Attorney General shall be responsible for providing legal advice to the governor and executive departments, representing the Commonwealth in all legal matters, and prosecuting violations of Commonwealth law.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 16. Amendment 16 added the second sentence and capitalized "Attorney General" in the first and last sentences.

Textual Irregularity: Capitalization of "Attorney General" (compare, e.g., article XVIII, § 4).

Cross References: *See* article IX, §§ 1-3 (duty to certify signatures on initiative, referendum and recall petitions), article XVIII, §§ 2 and 4 (duty to certify signatures on petitions proposing constitutional convention or amendment) and preamble to Schedule on Transitional Matters (duty to annually review and certify executed provisions).

Related Commonwealth Code Sections: *See generally* 1 CMC § 2151 et seq., as amended by Executive Order 94-3, §§ 301(c) and 309 (general provisions); *see also* 1 CMC § 8245, as amended by PL 9-25, § 513 (setting salary of \$70,000) and CMC index for numerous citations to other authority and duties.

Notes of Decisions

1. Generally
2. Contracts, Review of

1. Generally

Pursuant to NMI Const. art. III, § 11, the attorney general is responsible for prosecuting all violations of Commonwealth law.

Commonwealth v. Aguon, Crim. Action No. 90-008 (N.M.I. Super. Ct. Mar. 9, 1990) (Decision at 14, n.13).

2. Contracts, Review of

The attorney general, who is empowered by the NMI Constitution to act as legal advisor to the governor and the executive departments, has the authority to determine if a contract is in the best interest of the Commonwealth.

Saipan Secretarial/Employment Services, Inc. v. Commonwealth, 3 CR 168 (Dist. Ct. App. Div. 1987).

When the attorney general reviews government contracts, he is shielded by absolute immunity.

Saipan Secretarial/Employment Services, Inc. v. Commonwealth, 3 CR 168 (Dist. Ct. App. Div. 1987).

The very nature and existence of the attorney general, as an attorney and legal advisor to the governor and the executive branch, plus the overall scheme of governmental organization, dictates against a narrow reading and interpretation of the attorney general's duty to "review and approve, as to form and legal capacity, all proposed contracts . . . of the Commonwealth." 1 CMC § 2153(g).

Saipan Secretarial/Employment Services, Inc. v. Commonwealth, 2 CR 700 (Trial Ct. 1986), *aff'd*, 3 CR 168 (Dist. Ct. App. Div. 1987).

The attorney general is entitled to and enjoys absolute immunity in reviewing, approving, or disapproving contracts submitted to him.

Saipan Secretarial/Employment Services, Inc. v. Commonwealth, 2 CR 700 (Trial Ct. 1986), *aff'd*, 3 CR 168 (Dist. Ct. App. Div. 1987).

Art. III, § 12

Section 12: Public Auditor. The governor shall appoint a public auditor with the advice and consent of each house of the legislature. The public auditor shall audit the receipt, possession and disbursement of public funds by the executive, legislative and judicial branches of the government, an instrumentality of the Commonwealth or an agency of local government and shall perform other duties provided by law. The Public Auditor shall be guaranteed an annual budget of at least \$500,000. The budgetary appropriation may not be reprogrammed for other purposes, and any unencumbered fund balance in a fiscal year shall be available for general appropriation. The public auditor shall report to the legislature and the governor at least once every year and this report shall be made public promptly. The public auditor may be removed only for cause and by the affirmative vote of two-thirds of the members of each house of the legislature. In the event that there is a vacancy in the office of public auditor, the governor shall appoint a temporary public auditor to serve until the vacancy is filled.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 17. Amendment 17 added the third and fourth sentences and revised the last sentence by inserting "governor" in place of "presiding officer of the senate."

Textual Irregularities: Capitalization of "Public Auditor" in third sentence and use of dollar symbol and number instead of words (compare, e.g., article III, § 5).

Cross Reference: *See*, regarding annual reports, article III, § 9(b) (annual report by governor to legislature) and article V, § 4 (annual report by resident representative to the U.S. to legislature).

Related Commonwealth Code Sections: *See generally* 1 CMC § 2301 et seq. (general provisions), 1 CMC § 7811 et seq. (Commonwealth Auditing Act of 1983), and 1 CMC § 7710 (general authority to audit appropriations and expenditures); *see also* 1 CMC § 2554 (concurrence required for uniform government accounting system), 1 CMC § 8245, as amended by PL 9-25, § 513 (setting salary of \$54,000), 1 CMC § 8501 et seq. (Government Ethics Code Act of 1992), 1 CMC § 9417 (lobbying disclosure regulation), 4 CMC § 8152, as amended by Executive Order 94-3 (specific authority to audit Commonwealth Utilities Corporation) and 4 CMC § 10413 (specific authority to audit Commonwealth Development Authority).

Comment: According to its title, Amendment 17 was intended "to provide for appointment of a temporary public auditor by the governor in the event of a vacancy in the office of public auditor, and to guarantee the minimum budget of the public auditor."

Notes of Decisions

Appropriations

The constitutional status of office of public auditor does not shield it from legislative or gubernatorial regulation of appropriations under the Commonwealth Constitution. NMI Const. art. II, § 7.

Bradshaw v. Camacho, 1 CR 165 (Dist. Ct. 1981).

Const. art. III, § 12.

Bradshaw v. Camacho, 1 CR 31 (Dist. Ct. 1980).

—Particular Cases

Whether the executive's constitutionally-delegated line item veto authority, when used to veto appropriation for office of public auditor, was limited by Commonwealth Constitution mandate that executive appoint a public auditor was non-justiciable political question. NMI

Art. III, § 13

Section 13: Department of Education. [Repealed.]

History: Ratified 1977, effective 1978; repealed by Amendment 38, effective the second Monday of January, 1988 (January 11, 1988). This section provided:

The legislature shall establish a department of education that shall be headed by a superintendent of education appointed by a representative board of education. The governor shall appoint the members of the board of education for a term of four years with the advice and consent of the senate. The board of education shall formulate policy and exercise control over the public school system through the superintendent. The composition of the board of education and other matters pertaining to its operations and duties shall be provided by law.

Amendment 38 also amended article XV, § 1 (to specify certain educational requirements, provide for an elected board, and mandate a minimum budget level) and adopted article XV, § 2 (concerning higher and adult education). Both the amendment to article XV, § 1 and new article XV, § 2 took effect the second Monday of January, 1988 (January, 11 1988).

Section 14: Heads of Executive Departments. Each principal department shall be under the supervision of the governor and, unless otherwise provided by law, shall be headed by a single executive. The governor shall appoint the heads of executive departments with the advice and consent of the senate. The governor may remove the heads of executive departments. The governor may at any time require information in writing or otherwise from the head of any administrative department, office or agency of the Commonwealth.

History: Ratified 1977, effective 1978.

Cross Reference: See article II, § 5 (next section, organization of executive branch).

Related Commonwealth Code Sections: See generally 1 CMC § 2001 et seq., as amended by Executive Order 94-3 (1 CMC, Div. 2, organization of executive branch); see also 1 CMC § 2901 et seq. (appointment, confirmation, removal of department heads) and 1 CMC § 8245, as amended by PL 9-25, § 513 (salaries).

Notes of Decisions

1. Generally
2. Governor's Assistants
--Particular Cases

1. Generally

Governor may not reallocate executive offices so that he circumvents the advice and consent provision as to heads of executive departments. If in fact a person is head of a principal executive department he is subject to legislative confirmation regardless of his title, so long as it is clear that he is to perform the functions and duties of an office which the legislature has described as one of the fifteen (or fewer) executive departments. NMI Const. art. III, §§ 14, 15.

Mafnas v. Camacho, Civ. Action No. 80-012 (Dist. Ct. Oct. 21, 1980) (Partial Summary Judgment at 8).

2. Governor's Assistants

--Particular Cases

Legislation requiring senate confirmation of governor's special assistants for administration, planning and budgeting, programs and legislative review and the public information and protocol officer was improper attempt to usurp authority of executive branch. Positions were not heads of executive departments within meaning of NMI Const. art. III, § 14, authorizing confirmation by senate. Legislation violated separation of powers doctrine and was unconstitutional. 1 CMC § 2051 [PL 1-8, ch.1, § 1].

Mafnas v. Camacho, Civ. Action No. 80-012 (Dist. Ct. Oct. 21, 1980) (Partial Summary Judgment at 6-9).

Art. III, § 15

Section 15: Executive Branch Departments. Executive branch offices, agencies and instrumentalities of the Commonwealth government and their respective functions and duties shall be allocated by law among and within not more than fifteen principal departments so as to group them so far as practicable according to major purposes. Regulatory, quasi-judicial and temporary agencies need not be a part of a principal department. The functions and duties of the principal departments and of other agencies of the Commonwealth shall be provided by law. The legislature may reallocate offices, agencies and instrumentalities among the principal departments and may change their functions and duties. The governor may make changes in the allocation of offices, agencies and instrumentalities and in their functions and duties that are necessary for efficient administration. If these changes affect existing law, they shall be set forth in executive orders which shall be submitted to the legislature and shall become effective sixty days after submission, unless specifically modified or disapproved by a majority of the members of each house of the legislature.

History: Ratified 1977, effective 1978.

Cross Reference: See article II, § 14 (preceding section, heads of executive departments).

Related Commonwealth Code Sections: See generally 1 CMC § 2001 et seq., as amended by Executive Order 94-3 (1 CMC, Div. 2, organization of executive branch); see also CMC index for numerous provisions concerning executive branch agencies. With respect to executive orders, see 1 CMC § 2153 (attorney general's duty to publish) and 1 CMC § 9102 (publication in Commonwealth Register).

Notes of Decisions

1. Generally
2. Executive Branch Agencies
 - Particular Agencies
2. Executive Reorganization Orders
 - Particular Cases

1. Generally

NMI Const. art. III, § 15 has three parts: the first defines the executive branch of government, the second defines the powers of the legislature and the governor to reorganize the executive branch, and the third defines the power of the legislature to disapprove a gubernatorial reorganization plan.

Marianas Visitors Bureau v. Commonwealth, Civ. Action No. 94-516 (N.M.I. Super. Ct. June 23, 1994) (Memorandum Decision and Judgment at 19).

Governor's reorganization power under NMI Const. art. III, § 15 extends to limits of executive branch, going beyond the fifteen principal departments and including regulatory, quasi-judicial and temporary agencies, but not including entities specifically established by the Constitution.

Marianas Visitors Bureau v. Commonwealth, Civ. Action No. 94-516 (N.M.I. Super. Ct.

June 23, 1994) (Memorandum Decision and Judgment at 25 and 25, n.14).

The legislature has certain constitutional powers to legislate in the establishment of offices and their functions but the legislature can do no more than what is specified in NMI Const. art. III, § 15 insofar as the establishment of divisions of government is concerned.

Mafnas v. Camacho, Civ. Action No. 80-012 (Dist. Ct. Oct. 21, 1980) (Partial Summary Judgment at 6).

Governor may not reallocate executive offices so that he circumvents the advice and consent provision as to heads of executive departments. If in fact a person is head of a principal executive department he is subject to legislative confirmation regardless of his title, so long as it is clear that he is to perform the functions and duties of an office which the legislature has described as one of the fifteen (or fewer) executive departments. NMI Const. art. III, §§ 14, 15.

Mafnas v. Camacho, Civ. Action No. 80-012 (Dist. Ct. Oct. 21, 1980) (Partial Summary Judgment at 8).

2. Executive Branch Agencies

Art. III, § 15

First sentence of NMI Const. art. III, § 15 mandates what may be called a "structural" test for determining whether an entity is within the executive branch. Legislative history, enabling statute and bureaucratic embodiment of entity are studied to determine whether it is structurally contained within one of the fifteen main executive departments.

Marianas Visitors Bureau v. Commonwealth, Civ. Action No. 94-516 (N.M.I. Super. Ct. June 23, 1994) (Memorandum Decision and Judgment at 28).

--Particular Cases

Following judicially-mandated functional analysis, functions and duties of Marianas Visitors Bureau, as listed in 4 CMC § 2106, are primarily executive, as opposed to regulatory or quasi-judicial--in particular constructing, licensing and maintaining tourist sites, maintaining reception booths, promoting indigenous culture, conducting advertising campaigns, accepting gifts on behalf of government, and coordinating government's tourism promotion efforts. Bureau is part of the executive branch of Commonwealth government and subject to governor's reorganization power under NMI Const. art. III, § 15.

Marianas Visitors Bureau v. Commonwealth, Civ. Action No. 94-516 (N.M.I. Super. Ct. June 23, 1994) (Memorandum Decision and Judgment at 34).

Functions of liaison offices in Guam and Hawaii were more akin to the administrative and executive functions of governor's office than to office of Washington representative and therefore were appropriately placed under control of governor.

Tenorio v. Commonwealth, 2 CR 725 (Dist. Ct. App. Div. 1986).

2. Executive Reorganization Orders

NMI Const. art. III, § 15 requires action by a majority of the members of each house of the legislature to exercise the power to disapprove an executive reorganization.

Marianas Visitors Bureau v. Commonwealth, Civ. Action No. 94-516 (N.M.I. Super. Ct. June 23, 1994) (Memorandum Decision and Judgment at 37).

Under NMI Const. art. III, § 15, a unicameral "approval" of an executive reorganization is an act of no legal significance. It is the same as complete silence. The only legislative act carrying legal significance is bicameral disapproval of an executive reorganization.

Marianas Visitors Bureau v. Commonwealth, Civ. Action No. 94-516 (N.M.I. Super. Ct.

June 23, 1994) (Memorandum Decision and Judgment at 37, n.21).

--Particular Cases

Executive order divesting plaintiff of his authority for implementing civil service system as it applied to executive branch and creating entirely new office within executive branch called office of personnel, headed by personnel management officer, was within the constitutional powers of governor. NMI Const. art. III, § 15.

Mafnas v. Camacho, 1 CR 301 (Dist. Ct. App. Div. 1982).

Duties and functions of personnel office are executive functions that may be subject to reorganization and reallocation through an executive order, including transferring of functions and duties of personnel office to office of personnel established by executive order. NMI Const. art. III, § 15.

Mafnas v. Camacho, 1 CR 301 (Dist. Ct. App. Div. 1982).

Constitution provided governor authority to transfer funds from personnel office to office of governor in order to carry out purpose of executive order transferring functions and duties from the personnel office to office of personnel, where order was subject to 60-day consideration by legislature and legislature did not take any action to modify or disapprove entire order. NMI Const. art. III, § 15.

Mafnas v. Camacho, 1 CR 301 (Dist. Ct. App. Div. 1982).

Commonwealth Senate lacked power to reconsider joint resolution rejecting executive order, after resolution had been adopted by both houses and transmitted to governor, without first securing agreement of house of representatives to recall resolution from governor. Senate's failure to follow recall procedure violated NMI Const. art. II, § 5(c) and art. III, § 15, rendering subsequent senate resolution approving executive order void. Consequently, earlier joint resolution rejecting executive order remained in full force from date of transmittal to governor, and executive order--which sought to reorganize executive branch--was void.

Marianas Visitors Bureau v. Commonwealth, Civ. Action No. 94-516 (N.M.I. Super. Ct. June 23, 1994) (Memorandum Decision and Judgment at 38-40).

Section 16: Civil Service. [Repealed.]

History: Ratified 1977, effective 1978; repealed by Amendment 41. This section provided:

The legislature shall provide for a non-partisan and independent civil service commission with the duty to establish and administer personnel policies for the Commonwealth government. The commission's authority shall extend to positions other than those filled by election or by appointment of the governor in the departments and agencies of the executive branch and in the administrative staffs of the legislative and judicial branches. Appointment and promotion within the civil service shall be based on merit and fitness demonstrated by examination or by other evidence of competence.

Amendment 41 also adopted article XX, § 1, which readopted the language of this section, almost unaltered, and added provisions concerning the commission's composition, terms and removal of members, and authority.

Cross Reference: See article XX, § 1 (civil service).

Section 17: Public Services.

a) The governor shall delegate to a mayor elected under the provisions of Article VI, Section 2, responsibility for the execution of Commonwealth laws as deemed appropriate, and the administration of public services in the island or islands in which the mayor has been elected. Services being provided on a decentralized basis in Rota, and Tinian and Aguiguan, on the effective date of this provision shall continue. In furtherance of this section, the mayor shall have the responsibility for ensuring that the resident department heads faithfully execute their duties under the law and in accordance with the policies of the Commonwealth government for the administration of public services, in the island or islands in which the mayor has been elected.

b) Public services on Rota, and Tinian and Aguiguan, shall be headed by a resident department head in the departments providing the services. A resident department head shall submit a budget to the mayor pursuant to the budget instructions. No resident department head may be appointed to serve in any commonwealth-wide board, commission, or authority. These arrangements shall apply to the islands north of Saipan when the population of these islands exceeds one thousand persons.

c) Public services shall be provided on an equitable basis to the citizens of the Commonwealth. The legislature may require that these services be provided through decentralized administrative arrangements. The governor shall make any necessary recommendations to the legislature in order to accomplish this objective.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 25. Amendment 25 amended subsections (a) and (b), which originally provided:

a) The governor may delegate to a mayor elected under the provisions of article VI, section 2, responsibility for the execution of Commonwealth laws and the administration of public services in the island or islands in which the mayor has been elected. Services being provided on a decentralized basis in Rota and Tinian on the effective date of this Constitution shall continue to be provided on this basis unless the governor personally certifies after public hearing on the island involved that such decentralization is inconsistent with the efficient and economical delivery of services.

b) Public services on Rota and Tinian shall be supervised by a resident department head in

Art. III, § 18

the departments providing the services appointed by the head of the executive branch department with the advice and consent of the majority of the members of the legislature from the senatorial district in which the resident department head shall serve. These arrangements shall apply to the islands north of Saipan when the population of these islands exceeds one thousand persons.

Amendment 25 also amended article VI, §§ 1-6, and added sections seven and eight to that article (relating to local government).

Textual Irregularities: Capitalization of "Article" and "Section" in subsection (a) and lack of capitalization of "Commonwealth" in subsection (b).

Cross Reference: See article VI, § 3 (appointment of resident department heads) and article VI, § 7(b) (confirmation of department heads by municipal councils).

Related Commonwealth Code Sections: See 1 CMC § 5201 (delegation of authority to mayors of Rota and Tinian and Aguiguan) and 1 CMC § 5202 (duties of resident department heads).

Section 18: Executive Assistant for Carolinian Affairs.

a) The governor shall appoint an executive assistant for Carolinian affairs who is acceptable to the Carolinian community within the Commonwealth.

b) The executive assistant shall be a member of the governor's council created under article VI, section 5, and shall advise the governor on matters affecting persons of Carolinian descent within the Commonwealth.

c) The executive assistant shall review the application of government policies to and the availability and quality of government services for persons of Carolinian descent and may report findings or recommendations on these matters to the governor.

d) The executive assistant may investigate complaints and conduct public hearings regarding matters affecting persons of Carolinian descent. The executive assistant may report findings or recommendations on these matters to the governor.

e) The executive assistant may recommend items for inclusion in the proposed annual budget, review the budget before its submission by the governor to the legislature, and recommend amendments to the budget relating to matters affecting persons of Carolinian descent.

f) The executive assistant may at any time require information in writing or otherwise with respect to matters affecting persons of Carolinian descent from the officers of any administrative department, office or agency of the Commonwealth.

g) The annual salary of the Executive Assistant for Carolinian Affairs may not be less than the annual salary of a head of an executive department.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 18. Amendment 18 added subsection (g).

Textual Irregularity: Capitalization of "Executive Assistant for Carolinian Affairs" in subsection (g).

Art. III, § 19

Cross References: See article VI, § 5 (member of governor's council); see also article I, § 6 (equal protection of laws guaranteed, discrimination prohibited).

Related Commonwealth Code Sections: See Executive Order 94-3, § 204 (within Department of Community and Cultural Affairs), 3 CMC § 1202 (authority to nominate persons to serve on Chamorro-Carolinian Language Policy Commission), and 1 CMC § 8245, as amended by PL 9-25, § 513 (setting salary of \$48,000).

Section 19: Impeachment. The governor and lieutenant governor are subject to impeachment as provided in article II, section 8, of this Constitution for treason, commission of a felony, corruption or neglect of duty.

History: Ratified 1977, effective 1978.

Cross References: In addition to the cited section, see article III, § 23(a) (impeachment of resident executive for indigenous affairs), article IV, § 6 (impeachment of judges), article V, § 7 (impeachment of resident representative to the U.S.), and article III, § 9(c) (prohibiting governor from granting reprieve, commutation or pardon in case involving impeachment).

Comment: All elected public officials, including the governor and lieutenant governor, are subject to recall pursuant to article IX, § 3.

Section 20: Retirement System.

a) Membership in an employee retirement system of the Commonwealth shall constitute a contractual relationship. Accrued benefits of this system shall be neither diminished nor impaired.

b) An employee who has acquired not less than twenty years of creditable service under the Commonwealth retirement system shall be credited an additional five years and shall be eligible to retire. An employee who elects to retire under this provision may not be reemployed by the Commonwealth Government or any of its instrumentalities or agencies, for more than 60 calendar days in any fiscal year without losing his or her retirement benefits for the remainder of that fiscal year.

History: Adopted 1985 by Amendment 19.

Textual Irregularities: In subsection (b), capitalization of "Government" (compare, e.g., article III, § 15) and specification of number ("60") rather than word (compare, e.g., article IV, § 8).

Cross Reference: See article I, § 1 (prohibiting laws impairing obligation of contracts).

Related Commonwealth Code Sections: See generally 1 CMC § 8301 et seq. (1 CMC, Div. 8, pt. 3, retirement fund); see also 1 CMC § 8342 (early retirement benefits for certain government employees) and 1 CMC § 8401 et seq., as amended by PL 9-27, § 10 (early retirement bonus for certain government employees).

Notes of Decisions

1. Generally
2. U.S. Constitutional Challenge

1. Generally

Language of 19th Amendment is plainly applicable only to employees who had not yet retired when amendment was ratified in 1986. It does not permit an employee who retired before the amendment was adopted to "retire" again to take advantage of its terms. The amendment

Art. III, § 21

does not apply retroactively. NMI Const. art. III, § 20.
Camacho v. Northern Marianas Retirement Fund, 1 N.M.I. 362 (1990).

Legislative history of 19th Amendment confirms the apparent intention that it be applied prospectively. NMI Const. art. III, § 20.

Camacho v. Northern Marianas Retirement Fund, 1 N.M.I. 362 (1990).

Where constitutional amendment provided for option to obtain additional five years credit for retirement eligibility to employees with 20 years service who were eligible to retire, a person who retired before amendment came into force does not qualify for the five year credit offered. NMI Const. art. III, § 20.

In re Appeal of Camacho, 3 CR 615 (Trial Ct. 1989), *aff'd sub nom.*, *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362 (1990).

2. U.S. Constitutional Challenge

Classification scheme under 19th Amendment to NMI Constitution (art. III, § 20), which was adopted to save government money by enticing current qualified employees to retire early, bore rational relationship to legitimate government purpose. It did not violate Equal Protection Clause. U.S. Const. amend. XIV.

Camacho v. Northern Marianas Retirement Fund, 1 N.M.I. 362 (1990).

Refusal to include retirees within the scope of term "employee" as used in Constitutional amendment, purpose of which was to entice early retirement of government employees by offering those eligible to retire an additional five year service credit, did not offend equal protection provision of U.S. Constitution. U.S. Const. amend. XIV; NMI Const. art. III, § 20.

In re Appeal of Camacho, 3 CR 615 (Trial Ct. 1989), *aff'd sub nom.*, *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362 (1990).

Section 21: Boards and Commissions. In every case where the governor appoints a board or commission to perform a regulatory or administrative function or direct the activities of an agency, authority, or public or quasi-public corporation in the performance of a regulatory or administrative function, the members of such a board or commission shall be independent and may be removed only on grounds of gross neglect or dereliction of duty, breach of fiduciary duty, conviction of a felony, or mental or physical incapacity. Upon the expiration of the term of a member of a board or commission, such person shall cease to be a member unless reappointed in the manner prescribed by law. The governor shall make appointments within ninety days to fill any vacant seats on a board or commission. This section does not apply to boards and commissions that serve a purely

Art. III, § 22

advisory function or, except to the extent specifically required by federal law, to boards and commissions created in order to comply with federal law.

History: Adopted 1985 by Amendment 20.

Textual Error: In last sentence, "extend" instead of "extent."

Cross References: See article II, § 11 (prohibiting appointment of current and former legislators to boards or commissions under certain circumstances), article III, § 17(b) (prohibiting appointment of resident department head to Commonwealth-wide board or commission), article XV, § 1(c) (appointment of nonvoting ex officio members of board of education), article XV, § 2 (appointment of members of Northern Marianas College Board of Regents), article XIX, § 1 (mandating comprehensive code of ethics applying to, among other officials, board and commission members), and article XX, § 1 (appointment and removal of civil service commission members).

Related Commonwealth Code Sections: See generally 1 CMC § 2901 et seq. (appointment, confirmation, removal of board or commission members); see also 1 CMC § 8247 (compensation).

Comment: According to Amendment 20's title, it was intended "to guarantee the independence of boards and commissions and require appointments to vacant seats within 90 days."

Notes of Decisions

Removal of Members

Generally, with the executive power of appointment goes the power of removal. NMI Const. art. III.

Izuka v. Camacho, 1 CR 210 (Dist. Ct. 1981).

Where a term of office and the mode for removal from office are fixed by statute or regulation, the general proposition that the power of removal is inherently incident to the power of appointment does not apply and the executive power of removal is limited.

Izuka v. Camacho, 1 CR 210 (Dist. Ct. 1981).

—Particular Cases

Governor's attempted removal of his appointee to the Economic Development Loan Fund board was without force and effect when not in accordance with prescribed procedures, i.e. a recommendation by a majority of the board that the member be removed.

Izuka v. Camacho, 1 CR 210 (Dist. Ct. 1981).

Section 22: Special Assistant for Women's Affairs.

a) There is hereby established an Office of Special Assistant to the Governor for Women's Affairs. The governor shall appoint a person, who is qualified by virtue of education and experience, to be the special assistant. The special assistant may be removed only for cause.

b) It is the responsibility and duty of the special assistant to formulate and implement a policy of affirmative action in the government and private sector to assist

Art. III, § 23

women achieve social, political and economic parity. The special assistant shall promote the interests of women, assist agencies of government and private organizations to plan and implement programs and services for women, monitor compliance of laws and regulations by government agencies and private organizations, organize community education strategies regarding the roles of women, and recommend to the governor and the legislature for consideration legislation of benefit to women.

c) The special assistant may be authorized to hire staff and shall promulgate rules and regulations in carrying out the responsibilities and duties of the office.

d) The governor shall include in the budget of the executive branch the funding necessary to fully implement the provisions of this section.

History: Adopted 1985 by Amendment 21.

Textual Irregularity and Errors: Capitalization of "Office of Special Assistant to the Governor for Women's Affairs" in subsection (a) (compare, e.g., next section, article III, § 23(a)); in subsection (b), it appears that "to" should have been added after "women" in the first sentence, and that "compliance with" rather than "compliance of" should have been specified in the second sentence.

Cross Reference: See article I, § 6 (equal protection of laws guaranteed, sex discrimination prohibited).

Related Commonwealth Code Sections: See Executive Order 94-3, § 204 (within Department of Community and Cultural Affairs) and 1 CMC § 8245, as amended by PL 9-25, § 513 (setting salary of \$43,200).

Section 23: Resident Executive for Indigenous Affairs.

a) There is hereby established the office of resident executive to the governor for indigenous affairs. The governor shall appoint a person who is of Northern Marianas descent with the necessary and sufficient education and experience to be resident executive, with the advice and consent of the senate. The term of office shall be four years. Nothing in this section shall preclude renewal of such appointment by the governor. The resident executive may be removed as provided in Article II, Section 8, of this Constitution for incompetence, neglect of duty, commission of a felony, treason, or corruption.

b) **Responsibilities of Resident Executive.** The duties and responsibilities of the resident executive for indigenous affairs shall include but not limited to:

- coordinate the development, distribution, adoption and translation of a comprehensive history of the Marianas.
- ensure local participation in executive managerial decision-making in the government and private sector.
- assist and promote local entrepreneurial development.
- establish a community foundation for the advancement of the indigenous people.
- coordinate the translation and distribution of such official documents as the Constitution of the Commonwealth of the Northern Mariana Islands and the Covenant and the analyses thereof.
- plan for the establishment of the Indigenous Cultural Center and the Indigenous

Art. IV, § 1

Hall of Fame.

- coordinate an annual cultural festival.
- develop and implement a long-range plan to assist and promote the entry of the indigenous people into professional and technical institutions of higher education.
- serve as an advocate of positions taken by indigenous people on issues brought before them.

c) The office of resident executive for indigenous affairs shall commence immediately upon ratification of this section.

d) The resident executive is authorized to hire staff and promulgate rules and regulations in carrying out the duties and responsibilities of the office.

e) The governor shall include in the budget of the executive branch the funding necessary to fully implement the provisions of this section.

History: Adopted 1985 by Amendment 22.

Textual Irregularities and Errors: Capitalization of "Article" and "Section" in subsection (a); use of heading and grammatical errors in subsection (b) (e.g., "duties and responsibilities . . . shall include but [are?] not limited to . . . coordinate . . .").

Cross References: *See*, in addition to the cited section, article III, § 19 (impeachment of governor and lieutenant governor), article IV, § 6 (impeachment of judges), article V, § 7 (impeachment of resident representative to the U.S.), article III, § 9(c) (prohibiting governor from granting reprieve, commutation or pardon in case involving impeachment), and article XII, § 4 (defining persons of Northern Marianas descent).

Related Commonwealth Code Sections: *See* Executive Order 94-3, § 204 (within Department of Community and Cultural Affairs); *see also* 1 CMC § 463 (responsibility for tomb of the sea monument) and 1 CMC § 8245, as amended by PL 9-25, § 513 (setting salary of \$43,200).

Comment: The resident executive for indigenous affairs is the only official subject to impeachment who may be impeached for "incompetence."

ARTICLE IV: JUDICIAL BRANCH

Section 1: Judicial Power. The judicial power of the Commonwealth shall be vested in a judiciary of the Northern Mariana Islands which shall include those trial and appeals courts established by the legislature under this article.

History: Ratified 1977, effective 1978.

Cross References: *See* article IV, § 2 (next section, trial court), article IV, § 3 (appeals court), and Schedule on Transitional Matters § 4 (continuity of judicial matters).

Related Commonwealth Code Sections: *See generally* 1 CMC § 3001 et seq. (1 CMC, Div. 3, judicial branch) and CMC index for numerous provisions concerning the judiciary.

Comment: Covenant § 203(a) provides, in part: "[t]he Constitution [of the Northern Mariana Islands] will provide for a republican form of government with separate executive, legislative and judicial branches" Covenant § 203(d) provides:

Art. IV, § 2

The judicial power of the Northern Mariana Islands will be vested in such courts as the Constitution or laws of the Northern Mariana Islands may provide. The Constitution or laws of the Northern Mariana Islands may vest in such courts jurisdiction over all causes in the Northern Mariana Islands over which any court established by the Constitution or laws of the United States does not have exclusive jurisdiction.

Covenant § 903 provides:

Nothing herein shall prevent the presentation of cases or controversies arising under this Covenant to courts established by the Constitution or laws of the United States. It is intended that any such cases or controversies will be justiciable in such courts and that the undertakings by the Government of the United States and by the Government of the Northern Mariana Islands provided for in this Covenant will be enforceable in such courts.

Federal courts, including the U.S. District Court for the Northern Mariana Islands, have authority under Covenant § 202 "to determine whether the [Commonwealth] Constitution and subsequent amendments thereto are consistent with this Covenant and with those provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands." Federal courts may also interpret and apply Commonwealth law in federal cases.

Section 2: Commonwealth Trial Court. The Commonwealth trial court shall have original jurisdiction in all cases in equity and in all cases at law which involve land in the Commonwealth, and in all other civil actions. The court shall also have original jurisdiction in all criminal actions. At least one full-time judge shall be assigned to civil and criminal actions filed in Rota and Tinian. The legislature shall determine the number of judges.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 23. This section originally provided:

The legislature shall establish a Commonwealth trial court. This court has original jurisdiction over actions involving land in the Commonwealth and other civil actions except those in which the value of the matter in controversy exceeds five thousand dollars. The court also has original jurisdiction over criminal actions except those in which the defendant, if convicted, may be fined an amount that exceeds five thousand dollars or imprisoned for a term that exceeds five years. For at least five years after the establishment of the court, actions involving land shall be considered by a special division of the court. At least one full-time judge of the court shall be assigned to Rota and at least one full-time judge of the court shall be assigned to Tinian. The legislature may vest additional civil and criminal jurisdiction in the court after this Constitution has been in effect for at least five years or at an earlier date if no United States District Court for the Northern Mariana Islands is available under article IV, section 402(b), of the Covenant to exercise jurisdiction over causes not vested in the Commonwealth trial court.

Amendment 23 also amended article IV, §§ 3 and 4.

Cross References: See article IV, § 1 (preceding section, judicial power), and article IV, § 3 (next section, appeals court).

Related Commonwealth Code Sections: See generally 1 CMC § 3201 et seq. (Commonwealth Superior Court); see also CMC index for numerous citations to Superior Court jurisdiction.

Comment: Covenant § 402(a) grants the U.S. District Court for the Northern Mariana Islands the same jurisdiction as other federal district courts. Covenant § 402(b), cited in the original language of article IV, § 2, provides:

The District Court will have original jurisdiction in all causes in the Northern Mariana Islands not described in Subsection (a) jurisdiction over which is not vested by the Constitution or laws of the Northern Mariana Islands in a court or courts of the Northern Mariana Islands. In causes brought in the District Court solely on the basis of this subsection, the District Court will be considered a court of the Northern Mariana Islands for the purposes of determining the requirements of the indictment by grand jury or trial by jury.

Art. IV, § 2

In PL 1-5, the Commonwealth Trial Court Act of 1978 (effective July 14, 1978), the legislature established the Commonwealth Trial Court and granted it jurisdiction "over those matters as set forth" in the original language of article IV, § 2. PL 1-5, § 1 (ch. 1, § 1). Pursuant to Covenant § 402(b) and the original language of article IV, § 2, the District Court exercised jurisdiction over civil actions involving claims exceeding \$5,000 and criminal actions involving potential fines exceeding \$5,000 or imprisonment exceeding five years. Pursuant to authority granted in Covenant § 402 (c) (see comment to next section), PL 1-5 provided for appeals to the District Court. PL 1-5, § 1 (ch. 3, § 1). The District Court established an Appellate Division to hear such appeals (see comment to next section, appeals court).

In PL 3-14, the legislature expanded the Trial Court's jurisdiction, effective January 10, 1983, to encompass "all civil and criminal matters arising under the laws of the Commonwealth of the Northern Mariana Islands," thus divesting the District Court of trial jurisdiction. PL 3-14, § 2. PL 3-14 § 2(c) provided that actions pending in the District Court prior to January 10, 1983, would remain within the jurisdiction of that court until disposed of. The District Court Appellate Division continued to exercise appellate jurisdiction.

In PL 6-25, the Commonwealth Judicial Reorganization Act of 1989 (effective May 2, 1989), the legislature created the Commonwealth Supreme Court and granted it appellate jurisdiction over judgments and orders of the Trial Court, which was reestablished and renamed the Commonwealth Superior Court. PL 6-25, § 3 (ch. 1, §§ 3101 and 3102, and ch. 2, § 3201). PL 6-25 transferred jurisdiction over all appeals from Trial Court rulings pending before the District Court Appellate Division, the U.S. Ninth Circuit Court of Appeals and the U.S. Supreme Court on May 2, 1989, the act's effective date. PL 6-25, § 3 (ch. 1, § 3109). In *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom., Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992), the Ninth Circuit ruled that the Commonwealth was without power to divest it of jurisdiction over appeals filed from a final order of the District Court Appellate Division entered before May 2, 1989. However, in *Commonwealth of the Northern Mariana Islands v. Kawano*, 917 F.2d 567 (9th Cir. 1990), *cert. den.*, 499 U.S. 910, 111 S.Ct. 1116, 113 L.Ed.2d 224 (1991), the Ninth Circuit upheld PL 6-25's divestment of District Court Appellate Division jurisdiction over appeals pending before that court on May 2, 1989.

Concerning the authority of federal courts to make rulings regarding provisions of the Commonwealth Constitution and other Commonwealth law, see comment to article IV, § 1 (preceding section, judicial power).

Notes of Decisions

Land, Actions Involving

By describing the Commonwealth Trial Court's jurisdiction in land matters as original, the framers must have intended it to be just that; if they had intended such jurisdiction to be exclusive they would have so indicated. NMI Const. art. IV, § 2.

Lizama v. Rios, 2 CR 407 (Dist. Ct. 1985).

For purposes of the Commonwealth constitutional provision vesting original jurisdiction in Commonwealth Trial Court over actions involving land, "actions involving land" include any dispute the resolution of which is, in whole or in part, dependent upon a determination first being made of a controverted claim to any right, title, or interest in land. NMI Const. art. IV, § 2.

South Seas Corp. v. Sablan, 1 CR 130 (Trial Ct. 1981).

Commonwealth Trial Court has jurisdiction over actions involving land even where the amount in controversy exceeds \$5,000. NMI Const. art. IV, § 2.

South Seas Corp. v. Sablan, 1 CR 130 (Trial

Ct. 1981).

The District Court for the Northern Mariana Islands does not have jurisdiction in actions involving land. NMI Const. art. IV, § 2.

Villagomez v. Villagomez, 1 CR 13 (Dist. Ct. 1979).

The Commonwealth Trial Court has original jurisdiction over land actions and jurisdiction extends beyond mere adjudication of title to land. NMI Const. art. IV, § 2.

Villagomez v. Villagomez, 1 CR 13 (Dist. Ct. 1979).

"Actions involving land," over which the Commonwealth Trial Court has original jurisdiction, include any dispute the resolution of which is, in whole or in part, dependent upon a determination first being made of a controverted claim to any right, title or interest in land. NMI Const. art. IV, § 2.

Villagomez v. Villagomez, 1 CR 13 (Dist. Ct. 1979).

Art. IV, § 3

Section 3: Commonwealth Appeals Court. The legislature may establish a Commonwealth appeals court to hear those appeals from judgments and orders of the Commonwealth trial court.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 23. This section originally provided:

The legislature may establish a Commonwealth appeals court to hear those appeals from judgments and orders of the Commonwealth trial court as are required or permitted by law after this Constitution has been in effect for at least five years or at an earlier date if no United States District Court for the Northern Mariana Islands is available under article IV, section 402(c), of the Covenant to hear these appeals.

Amendment 23 also amended article IV, §§ 2 and 4.

Cross References: See article II, § 4 (exclusive jurisdiction to review or establish reapportionment or redistricting plan for house of representatives), article III, § 8(b) (exclusive jurisdiction to determine questions regarding disability of governor and existence of vacancy in office of governor), article IV, § 1 (judicial power), and article IV, § 2 (preceding section, trial court).

Related Commonwealth Code Sections: See generally 1 CMC § 3101 et seq. (establishing Commonwealth Supreme Court); see also CMC index for citations to Supreme Court jurisdiction.

Comment: Prior to the establishment of the Commonwealth Supreme Court in 1989 (see comment to preceding section for legislative history of Commonwealth judicial branch), the Appellate Division of the U.S. District Court for the Northern Mariana Islands served as the Commonwealth appellate court under legislation enacted pursuant to Covenant § 402(c), which provides:

The District Court will have such appellate jurisdiction as the Constitution or laws of the Northern Mariana Islands may provide. When it sits as an appellate court, the District Court will consist of three judges, at least one of whom will be a judge of a court of record of the Northern Mariana Islands.

With respect to appeals from the Commonwealth Supreme Court to federal courts, Covenant § 403(a) provides, in part:

The relations between the courts established by the Constitution or laws of the United States and the courts of the Northern Mariana Islands with respect to appeals, certiorari . . . and other matters or proceedings will be governed by the laws of the United States pertaining to the relations between the courts of the United States and the courts of the several States in such matters and proceedings, except as otherwise provided in this Article; provided that for the first fifteen years following the establishment of an appellate court of the Northern Mariana Islands the United States Court of Appeals for the judicial circuit which includes the Northern Mariana Islands will have jurisdiction of appeals from all final decisions of the highest court of the Northern Mariana Islands from which a decision could be had in all cases involving the Constitution, treaties or laws of the United States, or any authority exercised thereunder

Section 4: Appointment and Qualifications. The governor shall appoint judges of the Commonwealth courts with the advice and consent of the senate. The term of office shall be six years and may be increased by law to not more than twelve years for judges who have served at least one term. A judge shall be at least thirty-five years of age, a citizen or national of the United States and possess other qualifications provided by law.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 23. Amendment 23 raised the minimum age from 30 to 35. Amendment 23 also amended article IV, §§ 2 and 3.

Related Commonwealth Code Sections: See generally 1 CMC § 3301 et seq. (Commonwealth judges and justices).

Section 5: Compensation. The compensation of judges shall be provided by law.

Art. IV, § 6

The salary of a judge may not be decreased during a term of office.

History: Ratified 1977, effective 1978.

Cross Reference: *See* article II, § 10 (compensation of legislators), article III, § 5 (compensation of governor), article V, § 5 (compensation of resident representative to the U.S.), article VI, § 4 (compensation of mayors), and article VI, § 7(a) (compensation of municipal council members).

Related Commonwealth Code Sections: *See* 1 CMC § 3304 (setting salary of chief justice at \$130,000, associate justices at \$126,000, superior court presiding judge at \$123,000, associate judges at \$120,000, and special judges on a pro-rata basis, based upon time served).

Section 6: Sanctions. Judges are subject to impeachment as provided in article II, section 8, of this Constitution for treason, commission of a felony, corruption or neglect of duty. The legislature shall establish an advisory commission on the judiciary whose members include lawyers and representatives of the public. Upon recommendation of the advisory commission, the governor may remove, suspend or otherwise sanction a judge for illegal or improper conduct.

History: Ratified 1977, effective 1978.

Cross References: *See*, in addition to cited section, article III, § 19 (impeachment of governor and lieutenant governor), article III, § 23(a) (impeachment of resident executive for indigenous affairs), article V, § 7 (impeachment of resident representative to the U.S.), and article III, § 9(c) (prohibiting governor from granting reprieve, commutation or pardon in case involving impeachment).

Related Commonwealth Code Sections: *See* 1 CMC § 3501 et seq. (advisory commission on the judiciary).

Comment: Commonwealth judges and justices are subject to canons and other provisions governing conduct set forth in the CODE OF JUDICIAL CONDUCT FOR THE COMMONWEALTH JUDICIARY AND PROCEDURE FOR FILING GRIEVANCES INVOLVING MEMBERS OF THE JUDICIARY (effective Dec. 3, 1989).

Section 7: Limitations on Activities of Judges. A full-time judge may not hold another compensated government position or engage in the practice of law. A judge may not make a direct or indirect financial contribution to a political organization or candidate, hold an executive office in a political organization, participate in a political campaign, or become a candidate for elective public office without resigning judicial office at least six months before becoming a candidate.

History: Ratified 1977, effective 1978.

Cross Reference: *See* article VIII, § 5 (elected public official must resign from office upon certification to be candidate for other public office if term of office sought begins before end of term of office held).

Related Commonwealth Code Sections: *See* 1 CMC § 3307 (limitations on political activities).

Comment: Commonwealth judges and justices are subject to canons and other provisions governing conduct set forth in the CODE OF JUDICIAL CONDUCT FOR THE COMMONWEALTH JUDICIARY AND PROCEDURE FOR FILING GRIEVANCES INVOLVING MEMBERS OF THE JUDICIARY (effective Dec. 3, 1989).

Section 8: Rule-making Power. The judiciary of the Commonwealth may propose rules governing civil and criminal procedure, judicial ethics, admission to and governance

Art. V, § 1

of the bar of the Commonwealth, and other matters of judicial administration. A proposed rule shall be submitted promptly to the legislature and shall become effective sixty days after submission unless disapproved by a majority of the members of either house of the legislature. Until rules are established under this section, the rules of the High Court of the Trust Territory of the Pacific Islands shall apply in the Commonwealth courts.

History: Ratified 1977, effective 1978.

Related Commonwealth Code Sections: *See generally* 1 CMC § 3403; *see also* 1 CMC § 3503 (assistance of judicial advisory commission) and 9 CMC § 1401 (rules for motor vehicle traffic cases).

Comment: Pursuant to this section's grant of authority, the following rules have been adopted: CODE OF JUDICIAL CONDUCT FOR THE COMMONWEALTH JUDICIARY AND PROCEDURE FOR FILING GRIEVANCES INVOLVING MEMBERS OF THE JUDICIARY, COMMONWEALTH RULES OF APPELLATE PROCEDURE, COMMONWEALTH RULES OF CIVIL PROCEDURE, COMMONWEALTH RULES OF CRIMINAL PROCEDURE, COMMONWEALTH DISCIPLINARY RULES AND PROCEDURE, COMMONWEALTH RULES OF EVIDENCE, COMMONWEALTH RULES OF JUVENILE DELINQUENCY PROCEDURE, COMMONWEALTH RULES FOR LEGAL INTERN PROGRAM, COMMONWEALTH RULES OF PRACTICE, COMMONWEALTH RULES OF PROBATE PROCEDURE, COMMONWEALTH RULES GOVERNING PROCEDURE IN TRAFFIC CASES, and RULES OF ADMISSION OF THE COMMONWEALTH SUPREME COURT.

Notes of Decisions

Trial Assistants

—Particular Cases

Limitations in disciplinary order clarifying rules applicable to trial assistants were proper. 1 CMC § 3103 [PL 1-5, § 3]; NMI Const. art. IV, § 8.

In re Villanueva, 1 CR 952 (Dist. Ct. App. Div. 1984).

Limitation in disciplinary order purporting to restrict trial assistant to trial work and preventing him from conducting a general law practice was invalid under existing rules of criminal procedure. T.T. R.Crim.P. 3(f); NMI Const. art. IV, § 8.

In re Villanueva, 1 CR 952 (Dist. Ct. App. Div. 1984).

ARTICLE V: REPRESENTATION IN THE UNITED STATES

Section 1: Resident Representative to the United States. A resident representative to the United States shall be elected to represent the Commonwealth in the United States and perform those related duties provided by law. The governor shall provide a certification of selection promptly to the United States Department of State and to the resident representative.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 24. Amendment 24 added "resident" before "representative" in the heading and the first sentence. Amendment 24 amended all seven sections of this article.

Related Commonwealth Code Sections: *See generally* 1 CMC § 4101 et seq.; *see also* 1 CMC § 6331 (nomination of candidates), 1 CMC § 6341 (campaign financing disclosure), and 1 CMC § 6421 et seq. (election contests).

Art. V, § 2

Comment: Covenant § 901 provides, in part: "[t]he Constitution or laws of the Northern Mariana Islands may provide for the appointment or election of a Resident Representative to the United States, whose term of office will be two years, unless otherwise determined by local law, and who will be entitled to receive official recognition as such Representative by all of the departments and agencies of the Government of the United States upon presentation through the Department of State of a certificate of selection from the Governor."

Notes of Decisions

1. Generally
2. Authority
--Particular Cases

1. Generally

The office of the representative to the United States is an independent constitutional office which does not fall neatly within any of the three traditional branches of government; however, it is not a fourth branch of government.

Tenorio v. Commonwealth, 2 CR 725 (Dist. Ct. App. Div. 1986).

2. Authority

--Particular Cases

The legislature has the authority pursuant to the NMI Constitution to prescribe the duties of the representative to the United States; accordingly, its action removing from the representative control over the liaison offices which it had previously given was constitutional. NMI Const. art. V, § 1.

Tenorio v. Commonwealth, 2 CR 725 (Dist. Ct. App. Div. 1986).

Section 2: Term of Office. The term of office of the resident representative shall be two years, except that on the second Monday of January 1990, the term of office of the resident representative shall be increased to four years. In the event that the United States confers the status of member or non-voting delegate in the United States Congress on the resident representative and such status requires a different term, the term of office of the resident representative shall be that required by such status.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 24. This section originally provided: "[t]he term of office of the representative shall be two years unless it is increased to no more than four years by initiative under article IX, section 1." Amendment 24 amended all seven sections of this article.

Textual Irregularity: No comma between "January" and "1990" in first sentence.

Related Commonwealth Code Sections: See 1 CMC § 4101 (setting four-year term).

Section 3: Qualifications. The resident representative shall be qualified to vote in the Commonwealth, a citizen of the United States, at least twenty-five years of age, and a resident and domiciliary of the Commonwealth for at least seven years, immediately preceding the date on which the resident representative takes office. A different period of

Art. V, § 4

residence and domicile may be provided by law. No person convicted of a felony in the Commonwealth or in any area under the jurisdiction of the United States may be eligible for this office unless a full pardon has been granted.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 24. Amendment 24 added "resident" before "representative" in the first sentence. Amendment 24 amended all seven sections of this article.

Related Commonwealth Code Sections: See 1 CMC § 4102 (representative to have qualifications specified in article V, § 3).

Comment: Covenant § 901 provides, in part: "[t]he Representative must be a citizen and resident of the Northern Mariana Islands, at least twenty-five years of age, and, after termination of the Trusteeship Agreement [November 4, 1986, under Presidential Proclamation 5564], a citizen of the United States."

According to the *Analysis*:

It is intended that for all purposes in this Constitution or any statute the representative to the United States shall be considered a resident and domiciliary of the Commonwealth during any period that the representative is in the United States on official business. This permits the representative to vote, run for office and be eligible for other rights, privileges or benefits that are available only to persons who meet a durational residency or domicile requirement.

Id. at 104.

Section 4: Annual Report. The resident representative shall submit a written report by the first day of March of each year, except that an outgoing resident representative shall submit a final written report by the second Monday of January of the year he or she leaves office, to the governor and legislature on the resident representative's official activities during the preceding year and matters requiring the attention of the government or people of the Commonwealth.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 24. This section originally provided: "[t]he representative shall submit a written report by the second Monday of January of each year to the governor and legislature on the representative's official activities during the preceding year and matters requiring the attention of the government or people of the Commonwealth." Amendment 24 amended all seven sections of this article.

Cross Reference: See, regarding annual reports, article III, § 9(b) (annual report by governor to legislature) and article III, § 12 (annual report by public auditor to legislature).

Related Commonwealth Code Sections: See 1 CMC § 4207.

Section 5: Compensation. The resident representative shall receive an annual salary and reasonable allowance for expenses provided by law. The salary may not be changed during a term of office. The staff of the office of the resident representative shall be exempted from the civil service.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 24. Amendment 24 added "resident" before "representative" in the first sentence and also added the last sentence. Amendment 24 amended all seven sections of this article.

Cross References: See article II, § 10 (compensation of legislators), article III, § 5 (compensation of governor and lieutenant governor), article IV, § 5 (compensation of judges), article VI, § 4 (compensation of mayors), and article VI, § 7(a) (compensation of municipal council members).

Art. V, § 6

Related Commonwealth Code Section: *See* 1 CMC § 8244 (setting salary of \$60,000) and 1 CMC § 4103 (expenses).

Section 6: Vacancy. In the event of a vacancy in the office of resident representative to the United States, the governor shall appoint a successor with the advice and consent of the legislature unless the United States confers the status of member or non-voting delegate in the United States Congress on the resident representative and such status requires a different method of filling vacancies, in which case vacancies shall be filled in the manner required by such status.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 24. This section originally provided: "[i]n the event of a vacancy in the office of representative to the United States, the governor shall appoint a successor with the advice and consent of the legislature." Amendment 24 amended all seven sections of this article.

Related Commonwealth Code Section: *See* 1 CMC § 4102.

Section 7: Impeachment. The resident representative is subject to impeachment as provided in article II, section 8, of this Constitution for treason, commission of a felony, corruption or neglect of duty.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 24. Amendment 24 added "resident" before "representative." Amendment 24 amended all seven sections of this article.

Cross References: In addition to cited section, *see* article III, § 19 (impeachment of governor and lieutenant governor), article III, § 23(a) (impeachment of resident executive for indigenous affairs), article IV, § 6 (impeachment of judges), and article III, § 9(c) (prohibiting governor from granting reprieve, commutation or pardon in case involving impeachment).

Related Commonwealth Code Section: *See* 1 CMC § 4104 (compliance with ethics code required).

Comment: All elected public officials, including the resident representative to the U.S., are subject to recall pursuant to article IX, § 3.

ARTICLE VI: LOCAL GOVERNMENT

Section 1: Local Government. Agencies of local government shall be established as provided by this article.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 25; amended by Legislative Initiative 1 (House Bill 5-198), ratified November 7, 1987. Amendment 25, which readopted the original language of this section, also amended article III, § 17, all six original sections of this article, and added new sections 7 and 8 to this article. Legislative Initiative 1 readopted the original language of this section and amended the other seven sections of this article.

Cross References: *See* article II, § 6 (granting legislature or senatorial district delegation authority to enact local laws), article III, § 17 (provision of public services within islands), and article IX, § 1 (permitting proposal and adoption of local laws by initiative).

Related Commonwealth Code Sections: *See generally* 1 CMC § 5001 et seq. (1 CMC, Div. 5, local government).

Comment: According to their titles, both Amendment 25 and Legislative Initiative 1 related "to Local Government and decentralized delivery of public services." House Bill 5-198, designated as Legislative Initiative 1 on the ballot, was titled "the Saipan Mayor's Office Legislative Initiative Act of 1987." HB 5-198, § 1.

Art. VI, § 2

Section 2: Election of Mayor. The qualified voters from Rota, Tinian and Aguiguan, Saipan, and the islands north of Saipan shall elect a mayor for each island or group of islands.

a) A mayor shall be qualified to vote in the island or islands served by the mayor, at least twenty-five years of age, a resident and domiciliary of the island or islands served by the mayor for at least three years immediately preceding the date on which the mayor take office, and must reside in the island or islands served by the mayor after each election, and shall meet other qualifications provided by law. No person convicted of a felony in the Commonwealth or in an area under the jurisdiction of the United States may be eligible for this office unless a full pardon has been granted.

b) The mayor shall be elected at a regular general election for a term of office of four years and may not hold that office for more than two terms. A vacancy in the Office of Mayor shall be filled by special election if one-half or more of the term remains and otherwise as provided by law.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 25; amended by Legislative Initiative 1 (House Bill 5-198), ratified November 7, 1987. Amendment 25 made several revisions to the original language, which provided:

The qualified voters from Rota, Saipan, Tinian and Aguiguan, and the islands north of Saipan shall elect a mayor for each island or group of islands.

(a) A mayor shall be qualified to vote in the Commonwealth, at least twenty-five years of age, a resident and domiciliary of the Commonwealth for at least three years immediately preceding the date on which the mayor takes office, and shall meet other qualifications provided by law. No person convicted of a felony in the Commonwealth or in an area under the jurisdiction of the United States may be eligible for this office unless a full pardon has been granted.

(b) A mayor shall be elected at a regular general election for a term of office of four years. A vacancy in the office of mayor shall be filled by special election if one-half or more of the term remains and otherwise as provided by law.

Amendment 25 added a new subsection, which provided:

(c) The office of the mayor for Saipan shall remain as provided in this Constitution prior to the effective date of this provision until the second Monday of January, 1990, at which time, it shall cease to exist and the offices of precinct commissioners shall be established as provided in this article.

Amendment 25 also amended article III, § 17, all six original sections of this article, and added new sections 7 and 8 to this article.

Legislative Initiative 1 changed "takes" to "take" after "date on which the mayor" and inserted "each" before "election" in the first sentence of subsection (a), and deleted all of subsection (c). Legislative Initiative 1 readopted or amended all eight sections of this article.

Textual Irregularity and Error: Capitalization of "Office of Mayor" in subsection (b); "take" rather than "takes" after "date on which the mayor" in subsection (a).

Cross Reference: See article VIII, § 2 (special elections).

Related Commonwealth Code Sections: See generally 1 CMC § 5101 et seq. (office of mayor); see also 1 CMC § 6335 (nomination of candidates), 1 CMC § 6341 (campaign financing disclosure), and 1 CMC § 6421 et seq. (election

Art. VI, § 3

contests).

Comment: With respect to special elections to fill vacancies, see comment to article VIII, § 2.

Section 3: Responsibilities and Duties of the Mayor.

a) A mayor shall serve on the Governor's Council as established by Section 5 of this article.

b) A mayor shall administer government programs, public services, and appropriations provided by law, for the island or islands served by the mayor, and shall report quarterly to the governor, relating to these programs and services or appropriations.

c) A mayor may investigate complaints and conduct public hearings with respect to government operations and local matters, and may submit findings or recommendations to the governor and the legislature. A mayor may require information in writing relating to local matters as may be necessary to his investigation under this subsection.

d) The Mayors of Rota, Tinian and Aguiguan, Saipan, and the islands north of Saipan, in consultation with the Municipal Council, shall submit items for inclusion in the proposed budgets for both government operations and capital improvement projects. The governor's budget submission to the legislature shall state his disposition of the budgetary requests contained in the submissions received from the Mayors.

e) A mayor shall coordinate any extension of federal programs extended to the island or islands served by the mayor.

f) A mayor shall act as the principal local official for coordinating activities with disaster control for the mobilization of resources and meeting emergency conditions in the island or islands served by the mayor.

g) The Mayors of Rota, and, Tinian and Aguiguan, shall appoint, in consultation with the head of the respective executive branch department, all resident department heads.

h) A mayor shall perform other responsibilities provided by law.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 25; amended by Legislative Initiative 1 (House Bill 5-198), ratified November 7, 1987. This section originally provided:

Section 3: Responsibilities of Mayor.

a) A mayor shall serve on the governor's council established by section 5 of this article.

b) A mayor shall review the government services and appropriations provided by law for the island or islands served by the mayor and shall submit to the governor findings or recommendations relating to these services or appropriations.

Art. VI, § 4

c) A mayor may investigate complaints and conduct public hearings with respect to local matters and may submit findings or recommendations to the governor.

d) A mayor shall recommend items for inclusion in the proposed annual budget, review the proposed budget before its submission by the governor to the legislature, and recommend amendments in the proposed budget relating to the island or islands served by the mayor. A recommendation relating to the budget made by a mayor shall be considered by the governor and rejected only for good cause.

e) A mayor may promulgate regulations on local matters as provided by law.

f) A mayor may expend for local public purposes the revenues raised by local taxes that are designated by law for those purposes after the expenditures are authorized by the legislature or by the affirmative vote of a majority of the members of the legislature representing the island or islands served by a mayor.

g) A mayor may appoint, supervise and remove those employees as are provided by law to assist in the performance of mayoral responsibilities.

h) A mayor shall perform other responsibilities provided by law.

Amendment 25 altered the heading, inserted "as" before "established" in subsection (a); revised subsection (b) to its present form; added "government operations and" prior to "local matters" and "and the legislature" after "governor" in subsection (c) and added the current second sentence of that section; and revised subsection (d) as follows:

The mayors of Rota, and Tinian and Aguiguan, in consultation with the municipal council, and the mayor of the islands north of Saipan shall submit items for inclusion in the proposed budgets for both government operations and capital improvement projects. The governor's budget submission to the legislature shall state his disposition of the budgetary requests contained in the submissions from Rota, Tinian and Aguiguan, and the islands north of Saipan.

Amendment 25 also revised subsections (e), (f) and (g) to their present form. Amendment 25 amended article III, § 17, all six original sections of this article, and added new sections 7 and 8 to this article.

Legislative Initiative 1 revised subsection (d) to its present form by capitalizing "Mayors" (two instances) and "Municipal Council," by including language concerning the Mayor of Saipan, and by substituting "received from the Mayors" in place of "from Rota, Tinian and Aguiguan, and the islands north of Saipan." Legislative Initiative 1 readopted or amended all eight sections of this article.

Cross Reference: See article III, § 10 (governor's powers in emergency or disaster), article III, § 17(b) (authority and duties of mayor with respect to resident department head), and article VI, § 7 (powers of municipal council, including member becoming acting mayor if mayor unable to discharge duties because of physical or mental disability).

Textual Irregularities: Capitalization of "Governor's Council" and "Section" in subsection (a), "Mayors" (two instances) and "Municipal Council" in subsection (d), and "Mayors" in subsection (g); comma placement in subsection (b).

Related Commonwealth Code Sections: See generally 1 CMC §§ 5106 and 5107; see also 1 CMC § 331 (clean-up week activity coordinators), 1 CMC § 5108 (duties during emergencies), 1 CMC § 5201 (delegation of authority for delivery of public services on Rota and Tinian), and 3 CMC §§ 5122 and 5123, as amended by Executive Order 94-3 (duties during disasters).

Section 4: Compensation. A mayor shall receive an annual salary, plus an allowance for reasonable expenses as provided by law.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 25; amended by Legislative Initiative 1 (House

Art. VI, § 5

Bill 5-198), ratified November 7, 1987. This section originally provided:

A mayor shall receive an annual salary and reasonable allowance by expenses provided by law. The salary of a mayor may not be decreased during a term of office. Salaries and expenses for assistants to a mayor shall be provided by law.

Amendment 25 adopted the current language. Amendment 25 also amended article III, § 17, all six original sections of this article, and added new sections 7 and 8 to this article. Legislative Initiative 1 readopted the language of Amendment 25; it also readopted or amended the seven other sections of this article.

Cross References: See article II, § 10 (compensation of legislators), article III, § 5 (compensation of governor and lieutenant governor), article IV, § 5 (compensation of judges), article V, § 5 (compensation of resident representative to the U.S.), and article VI, § 7(a) (compensation of municipal council members).

Related Commonwealth Code Sections: See 1 CMC § 8244 (setting salary of \$43,200).

Section 5: Governor's Council. The mayors elected under Section 2, the executive assistants appointed under Article III, Section 18, and the chairmen of the Municipal Councils shall be members of a Governor's Council that shall advise the governor on government operations and local matters. The governor shall preside over the Council which shall meet regularly or at least four times each year to consider matters concerning the relationship between the Commonwealth and its separate islands.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 25; amended by Legislative Initiative 1 (House Bill 5-198), ratified November 7, 1987. The first sentence of this section originally provided: "[t]he mayors elected under section 2 and the executive assistant appointed under article III, section 18, shall be members of a governor's council that shall advise the governor on local matters." Amendment 25 revised the first sentence to provide: "[t]he mayors elected under Section 2, the executive assistant appointed under Article III, Section 18, and the chief precinct commissioner shall be members of a governor's council that shall advise the governor on government operations and local matters." Amendment 25 also amended article III, § 17, all six original sections of this article, and added new sections 7 and 8 to this article. Legislative Initiative 1 revised the first sentence to its present form and capitalized "Council" in the second sentence. Legislative Initiative 1 readopted or amended all eight sections of this article.

Textual Irregularities: Capitalization of "Section" (two instances), "Article," "Municipal Councils," "Governor's Council" and "Council."

Cross Reference: See article VI, § 6 (next section, municipal councils).

Section 6: Municipal Councils.

a) There shall be municipal councils for Rota, Tinian and Aguiguan, Saipan and the islands north of Saipan, to be composed of three members, elected at-large in the island or islands to be served and on a non-partisan basis. Candidates for municipal council shall be at least twenty-one years of age, a resident of the municipality for at least three and shall serve for a term of two years. Each council shall adopt its own Rules of Procedures.

b) In the case of a vacancy in a municipal council, the mayor of the island or islands served by the council shall appoint the unsuccessful candidate for the office in the last election for the council who received the next highest number of votes. Otherwise, the mayor shall appoint a person from the island or islands served with the advise and consent of the legislative delegation of the senatorial district for that island or islands.

Art. VI, § 6

History: Ratified 1977, effective 1978; amended 1985 by Amendment 25; amended by Legislative Initiative 1 (House Bill 5-198), ratified November 7, 1987. This section originally provided:

Section 6: Other Agencies of Local Government.

a) The chartered municipality form of local government shall cease to exist on the effective date of this Constitution. Local taxes paid to the chartered municipal governments on Rota, Saipan and Tinian shall remain in effect until otherwise provided by law and may be expended for local public purposes on the island or islands producing those revenues if authorized by the legislature or by the affirmative vote of a majority of the members of the legislature from the applicable senatorial district. Ordinances and other regulations enacted by municipal councils on Rota, Saipan and Tinian that are consistent with this Constitution shall remain in effect until superseded by Commonwealth law or local ordinances or regulations enacted under this Constitution.

b) No additional agency of local government may be established for at least five years from the effective date of this Constitution, after which the legislature may establish agencies of local government in place of or in addition to the agencies provided for in this article with powers, elected officials and financing as provided by law. Agencies of local government may not be created for geographical units smaller than an individual island. New agencies of local government may not be established without the affirmative vote of two-thirds of the persons qualified to vote from the island or islands to be served by the proposed agency of local government.

Amendment 25 provided:

Section 6: Municipal Councils/Precinct Commissioners.

a) There shall be municipal councils for Rota, and Tinian and Aguiguan, to be composed of three members, elected at-large in the island or islands to be served and on a non-partisan basis. Candidates for municipal council shall be at least twenty-one years of age, a resident of the municipality for at least three years and shall serve for a term of two years. Each council shall adopt its own rules of procedure.

b) Commencing the second Monday of January 1990, there shall be four precinct commissioners for Saipan, elected by and for four precincts. Candidates for precinct commissioner shall be at least twenty-one years of age, a resident of the precinct for at least three years immediately preceding the date on which the precinct commissioner takes office, and shall serve for a term of four years. Immediately upon taking office, the four precinct commissioners shall meet and select a chief commissioner by drawing of lots. The chief commissioner shall serve for a period not to exceed one year. Each of the four precinct commissioners shall serve alternately as chief commissioner every year throughout the four year term.

c) In the case of a vacancy in a municipal council, the mayor of the island or islands served by the council shall appoint the unsuccessful candidate for the office in the last election for the council who received the next highest number of votes. Otherwise, the mayor shall appoint a person from the island or islands served with the advice and consent of the legislative delegation of the senatorial district for that island or islands.

d) In the case of a vacancy in an office of precinct commissioner, the governor shall appoint the unsuccessful candidate for the office in the last election who received the next highest number of votes in the precinct for which the vacancy exists. Otherwise, the governor shall appoint a person from that precinct with the advice and consent of the precinct legislative delegation to the house of representatives.

Amendment 25 included the following addendum relating to this section:

Transition Provision - Election. An election of the members of the municipal councils for Rota, and Tinian and Aguiguan, shall be held within sixty days after ratification of this amendment. The election of precinct commissioners for Saipan shall be held four years after the ratification of this amendment. The Board of Elections shall conduct the election in accordance with existing laws.

Art. VI, § 7

Amendment 25 amended article III, § 17, all six original sections of this article, and added new sections 7 and 8 to this article.

Legislative Initiative 1 deleted "and" prior to "Tinian and Aguiguan," and "Saipan and the islands north of Saipan" after "Tinian and Aguiguan," in subsection (a); deleted subsections (b) and (d); and redesignated subsection (c) as subsection (b). Legislative Initiative 1 readopted or amended all eight sections of this article.

Cross Reference: See article VI, § 5 (chairmen of municipal councils members of governor's council).

Textual Irregularities and Errors: Capitalization of "Rules of Procedures" in subsection (a); lack of comma after first reference to "Saipan" in subsection (a) (compare, e.g., article VI, § 2); grammatical error in second sentence of subsection (a) ("Candidates . . . shall be . . . a resident . . ."); failure to specify "years" after "three" in second sentence of subsection (a); pluralization of "Procedures" in last sentence of subsection (a); and "advise" instead of "advice" in subsection (b).

Related Commonwealth Code Sections: See 1 CMC § 6341 (campaign financing disclosure) and 1 CMC § 6421 et seq. (election contests).

Comment: All elected public officials, including members of municipal councils, are subject to recall pursuant to article IX, § 3.

Section 7: Powers, Meetings and Compensations.

(a) The municipal councils shall meet in regular session no more than twice a month, and shall be paid for each meeting as provided by law. The mayor, or a majority of the members of the council, may call special sessions of the council as needed. The powers of the municipal councils shall extend to all local matters of a predominately local nature not pre-empted by the Commonwealth Legislature, and shall include the following:

1) Assist the mayor in the formulation of the annual budget delineating local needs,

2) At the request of an Executive Branch department head, in consultation with the mayor, the council shall have the authority to approve reprogramming of funds in the approved budget,

3) To confirm all resident department heads which are stationed on their island or islands,

4) When a mayor is unable to discharge the duties of office by reason of physical or mental disability, the presiding officer of the municipal council shall be acting mayor. If the presiding officer is not available, another member shall be selected by the council to serve, and

5) Additional powers and duties as provided by law.

History: Adopted 1985 by Amendment 25; amended by Legislative Initiative 1 (House Bill 5-198), ratified November 7, 1987. Amendment 25 also amended article III, § 17, readopted or amended all six original sections of this article, and adopted article VI, § 8 (next section, agencies of local government).

Legislative Initiative 1 revised this section by adding "which are stationed on their island or islands" to

Art. VI, § 8

subsection (a)(3). Legislative Initiative 1 also deleted former subsection (b), which provided:

The precinct commissioners shall meet in regular session no more than twice a month, and shall receive an annual salary as provided by law. The governor, or a majority of the precinct commissioners, may call special sessions as needed. The powers of the precinct commissioners shall extend to all local matters of a predominately local nature not pre-empted by the Commonwealth Legislature, and shall include the following:

- 1) Assist the governor in the formulation of the annual budget delineating local needs,
- 2) Advise the governor in the reprogramming of funds in the approved budget,
- 3) Serve as liaison between their respective precincts and the office of the governor in the delivery of public services,
- 4) Additional powers and duties as provided by law.

Legislative Initiative 1 retained the "(a)" subsection designation at the beginning of this section. Legislative Initiative 1 readopted or amended all eight sections of this article.

Textual Irregularities and Errors: Pluralization of "Compensations" in heading; designation of entire section as subsection (a); capitalization of "Executive Branch" in subsection (a)(2); grammatical errors (e.g., "powers . . . shall include . . . Assist . . ."); and inclusion of a period in subsection (a)(4)).

Cross References: See article III, § 17(b) (authority and duties of mayor with respect to resident department head) and article VI, § 3(g) (appointment of resident department head by mayor); see, concerning compensation, article II, § 10 (compensation of legislators), article III, § 5 (compensation of governor and lieutenant governor), article IV, § 5 (compensation of judges), article V, § 5 (compensation of resident representative to the U.S.), and article VI, § 4 (compensation of mayors).

Section 8: Agencies of Local Government.

(a) The chartered municipality form of local government on Rota, and, Tinian and Aguiguan, is hereby established. Local taxes paid to the chartered municipal governments of Rota, and, Tinian and Aguiguan, and Saipan may be expended for local public purposes on the island or islands producing those revenues. New agencies of local government may not be established without the affirmative vote of two-thirds of the persons qualified to vote from the island or islands to be served by the proposed agency of local government.

History: Adopted 1985 by Amendment 25; amended by Legislative Initiative 1 (House Bill 5-198), ratified November 7, 1987. Amendment 25 also readopted or amended all six original sections of this article, and adopted article VI, § 7 (preceding section, concerning municipal councils). Legislative Initiative 1 readopted the original language of this section and readopted or amended the seven other sections of this article.

Textual Irregularity and Errors: Designation of entire section as subsection (a); inclusion of commas after "Rota, and" in first and second sentences.

Related Commonwealth Code Sections: See 1 CMC §§ 1402 and 1403 (authority for enactment of local revenue taxes); see also 10 CMC § 1101 et seq. (10 CMC, Div. 1, Rota local laws), 10 CMC § 2101 et seq. (10 CMC, Div. 2, Tinian and Aguiguan local laws), and 10 CMC § 3111 et seq. (10 CMC, Div. 3, Saipan local laws).

Comment: Article VI, § 6 originally abolished chartered municipalities; see comment to that section.

ARTICLE VII: ELIGIBILITY TO VOTE

Section 1: Qualifications of Voters. A person is eligible to vote who, on the date of the election, is eighteen years of age or older, is domiciled in the Commonwealth, is a resident of the Commonwealth and has resided in the Commonwealth for a period of time provided by law, is not serving a sentence for a felony, has not been found by a court to be of unsound mind, and is either a citizen or national of the United States. The legislature may require that persons eligible to vote be citizens of the United States.

History: Ratified 1977, effective 1978.

Cross References: See article VIII, § 1 (general elections) and article VIII, § 2 (special elections).

Related Commonwealth Code Sections: See generally 1 CMC § 6201; see also 1 CMC §§ 6202-6204 (determination of domicile).

Comment: Provisions of the U.S. Constitution applicable within the Commonwealth pursuant to Covenant § 501(a) include the Fifteenth, Nineteenth and Twenty-Sixth Amendments. The Fifteenth Amendment provides: "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." The Nineteenth Amendment provides: "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex." The Twenty-Sixth Amendment provides: "[t]he right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age."

Section 2: Prohibition of Literacy Requirement. A person may not be denied the right to vote because that person is unable to read or write.

History: Ratified 1977, effective 1978.

Section 3: Domicile and Residence. The legislature shall implement section 1 by providing the criteria by which domicile and residence shall be determined for voting purposes and specifying the length of residence within the Commonwealth that shall be required.

History: Ratified 1977, effective 1978.

Related Commonwealth Code Sections: See 1 CMC §§ 6202-6204 (determination of domicile).

ARTICLE VIII: ELECTIONS

Section 1: Regular General Election. The regular general election of the Commonwealth shall be held on the first Saturday in November.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 26. This section originally provided: "[t]he regular general election of the Commonwealth shall be held on the first Sunday in November."

Cross References: See article VII (eligibility to vote).

Section 2: Other Elections. Other elections may be held as provided by law.

Art. VIII, § 3

History: Ratified 1977, effective 1978.

Cross References: *See* article II, § 9 (vacancy in legislature filled by special election if one-half or more of term remains), article III, § 7 (acting governor or lieutenant governor assuming office when more than one year remains in term may serve only until successor is chosen in special election), and article VI, § 2(b) (vacancy in office of mayor filled by special election if one-half or more of term remains).

Related Commonwealth Code Sections: *See* 1 CMC § 6432 (special elections set by legislature).

Comment: According to the *Analysis*:

The vacancies that are governed by constitutional provisions cannot be filled through election at a regular general election. There must be a special election even if it falls near the time of the regular general election or, indeed, at the same time.

Id. at 125-26.

Section 3: Election Procedures. The legislature may provide for the registration of voters, nomination of candidates, absentee voting, secrecy in voting, administration of elections, resolution of election contests, and other matters with respect to election procedures.

History: Ratified 1977, effective 1978.

Related Commonwealth Code Sections: *See generally* 1 CMC § 6001 et seq. (1 CMC, Div. 6, elections).

Section 4: Taking Office After Elections. Officers elected at the regular general election shall take office on the second Monday of January of the year following the year in which the election was held.

History: Ratified 1977, effective 1978.

Cross References: *See* article II, § 13 (organizing session of legislature) and article XVIII, § 1 (oath of office).

Related Commonwealth Code Sections: *See* 1 CMC § 1104 (organizing session of legislature) and 1 CMC § 6601 et seq. (Executive Transition Act, concerning office of governor-elect), specifically 1 CMC § 6608 (inauguration ceremonies).

Notes of Decisions

Legislators

Issuance of certificate of election to one who has qualified to the position of senator by a vote of franchised voters implicates NMI Const. art. VIII, § 4, providing that officers elected at regular general election shall take office on second Monday of January of year following year in which election was held. This constitutional directive makes it abundantly clear that there is no distinction to be made between members and members-elect of Commonwealth Senate in organizing session. 1 CMC § 6427; NMI Const. art. II, § 14(b).

Mafnas v. Inos, Civ. Action No. 90-031 (N.M.I. Super. Ct. Jan. 22, 1990)

(Memorandum Decision on Order to Show Cause for Declaratory Relief at 19), *aff'd*, 1 N.M.I. 101 (1990).

Under NMI Const. art. VIII, § 4, which makes no distinction for members of legislature against whom an election contest is filed, once a successful candidate has received his or her certificate of election, that person is entitled to take office.

Mafnas v. Inos, Civ. Action No. 90-031 (N.M.I. Super. Ct. Jan. 22, 1990) (Memorandum Decision on Order to Show Cause for Declaratory Relief at 24), *aff'd*, 1 N.M.I. 101 (1990).

Art. VIII, § 5

Section 5: Resignation from Public Office. An elected public official shall resign from office upon certification to be a candidate for another public office, if the term of the office sought begins before the end of the term of the office held.

History: Adopted 1985 by Amendment 27.

Cross Reference: See article IV, § 7 (judge may not become candidate for elective political office without resigning judicial office at least six months before becoming candidate).

ARTICLE IX: INITIATIVE, REFERENDUM AND RECALL

Section 1: Initiative. The people may enact laws by initiative.

a) An initiative petition shall contain the full text of the proposed law. If the petition proposes a general law for the Commonwealth, the petition shall be signed by at least twenty percent of the persons qualified to vote in the Commonwealth. If the petition proposes a local law that affects only the senatorial district, the petition shall be signed by at least twenty percent of the persons from the senatorial district who are qualified to vote.

b) An initiative petition shall be filed with the attorney general for certification that the requirements of section 1(a) have been met.

c) An initiative petition certified by the attorney general shall be submitted to the voters at the next regular general election that is held at least ninety days from the date the petition has been certified.

d) An initiative petition that proposes a general law for the Commonwealth shall become law if approved by two-thirds of the votes cast by persons qualified to vote in the Commonwealth. An initiative petition that proposes a local law shall become law if approved by two-thirds of the persons from the senatorial district who are qualified to vote. An initiative petition that has been approved by the voters shall take effect thirty days after the date of the election unless the petition provides otherwise.

History: Ratified 1977, effective 1978.

Cross References: See article II, § 6 (local laws) and article XXI, § 1 (authorizing establishment of gambling by initiative); for initiatives proposing Constitutional amendments, see article XVIII, § 3 (legislative initiatives), article XVIII, § 4 (popular initiatives), and article XVIII, § 5 (ratification).

Comment: As of mid-1995, four initiatives, all proposing local laws permitting gambling, have been submitted to Commonwealth voters. Of the four only one, Tinian Local Initiative 2 (the "Tinian Casino Gaming Control Act of 1989"), approved November 4, 1989, was successful. See 10 CMC § 2511 et seq. Tinian voters earlier rejected a somewhat similar measure, Tinian Local Initiative 1, on November 7, 1987. Rota voters rejected gambling initiatives on November 2, 1991 (Rota Local Initiative 1), and November 6, 1993 (Rota Local Initiative 2).

Notes of Decisions

1. Generally
2. Local Initiatives
--Particular Cases

1. Generally

NMI Const. art. IX, § 1 provides for two types of

Art. IX, § 2

initiatives: those which are local in scope and those which are Commonwealth-wide in coverage.

Commonwealth v. Tinian Casino Gaming Control Comm'n, 3 N.M.I. 134 (1992).

NMI Attorney General has constitutional duty to certify (or not certify) an initiative petition before an initiative is submitted to the voters.

Tenorio v. Superior Court, 1 N.M.I. 1 (1989).

2. Local Initiatives

–Particular Cases

In analyzing validity of Tinian initiative permitting gambling, three factors should be considered in balancing test. First, there is a presumption that a local gambling initiative enacted pursuant to NMI Const. arts. IX and XXI is valid, unless any initiative provision conflicts with the U.S. Constitution, NMI Constitution, or a Commonwealth-wide law. Opponent of initiative has the initial burden of showing by clear and convincing evidence which provisions are inconsistent and in conflict, and why. Second, if any initiative provision conflicts with the U.S. Constitution, NMI Constitution, or a Commonwealth-wide law, that provision must fall, unless, with respect to application of a Commonwealth-wide law, the Commonwealth-wide law would frustrate establishment of gambling in a senatorial district. Third, once it clearly is shown that there is a conflict between a Commonwealth-wide law and the initiative, the Commonwealth-wide law prevails, unless the proponent of the initiative demonstrates by clear and convincing proof that application of the Commonwealth-wide law would violate NMI Const. art. XXI, permitting senatorial district to establish gambling by local initiative. Proponent of initiative must show that if Commonwealth-wide law supersedes a provision of the initiative, it would unduly and unreasonably interfere with constitutional right to establish gambling. 10 CMC § 2511 et seq.

Commonwealth v. Tinian Casino Gaming Control Comm'n, 3 N.M.I. 134 (1992).

Parties in action challenging validity of provisions in local gambling initiative enacted pursuant to NMI Const. arts. IX and XXI were required to establish contentions by clear and convincing evidence because issue implicated constitutional concerns, and because particularly important individual interests or rights were at stake. 10 CMC § 2511 et seq.

Commonwealth v. Tinian Casino Gaming Control Comm'n, 3 N.M.I. 134 (1992).

Section 2: Referendum. The people may reject laws by referendum.

Art. IX, § 3

a) A referendum petition shall contain the full text of the law sought to be rejected. If the law is a general law for the Commonwealth, the petition shall be signed by at least twenty percent of the persons qualified to vote in the Commonwealth. If the law is a local law that affects only one senatorial district, the petition shall be signed by at least twenty percent of the persons from the senatorial district who are qualified to vote.

b) A referendum petition shall be filed with the attorney general for certification that the requirements of section 2(a) have been met.

c) A referendum petition certified by the attorney general shall be submitted to the voters at the next regular general election that is held at least thirty days from the date the petition has been certified.

d) A referendum petition concerning a general law for the Commonwealth shall take effect if approved by a majority of the votes cast by persons qualified to vote in the Commonwealth. A referendum petition concerning a local law shall take effect if approved by a majority of the votes cast by persons from the senatorial district who are qualified to vote. A law that is the subject of an approved petition shall become void and be repealed thirty days after the date of the election unless the petition provides otherwise.

History: Ratified 1977, effective 1978.

Comment: As of mid-1995, only one referendum has ever been submitted to Commonwealth voters. On November 4, 1979, voters approved Referendum 1, repealing PL 1-14, a measure authorizing casino gambling and slot machines.

Section 3: Recall. Elected public officials are subject to recall by the voters of the Commonwealth or of the island, islands or district from which elected.

a) A recall petition shall identify the public official sought to be recalled by name and office, state the grounds for recall, and be signed by at least forty percent of the persons qualified to vote for the office occupied by the public official.

b) A recall petition shall be filed with the attorney general for certification that the requirements of section 3(a) have been met.

c) A recall petition certified by the attorney general shall be submitted to the voters at the next regular general election unless special elections are provided by law for this purpose.

d) A recall petition shall take effect thirty days after the date of the election if approved by two-thirds of the persons qualified to vote for the office involved.

e) A recall petition may not be filed against a public official more than once in any year or during the first six months of a term in office.

History: Ratified 1977, effective 1978.

Comment: As of mid-1995, only one recall measure has ever been submitted to Commonwealth voters. On November

Art. X, § 1

7, 1987, Tinian voters rejected Tinian and Aguiguan Recall No. 1, which sought to remove Mayor Ignacio K. Quichocho from office for alleged misfeasance in office.

ARTICLE X: TAXATION AND PUBLIC FINANCE

Section 1: Public Purpose. A tax may not be levied and an appropriation of public money may not be made, directly or indirectly, except for a public purpose. The legislature shall provide the definition of public purpose.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 28. Amendment 28 added the second sentence.

Related Commonwealth Code Sections: *See generally* 4 CMC § 1101 et seq. (4 CMC, Div. 1, revenue and taxation) as amended by PL 9-22 (1995 tax reform act); *see also* CMC index for numerous citations to sections concerning taxation.

Section 2: Report on Tax Exemptions. Every five years the governor shall report to the legislature on the social, fiscal and economic impact of tax exemptions provided by law. The report may include recommendations by the governor on tax exemption policy or laws.

History: Ratified 1977, effective 1978.

Related Commonwealth Code Sections: *See* 4 CMC § 1101 et seq. (4 CMC, Div. 1, revenue and taxation) as amended by PL 9-22 (1995 tax reform act); *see also* CMC index for numerous citations to tax exemptions.

Comment: Covenant § 607(a) (quoted in comment to article X, § 4) provides that Commonwealth government bonds are exempt from taxation in U.S. jurisdictions.

Section 3: Public Debt Authorization. Public debt may not be authorized or incurred without the affirmative vote of two-thirds of the members in each house of the legislature.

History: Ratified 1977, effective 1978.

Comment: According to the *Analysis*:

Public debt means obligations of the Commonwealth government that are fixed, such as bonds, notes, debentures, or other forms of debt. It does not include obligations that involve a substantial contingency, such as loan guarantees where there is a reasonable expectation that the loan will be repaid by the borrower and guarantee by the Commonwealth will not require the expenditure of public funds.

...

... [T]he legislature may create special authorities to run certain utilities or enterprises. These authorities may be empowered by the legislature to obtain financing through debt instruments. Under the restrictions contained in [article X,] section 3, this general authorization must be made by the affirmative vote of two-thirds of the members of each house of the legislature. Once the legislature gives to an agency or authority the power to incur debt, that power may be exercised administratively without the approval by two-thirds vote of the legislature.

Id. at 139-41.

Art. X, § 4

Section 4: Public Debt Limitation. Public indebtedness other than bonds or other obligations of the government payable solely from the revenues derived from a public improvement or undertaking may not be authorized in excess of ten percent of the aggregate assessed valuation of the real property within the Commonwealth. Public indebtedness may not be authorized for operating expenses of the Commonwealth government or its political subdivisions.

History: Ratified 1977, effective 1978.

Related Commonwealth Code Sections: *See generally* 1 CMC § 2153 (review of proposed contracts or bonds by attorney general) and 1 CMC § 7709 (construction of public laws authorizing borrowing); *see also* provisions authorizing issuance of bonds by the Commonwealth Utilities Corporation (4 CMC §§ 8123 and 8141), the Commonwealth Development Authority (4 CMC §§ 10102 and 10203, as amended by PL 9-20, § 2), and the Commonwealth Ports Authority (2 CMC § 2172).

Comment: According to Covenant § 607:

(a) All bonds or other obligations issued by the Government of the Northern Mariana Islands or by its authority will be exempt, as to principal and interest, from taxation by the United States, or by any State, territory or possession of the United States, or any political subdivision of any of them.

(b) During the initial seven year period of financial assistance provided for in Section 702, and during such subsequent periods of financial assistance as may be agreed, the Government of the Northern Mariana Islands will authorize no public indebtedness (other than bonds or other obligations of the Government payable solely from revenues derived from any public improvement or undertaking) in excess of ten percentum of the aggregate assessed valuation of the property within the Northern Mariana Islands.

Section 5: Real Property Taxes. No tax may be levied upon any owner-occupied single family residential, agricultural, or unimproved real property, unless approved by three-fourths of the votes cast in an election conducted in the senatorial district in which the tax is to be levied.

History: Adopted 1985 by Amendment 29.

Related Commonwealth Code Sections: *See* 1 CMC §§ 1402 and 1403 (authorizing local revenue real property tax).

Section 6: Liquidation of Deficits. Before October 1, 1985, the legislature shall adopt a seven-year plan in which the government operations deficit through fiscal year 1985 shall be retired in equal shares. If the legislature fails to adopt or adhere to the plan, any person may bring an action to require the government to reallocate its expenditures in accordance with a deficit reduction plan. If an operating deficit is incurred in future fiscal years, the government shall retire the deficit during the second consecutive fiscal year following the year.

History: Adopted 1985 by Amendment 30. Amendment 30 also added article X, § 7 (next section, government employment ceilings).

Cross Reference: *See* article X, § 9 (taxpayer actions).

Related Commonwealth Code Sections: *See* 1 CMC § 7101 et seq., as amended by Executive Order 94-3 (Planning and Budgeting Act of 1983).

Art. X, § 7

Section 7: Government Employment. In the annual appropriations acts, the legislature shall establish ceilings on the number of persons that may be employed by each branch, department, agency, authority and public corporation of the Commonwealth to which public funds are appropriated. Except upon specific approval by joint resolution of the legislature, no public funds may be expended for personnel in excess of the ceilings so established.

History: Adopted 1985 by Amendment 30.

Related Commonwealth Code Sections: See 1 CMC § 7101 et seq., as amended by Executive Order 94-3 (Planning and Budgeting Act of 1983).

Comment: Amendment 30 also added article X, § 6 (preceding section, liquidation of deficits).

Section 8: Control of Public Finance. The Department of Finance or its successor department shall control and regulate the expenditure of public funds. The department shall promulgate regulations including accounting procedures that require public officials to provide full and reasonable documentation that public funds are expended for public purposes.

History: Adopted 1985 by Amendment 31. Amendment 31 also added article X, § 9 (next section, taxpayer actions).

Cross Reference: See article III, § 12 (public auditor).

Related Commonwealth Code Sections: See generally 1 CMC § 2551 et seq., as amended by Executive Order 94-3 § 307 (duties and authority of Department of Finance).

Comment: According to Amendment 31's title, this section related to "a Uniform Fiscal Management Policy."

Section 9: Taxpayer's Right of Action. A taxpayer may bring an action against the government or one of its instrumentalities in order to enjoin the expenditure of public funds for other than public purposes or for a breach of fiduciary duty. The court shall award costs and attorney fees to any person who prevails in such an action in a reasonable amount relative to the public benefit of the suit.

History: Adopted 1985 by Amendment 31. Amendment 31 also added article X, § 8 (preceding section, control of public funds).

Cross Reference: See article X, § 6 (private action to compel government to reallocate expenditures in accordance with deficit reduction plan).

Notes of Decisions

1. Generally
 2. Standing
- Particular Cases

Mafnas v. Commonwealth, 2 N.M.I. 248 (1991).

1. Generally

In the NMI, the right of taxpayers to challenge allegedly illegal expenditures of public funds is expressly granted by the NMI Constitution. NMI Const. art. X, § 9.

NMI Constitutional provision explicitly recognizes the right of Commonwealth taxpayers to call their government to account in matters pertaining to expenditures of public funds. It is remedial in nature and should be liberally construed. NMI Const. art. X, § 9.

Mafnas v. Commonwealth, 2 N.M.I. 248

Art. X, § 9

(1991).

NMI Const. art. X, § 9, permitting taxpayer actions, authorizes both declaratory and injunctive relief.

Mafnas v. Commonwealth, 2 N.M.I. 248 (1991).

NMI Const. art. X, § 9 authorizes taxpayers to sue government for breaches of fiduciary duty.

Taitano v. South Seas Corp., Civ. Action No. 92-1620 (N.M.I. Super. Ct. Mar. 7, 1994) (Decision and Order on Defendant Marianas Public Land Trust's Motion for Sanctions Against Plaintiff and His Counsel at 16).

2. Standing

Where a plaintiff challenges the expenditure of Commonwealth funds in contravention of a Commonwealth constitutional amendment, the plaintiff has standing to bring the action as a taxpayer, even absent a direct particularized injury.

Pangelinan v. Commonwealth, 2 CR 1148 (Dist. Ct. App. Div. 1987).

To establish taxpayer standing, it is unnecessary for a party to allege or prove that the challenged government action will increase taxes.

Pangelinan v. Commonwealth, 2 CR 1148 (Dist. Ct. App. Div. 1987).

Commonwealth taxpayers have standing to challenge the unlawful expenditure of public funds.

Lizama v. Rios, 2 CR 568 (Dist. Ct. 1986).

A Commonwealth taxpayer has standing to enjoin illegal payments of public funds even though s/he is not able to demonstrate injury beyond that of an ordinary taxpayer.

Romisher v. Marianas Pub. Land Corp., 1 CR 841 (Trial Ct. 1983).

--Particular Cases

Party had standing to bring action challenging Superior Court judge's right to hold office of Presiding Judge (on basis that judge was never appointed and confirmed to the office) as a taxpayer suit pursuant to NMI Const. art. X, § 9.

Mafnas v. Commonwealth, 2 N.M.I. 248 (1991).

Although extraordinary writ petition filed in NMI Supreme Court seeking declaration that respondent was not Presiding Judge of the Superior Court, enjoining him from exercising powers of office and requiring him to repay NMI Treasurer any salary in excess of law was

unusual civil action, it was type of taxpayer action normally filed in first instance at trial court level.

Mafnas v. Hefner, 1 N.M.I. 22 (1989).

Where money was taken from general fund to pay legislators' salaries in excess of constitutional mandate, and money could not be utilized for other constitutionally or statutorily permitted purposes, there was harm suffered by taxpayer and others similarly situated. NMI Const. art. II, § 16.

Pangelinan v. Commonwealth, 2 CR 1148 (Dist. Ct. App. Div. 1987).

Trial court did not commit error by recognizing standing of Commonwealth taxpayers to bring action preventing unlawful expenditure of public funds where decision had weight of authority behind it.

Manglona v. Camacho, 1 CR 820 (Dist. Ct. App. Div. 1987).

Though arguably no public funds were lost when, as defendant alleged, public land corporation exchanged public lands for private lands of lesser value, ultimately there was harm suffered by taxpayers and taxpayer action was appropriate.

Lizama v. Rios, 2 CR 568 (Dist. Ct. 1986).

Art. XI, § 1

ARTICLE XI: PUBLIC LANDS

Section 1: Public Lands. The lands to which right, title or interest have been or hereafter are transferred from the Trust Territory of the Pacific Islands to any legal entity in the Commonwealth under Secretarial Order 2969 promulgated by the United States Secretary of the Interior on December 26, 1974, the lands as to which right, title or interest have been vested in the Resident Commissioner under Secretarial Order 2989 promulgated by the United States Secretary of the Interior on March 24, 1976, the lands as to which right title or interest have been or hereafter are transferred to or by the government of the Northern Mariana Islands under article VIII of the Covenant, and the submerged lands off the coast of the Commonwealth to which the Commonwealth now or hereafter may have a claim of ownership are public lands belonging collectively to the people of the Commonwealth who are of Northern Marianas descent.

History: Ratified 1977, effective 1978; amended 1993 by Senate Legislative Initiative 7-3. Senate Legislative Initiative 7-3 deleted the word "as" after "[t]he lands" at the beginning of this section, deleted a comma after "right" in the second reference to "right, title or interest," and deleted "under United States law" after "ownership."

Textual Irregularity: Lack of comma after "right" in second reference to "right, title or interest."

Related Commonwealth Code Sections: See generally 2 CMC § 4111 et seq., as amended by Executive Order 94-3 (public land).

Cross Reference: See article XII, § 4 (defining persons of NMI descent).

Scholarly Articles: See Donald C. Woodworth & Tim Bruce, Symposium: Extension of the U.S. Territorial Sea to Twelve Miles: Legal and Policy Issues, *United States' Claims to Pacific Island Ocean Resources Trouble its Political Union with the Commonwealth of the Northern Mariana Islands*, 2 TERR. SEA J. 297 (1992); and Victoria King, Comment, *The Commonwealth of the Northern Mariana Islands' Rights Under United States and International Law to Control its Exclusive Economic Zone*, 13 U. HAW. L. REV. 477 (1991).

Comment: According to Senate Legislative Initiative 7-3's title, it sought to "eliminat[e] reference to United States law as a basis for Commonwealth claim to ownership of submerged lands off its coast." For detailed analysis of the original language of this section, see *Analysis* at 141-45.

Notes of Decisions

Airports

The Tinian Airport is within the constitutional definition of public lands. NMI Const. art. XI, § 1.

Marianas Pub. Land Trust v. Commonwealth, 3 CR 120 (Trial Ct. 1987).

Section 2: Submerged Lands. The management and disposition of submerged lands off the coast of the Commonwealth shall be as provided by law.

History: Ratified 1977, effective 1978.

Cross Reference: See article XIV, § 1 (marine resources to be managed and preserved by legislature).

Related Commonwealth Code Sections: See generally 2 CMC § 4112 and 2 CMC § 1201 et seq. (Submerged Lands

Art. XI, § 3

Act); *see also* 1 CMC § 2654, as amended by Executive Order 94-3, §§ 104 and 306 (granting Department of Lands and Natural Resources responsibility for management and disposition of submerged lands).

Scholarly Articles: *See* Donald C. Woodworth & Tim Bruce, Symposium: Extension of the U.S. Territorial Sea to Twelve Miles: Legal and Policy Issues, *United States' Claims to Pacific Island Ocean Resources Trouble its Political Union with the Commonwealth of the Northern Mariana Islands*, 2 TERR. SEA J. 297 (1992); and Victoria King, Comment, *The Commonwealth of the Northern Mariana Islands' Rights Under United States and International Law to Control its Exclusive Economic Zone*, 13 U. HAW. L. REV. 477 (1991).

Comment: According to the *Analysis*:

The legislature's power with respect to submerged lands is affected by its responsibilities to protect marine resources under article XIV, section 1. The legislature may not grant a lease or permit a use of the submerged lands that would adversely affect the protection and preservation of the marine resources for the benefit of the people of the Commonwealth.

Id. at 145.

Section 3: Surface Lands. The management and disposition of public lands except those provided for by section 2 shall be the responsibility of the Marianas Public Land Corporation.

History: Ratified 1977, effective 1978.

Cross References: *See* article XI, § 4 (next section, establishing Marianas Public Land Corporation) and article XI, § 5 (setting fundamental policies to be followed by corporation).

Comment: According to Executive Order 94-3, § 306(a), "[p]ursuant to Section 4(f) of Article XI of the Constitution, the Marianas Public Land Corporation is dissolved and its functions transferred to a Division of Public Lands in the Department of Lands and Natural Resources, which shall have at its head a Director of Public Lands."

Notes of Decisions

Homestead Program

The Marianas Public Land Corporation is vested with the authority to determine the nature of the interest transferred to a homestead grantee. Hence, legislature may change the nature of the interest to be transferred to include survivorship rights to pending and new homestead applicants. Covenant § 805(b); NMI Const. art. XI, §§ 3, 4, 5(a).

Estate of Faisao v. Tenorio, Appeal No. 94-018 (N.M.I. Sup. Ct. April 13, 1995) (Opinion at 10, n.16).

Section 4: Marianas Public Land Corporation. There is hereby established the Marianas Public Land Corporation.

a) The corporation shall have five directors, appointed by the governor with the advice and consent of the senate, who shall direct the affairs of the corporation for the benefit of the people of the Commonwealth who are of Northern Marianas descent.

Art. XI, § 4

b) One director shall be a resident of the first senatorial district, one shall be a resident of the second senatorial district, and three shall be residents of the third senatorial district; provided that of the five directors, at least one shall be a woman and at least one shall be a person of Carolinian descent. Each director shall be a citizen or national of the United States, a resident of the Commonwealth for at least five years immediately preceding the date on which the director takes office, a person with at least two years management experience, a person who has not been convicted of a crime carrying a maximum sentence of imprisonment of more than six months, a person who is able to speak Chamorro or Carolinian and a person of Northern Marianas descent.

c) The directors shall serve a term of four years except that two of the first five directors appointed shall serve a term of two years and three shall serve a term of four years. A director may not hold a paid position in the corporation. The directors shall be held to strict standards of fiduciary care.

d) The corporation shall have the powers available to a corporation under Commonwealth law and shall act only by the affirmative vote of a majority of the five directors.

e) The directors shall make an annual written report to the people of the Commonwealth describing the management of public lands and the nature and effect of transfers of interests in public land made during the preceding year and disclosing the interests of the directors in Commonwealth land.

f) After this Constitution has been in effect for at least twelve years, the Corporation shall be dissolved and its functions shall be transferred to the executive branch of government.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 32. This section originally provided:

There is hereby established the Marianas Public Land Corporation.

(a) The corporation shall have nine directors appointed by the governor with the advice and consent of the senate who shall direct the affairs of the corporation for the benefit of the people of the Commonwealth who are of Northern Marianas descent.

(b) Two directors shall be residents of Saipan, two shall be residents of Rota, two shall be residents of Tinian, one shall be a resident of the islands north of Saipan and one shall be a person of Carolinian descent. Each director shall be a citizen or national of the United States, a resident of the Commonwealth for at least five years immediately preceding the date on which the director takes office, a person who has not been convicted of a crime carrying a maximum sentence of imprisonment of more than six months, a person who is able to speak Chamorro or Carolinian and a person of Northern Marianas descent.

(c) The directors shall serve a term of six years except that three of the first nine directors appointed shall serve a term of two years and three shall serve a term of four years. A person may not serve more than one term as director.

(d) The corporation shall have the powers available to a corporation under Commonwealth law and shall act only by the affirmative vote of the majority of the nine directors.

(e) The directors shall make an annual written report to the people of the Commonwealth

Art. XI, § 4

describing the management of the public lands and the nature and effect of transfers of interests in public land made during the preceding year and disclosing the interests of the directors in Commonwealth land.

(f) After this Constitution has been in effect for at least ten years, the corporation may be dissolved and its functions may be transferred to the executive branch of government by the affirmative vote of two-thirds of the members in each house of the legislature.

Amendment 32 also amended article XI, § 5 (next section, setting fundamental policies to be followed by corporation).

Cross References: See article XI, § 3 (management and disposition of all but submerged public land responsibility of corporation), article XI, § 5 (next section, setting fundamental policies to be followed by corporation), article XII, § 4 (defining persons of NMI descent), and article XVI, § 1 (corporations).

Comment: According to Executive Order 94-3, § 306(a), "[p]ursuant to Section 4(f) of Article XI of the Constitution, the Marianas Public Land Corporation is dissolved and its functions transferred to a Division of Public Lands in the Department of Lands and Natural Resources, which shall have at its head a Director of Public Lands." Executive Order 94-3 took effect August 23, 1994.

Notes of Decisions

1. Beneficiaries, Rights of
2. Conflict of Interest
--Particular Cases
3. Fiduciary Duty
4. Homestead Program

1. Beneficiaries, Rights of

Where public land corporation was established under constitution to manage public lands for the benefit of the people of the Commonwealth who are of Northern Marianas descent, such persons are beneficiaries of a trust and can sue to redress alleged breaches of the trust.

Lizama v. Rios, 2 CR 568 (Dist. Ct. 1986).

Persons of Northern Marianas descent, as defined in NMI Const. art. XII, § 4, are beneficiaries of the trust imposed under the Constitution upon the Marianas Public Land Corporation and as such have standing to sue the Corporation for breach of its fiduciary duties. NMI Const. art. XI, § 4.

Romisher v. Marianas Pub. Land Corp., 1 CR 841 (Trial Ct. 1983).

2. Conflict of Interest

A conflict of interest arises where two board members of the Marianas Public Lands Corporation vote on a proposal to purchase land in which they have an interest.

Romisher v. Marianas Pub. Land Corp., 1 CR 841 (Trial Ct. 1983).

--Particular Cases

The votes of two directors of Marianas Public Land Corporation on a proposal to purchase land in which the

two directors had an interest were improper and illegal and therefore null and void.

Romisher v. Marianas Pub. Land Corp., 1 CR 841 (Trial Ct. 1983).

3. Fiduciary Duty

The Marianas Public Land Corporation cannot be estopped from exercising its duty to supervise public lands for the benefit of all the citizens of the Commonwealth.

Apatang v. Marianas Pub. Land Corp., 3 CR 935 (Super. Ct. 1989).

The Marianas Public Land Corporation acts in a fiduciary capacity when it performs its functions pursuant to the Constitution. NMI Const. art. XI.

Romisher v. Marianas Pub. Land Corp., 1 CR 841 (Trial Ct. 1983).

The Marianas Public Land Corporation receives money as a trustee for the people of the Commonwealth who are of Northern Marianas descent and has a strict duty to account, and it carries the burden of showing any deductions from the receipt of funds for public lands. NMI Const. art. XI, § 1.

Marianas Pub. Land Trust v. Marianas Pub. Land Corp., 1 CR 967 (Trial Ct. 1984).

As fiduciaries, the members of the board of directors of the Marianas Public Land Corporation have a duty of loyalty to the beneficiaries of the trust to the exclusion of the interests of all other parties; the board members must perform their duties honestly, faithfully, and refrain from activities which will interfere with the proper discharge of their duties.

Art. XI, § 5

Romisher v. Marianas Pub. Land Corp., 1 CR 841 (Trial Ct. 1983).

As members of a board of directors, appointed by the governor and confirmed with advice and consent of the senate, the persons sitting on the board of directors of the Marianas Public Land Corporation are public officials and, consequently, have a fiduciary relationship established by common law.

Romisher v. Marianas Pub. Land Corp., 1 CR 841 (Trial Ct. 1983).

Every board member of the Marianas Public Land Corporation sits as a fiduciary and as such, cannot waive or ratify an illegal act of the board; as co-fiduciaries the members of the board cannot ratify an act which adversely affects the beneficiaries.

Romisher v. Marianas Pub. Land Corp., 1 CR 841 (Trial Ct. 1983).

4. Homestead Program

The Marianas Public Land Corporation is vested with the authority to determine the nature of the interest transferred to a homestead grantee. Hence, legislature may change the nature of the interest to be transferred to include survivorship rights to pending and new homestead applicants. Covenant § 805(b); NMI Const. art. XI, §§ 3, 4, 5(a).

Estate of Faisao v. Tenorio, Appeal No. 94-018 (N.M.I. Sup. Ct. April 13, 1995) (Opinion at 10, n.16).

Section 5: Fundamental Policies. The Marianas Public Land Corporation shall follow certain fundamental policies in the performance of its responsibilities.

a) The corporation shall make available some portion of the public lands for a homestead program. A person is not eligible for more than one agricultural and one village homestead. A person may not receive a freehold interest in a homestead for three years after the grant of a homestead and may not transfer a freehold interest in a homestead for ten years after receipt except that these requirements are waived for persons who have established a continuous use of public lands for at least fifteen years as of the effective date of this Constitution. At any time after receiving the freehold interest, the grantee may mortgage the land provided that all funds received from the mortgagee be devoted to the improvement of the land. Other requirements relating to the homestead program shall be provided by law.

b) The corporation may not transfer a freehold interest in public lands for twenty years after the effective date of this Constitution, except for homesteads as provided under section 5(a), or for use for a public purpose by another agency of government, or for land exchanges to accomplish a public purpose as authorized by law.

Art. XI, § 5

c) The corporation may not transfer a leasehold interest in public lands that exceeds twenty-five years including renewal rights. An extension of not more than fifteen years may be given upon approval by three-fourths of the members of the legislature.

d) The corporation may not transfer an interest in more than five hectares of public land for use for commercial purposes without the approval of the legislature in a joint session.

e) The corporation may not transfer an interest, and may prohibit the erection of any permanent structure, in public lands located within one hundred fifty feet of the high water mark of a sandy beach, except that the corporation may authorize construction of facilities for public purposes.

f) The corporation shall adopt a comprehensive land use plan with respect to public lands including priority of uses and may amend the plan as appropriate.

g) The corporation shall receive all moneys from the public lands except those from lands in which freehold interest has been transferred to another agency of government pursuant to section 5(b), and shall transfer these moneys after the end of the fiscal year to the Marianas Public Land Trust except that the corporation shall retain the amount necessary to meet reasonable expenses of administration and management, land surveying, homestead development, and any other expenses reasonably necessary for the accomplishment of its functions. The annual budget of the corporation shall be submitted to the legislature for information purposes only.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 32. Amendment 32 revised subsections (b), (d), (e) and (g), which originally provided:

b) The corporation may not transfer a freehold interest in public lands for ten years after the effective date of this Constitution, except for homesteads as provided under section 5 (a).

...

d) The corporation may not transfer an interest in more than five hectares of public land for use for commercial purposes without approval by a majority of the members of the legislature.

e) The corporation may not transfer an interest in public lands located within one hundred fifty feet of the high water mark of a sandy beach.

...

g) The corporation shall receive all moneys from the public lands and shall transfer these moneys promptly to the Marianas Public Land Trust except that the corporation may retain the amount necessary to meet reasonable expenses of administration.

Amendment 32 also amended article XI, § 4 (preceding section, establishing corporation).

Cross References: See article XI, § 1 (public lands owned collectively by persons of Northern Marianas descent), article XI, § 3 (management and disposition of all but submerged public land responsibility of corporation), and article XI, § 6 (establishing Marianas Public Land Trust).

Art. XI, § 5

Related Commonwealth Code Sections: See 2 CMC § 4301 et seq., as amended by Executive Order 94-3, § 306(a) (homesteads).

Comment: According to Executive Order 94-3, § 306(a), "[p]ursuant to Section 4(f) of Article XI of the Constitution, the Marianas Public Land Corporation is dissolved and its functions transferred to a Division of Public Lands in the Department of Lands and Natural Resources, which shall have at its head a Director of Public Lands." Executive Order 94-3 took effect August 23, 1994. With respect to subsection (a), the *Analysis* provides:

The term "freehold interest" as used in this section means the freehold estates of inheritance (fee simple absolute, fee simple determinable, fee simple to condition subsequent, fee simple subject to an executory limitation, fee simple conditional and fee tail) and the freehold estates not of inheritance (estate for one's own life, estate for the life of another, and estate for one's own life and also for the life of another).

Id. at 154-55. With respect to subsection (b), the *Analysis* provides:

Transfer means sale in this provision. During this period the corporation can negotiate leases of public lands.

Id. at 155.

Notes of Decisions

1. Administrative Expenses
2. Construction, Restrictions on
3. Homestead Program
--Particular Cases
4. Land Acquisition
5. Land Exchanges
6. Moneys from Public Lands
--Particular Cases

1. Administrative Expenses

It is impermissible for the Marianas Public Land Corporation to expend any funds derived from public lands to implement or administer the Homestead Compensation Act. 2 CMC § 4351 et seq. [PL 3-103]; NMI Const. art. XI, § 5(g).

Marianas Pub. Land Trust v. Marianas Pub. Land Corp., 1 CR 974 (Trial Ct. 1984).

The trust funds derived from public lands can be used only for reasonable expenses of administration of the Marianas Public Land Corporation's constitutionally mandated duties which do not include carrying out legislative homestead programs. NMI Const. art. XI, § 5(g).

Marianas Pub. Land Trust v. Marianas Pub. Land Corp., 1 CR 974 (Trial Ct. 1984).

Land acquisition powers were not granted Marianas Public Land Corporation by the Constitution and therefore land acquisition costs are not expenses of administration under article XI of the Commonwealth Constitution. NMI Const. art. XI, § 5(g).

Marianas Pub. Land Trust v. Marianas Pub. Land Corp., 1 CR 967 (Trial Ct. 1984).

Management expenses of public land corporation administration of public land under article XI of the Commonwealth Constitution include: (1) collecting rents from public lands, including collection procedures and attorney fees; (2) monitoring of leases of public lands including maintenance of a temporary nature; (3) costs of negotiating leases and preparing leases of public lands; and (4) accounting costs of receipt of lease money and disbursal to Marianas Public Land Trust. Permissible management expenses do not include capital expenditures or capital improvements as generally defined. NMI Const. art. XI, § 5(g).

Marianas Pub. Land Trust v. Marianas Pub. Land Corp., 1 CR 967 (Trial Ct. 1984).

Reasonable expenses of MPLC administration of the portion of public land set aside for homestead program include: (1) determining location of public lands, including surveying and obtaining legal descriptions; (2) title searches and clerical work related thereto; (3) accepting applications and interviewing homestead applicants; (4) preparing homestead permits and deeds; (5) inspecting homesteads and monitoring compliance requirements; and (6) travel, legal fees, and staff and board expenses related to the above. NMI Const. art. XI, § 5(g).

Marianas Pub. Land Trust v. Marianas Pub. Land Corp., 1 CR 967 (Trial Ct. 1984).

Expenses of administration of public lands do not include capital expenditures or capital improvements such as constructing roads, water lines, sewers, etc., on public land designated within homestead program. NMI Const. art. XI, § 5(g).

Marianas Pub. Land Trust v. Marianas Pub.

Art. XI, § 5

Land Corp., 1 CR 967 (Trial Ct. 1984).

Expenses incurred by public land corporation in adopting a comprehensive land use plan for public lands are allowable expenses of administration, including: (1) planning and mapping costs; (2) any engineering design necessary to formulate the plan; (3) topographic work and any clearing necessary to formulate the plan; and (4) necessary clerical, staff and board expenses related to the above. NMI Const. art. XI, § 5(g).

Marianas Pub. Land Trust v. Marianas Pub. Land Corp., 1 CR 967 (Trial Ct. 1984).

Reasonable expenses of administration, as term is used in the NMI Constitution with regard to the Marianas Public Land Corporation, are limited to the costs and expenses of operating the Marianas Public Land Corporation in its normal and necessary everyday business. NMI Const. art. XI, § 5(g).

Romisher v. Marianas Pub. Land Corp., 1 CR 898 (Trial Ct. 1983).

2. Construction, Restrictions on

NMI Const. art. XI, § 5(e), prohibiting erection of permanent structure on public lands within 150 feet of high water mark of sandy beach, is self-executing.

Govendo v. Marianas Pub. Land Corp., 2 N.M.I. 482 (1992).

In the event that NMI Const. art. XI, § 5(e), prohibiting erection of permanent structure on public lands within 150 feet of high water mark of sandy beach, is violated by lessor of public land, any NMI citizen of Northern Marianas descent may bring action against violator to enjoin the violation and seek damages.

Govendo v. Marianas Pub. Land Corp., 2 N.M.I. 482 (1992).

3. Homestead Program

The Marianas Public Land Corporation is vested with the authority to determine the nature of the interest transferred to a homestead grantee. Hence, the legislature may change the nature of the interest to be transferred to include survivorship rights to pending and new homestead applicants. Covenant § 805(b); NMI Const. art. XI, §§ 3, 4, 5(a).

Estate of Faisao v. Tenorio, Appeal No. 94-018 (N.M.I. Sup. Ct. April 13, 1995) (Opinion at 10, n.16).

A homesteader under the pre-Constitution homestead program may, upon receiving title to homestead property, transfer the same by sale, and where homestead permit was granted prior to the effective date of the NMI

Constitution, but homestead matured after that date, the Constitutional transfer restriction does not apply to the lot.

In re Estate of Villagomez, 2 CR 850 (Trial Ct. 1986).

-Particular Cases

Vesting of decedent's property interest in homestead in his spouse after decedent's death, pursuant to land commission's transference of title to spouse under Marital Homestead Title Act, did not violate decedent's or heirs' due process rights. First, decedent's interest or right to alienate that interest was not retroactively impeded by Act; Act only affected succession to the property. Second, decedent's children had no interest or potential interest in homestead when it was held by decedent; that Act may have altered heirs' expectations of acquiring property did not make Act violative of due process. Finally, because property interest passed to decedent's spouse, subject to her perfection of title under Act, interest was not part of decedent's estate and no interest in property vested in decedent's heirs under intestate succession laws. Heirs had no interest of which they could have been unconstitutionally deprived. NMI Const. art. I, § 5.

Estate of Faisao v. Tenorio, Appeal No. 94-018 (N.M.I. April 13, 1995) (Opinion at 16, 17).

Agricultural homestead issued to person on July 9, 1976, pursuant to the homesteading program then in effect--i.e., prior to adoption of the NMI Constitution--was not subject to new laws, rules and regulations subsequently enacted or promulgated under the Constitution with regard to homesteads.

In re Estate of Villagomez, 2 CR 850 (Trial Ct. 1986).

4. Land Acquisition

Land acquisition powers were not granted Marianas Public Lands Corporation by the Constitution and therefore land acquisition costs are not expenses of administration under article XI of the Commonwealth Constitution. NMI Const. art. XI, § 5(g).

Marianas Pub. Land Trust v. Marianas Pub. Land Corp., 1 CR 967 (Trial Ct. 1984).

Legislature cannot alter terms of the Constitutional trust established in article XI by stating that the trust funds held by Marianas Public Land Corporation from the United States Government for land on Tinian are to be used for land acquisition. NMI Const. art. XI.

Romisher v. Marianas Pub. Land Corp., 1 CR 898 (Trial Ct. 1983).

Art. XI, § 5

The acquisition of private interests in land and the disbursement of trust funds for that purpose are not within the constitutional powers of the Marianas Public Land Corporation and neither the Covenant nor the Tinian Lease Technical Agreement give those powers to the Marianas Public Land Corporation. Tinian Lease Agreement; NMI Const. art. XI, §§ 4, 5.

Romisher v. Marianas Pub. Land Corp., 1 CR 873 (Trial Ct. 1983).

The Marianas Public Land Corporation has no legal authority to acquire private lands by purchase.

Romisher v. Marianas Pub. Land Corp., 1 CR 841 (Trial Ct. 1983).

Any disbursement of public funds by the Marianas Public Land Corporation for a purpose not specified in the Constitution is not allowed; thus, it must be the executive branch, through its normal processes, that negotiates, determines the value of private interests, disburses the funds, and acquires title to private land for a public purpose.

Romisher v. Marianas Pub. Land Corp., 1 CR 841 (Trial Ct. 1983).

5. Land Exchanges

The Public Purpose Land Exchange Authorization Act of 1987, the law intended to implement amendment to NMI Const. art. XI, § 5(b), is constitutional because its basic aim is to accomplish a public purpose, i.e. to resolve the inequities of past land takings, either those arising under previous land exchange programs, land encroachments by the government, or uncompensated land takings for highways and roadways. 2 CMC § 4141 et seq.

Apatang v. Marianas Pub. Land Corp., 1 N.M.I. 140 (1990).

6. Moneys from Public Lands

—Particular Cases

Funds released from joint account by United States to enable Commonwealth to acquire certain private lands to be leased to United States were not "from the public lands" within meaning of NMI Const. art. XI, § 5(g), and therefore did not have to be transferred to Marianas Public Land Trust. Only after lands in question were publicly owned could any payment be considered rent for use of public lands.

Marianas Pub. Land Trust v. Government of the Commonwealth of the Northern Mariana Islands, 838 F.2d 341 (9th Cir. 1988).

Money in escrow account, which was part of the \$33 million total rent paid by the United States under Tinian

Lease Agreement in "full satisfaction" of its rent obligation, was required to be turned over to Public Land Trust. NMI Const. art. XI.

Marianas Pub. Land Trust v. Government of the Northern Mariana Islands, 2 CR 870 (Dist. Ct. App. Div. 1986), *rev'd*, 838 F.2d 341 (9th Cir. 1988).

Art. XI, § 6

Section 6: Marianas Public Land Trust. There is hereby established the Marianas Public Land Trust.

a) The trust shall have three trustees appointed by the governor with the advice and consent of the senate. After this Constitution has been in effect for ten years, the number of trustees appointed by the governor with the advice and consent of the senate shall be increased to five. Three shall be from Saipan, one from Rota, and one from Tinian. At least one trustee shall be a woman and at least one trustee shall be of Carolinian descent. The trustees shall serve for a term of six years except that the term of office shall be staggered, accomplished as follows: three trustees shall serve for four years and two trustees shall serve for six years as determined by drawing of lots.

b) The trustees shall make reasonable, careful and prudent investments. For ten years after the effective date of this Constitution investments may not be made except in obligations of the United States government and as provided by section 6(c).

c) If the legislature authorizes a Marianas development bank and provides that all United States economic assistance for economic development loans provided under article VII, section 702(c), of the Covenant shall be deposited as capital in that bank, the trust shall use up to fifty-five percent of its receipts in a year to increase the total capital available to the bank to the sum of ten million dollars. After the bank has more than ten million dollars in total capital, the bank shall pay the excess above ten million dollars to the trust until the trust has been fully repaid for its contribution to the bank.

d) The trustees shall carry out the intention of article VIII, section 803(e), of the Covenant by using the interest on the amount received for the lease of property at Tanapag Harbor for the development and maintenance of a memorial park. The trustees shall transfer to the general revenues of the Commonwealth the remaining interest accrued on the trust proceeds except that the trustees may retain the amount necessary to meet reasonable expenses of administration.

e) The trustees shall make an annual written report to the people of the Commonwealth accounting for the revenues received and expenses incurred by the trust and describing the investments and other transactions authorized by the trustees.

f) The trustees shall be held to strict standards of fiduciary care. Each trustee shall annually submit to the governor and the presiding officers of the legislature a report disclosing their financial affairs, as provided by law.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 33. Amendment 33 added all of subsection (a) after the first sentence and the second sentence of subsection (f).

Cross Reference: See article XI, § 5(g) (transfer of moneys from management of public lands to trust).

Related Commonwealth Code Sections: See 2 CMC § 4115, as amended by Executive Order 94-3, § 306(a) (transfer of moneys from public lands to trust) and 4 CMC § 1803 (transfer of interest revenue to trust account for health services).

Art. XII, § 1

Notes of Decisions

Generally

The Marianas Public Land Trust has the obligation to safeguard and invest the funds it receives from the Marianas Public Land Corporation. NMI Const. art. XI.
Marianas Pub. Land Trust v. Commonwealth, 3 CR 120 (Trial Ct. 1987).

ARTICLE XII: RESTRICTIONS ON ALIENATION OF LAND

Section 1: Alienation of Land. The acquisition of permanent and long-term interests in real property within the Commonwealth shall be restricted to persons of Northern Marianas descent.

History: Ratified 1977, effective 1978.

Cross References: See article XII, § 2 (next section, defining 'acquisition'), article XII, § 3 (defining 'permanent and long-term interests in real property'), and article XII, § 4 (defining 'persons of Northern Marianas descent').

Related Commonwealth Code Sections: See 2 CMC § 4941 et seq. (actions concerning article XII); 2 CMC § 4464 (marketability of title); and 2 CMC § 7222 (annual report by zoning administrator of transactions involving persons of non-NMI descent).

Scholarly Articles: See Robert Torres, Comment, *Ferreira v. Borja: Land Transactions in the Northern Marianas*, 29 NEW ENG. L. REV. 209 (1994); James A. Branch, Jr., *The Constitution of the Northern Mariana Islands: Does a Different Cultural Setting Justify Different Constitutional Standards?*, 9 J. INT'L L. & POL'Y 35 (1980); and Howard P. Willens & Deanne C. Siemer, *The Constitution of the Northern Mariana Islands: Constitutional Principles and Innovation in a Pacific Setting*, 65 GEO. L.J. 1373 (1977).

Comment: Covenant § 805 provides:

Except as otherwise provided in this Article, and notwithstanding the other provisions of this Covenant, or those provisions of the Constitution, treaties or laws of the United States applicable to the Northern Mariana Islands, the Government of the Northern Mariana Islands, in view of the importance of the ownership of land for the culture and traditions of the people of the Northern Mariana Islands, and in order to protect them against exploitation and to promote their economic advancement and self-sufficiency:

(a) will until twenty-five years after the termination of the Trusteeship Agreement, and may thereafter, regulate the alienation of permanent and long-term interests in real property so as to restrict the acquisition of such interests to persons of Northern Marianas descent; and

(b) may regulate the extent to which a person may own or hold land which is now public land.

For analysis of this provision, see *Covenant Analysis* at 116-18. For detailed analysis of the provisions of article XII, see *Analysis* at 163-80.

According to Presidential Proclamation 5564, 51 Fed. Reg. 40399 (Nov. 3, 1986), *reprinted in CMC Vol. 1* at B-501 and B-502, the United Nations Trusteeship Agreement with respect to the Northern Mariana Islands terminated on November 3, 1986. In Security Council Resolution 683 (Dec. 22, 1990), *reprinted in CMC Vol. 1* at A-801 and A-802, the United Nations Security Council determined that the Trusteeship Agreement with respect to the Northern Mariana Islands "has terminated."

Art. XII, § 1

Notes of Decisions

1. Generally
2. Constitutional Challenge
--Particular Cases

1. Generally

Restrictions on land alienation imposed by NMI Const. art. XII are intended as a safeguard for the people of the Northern Mariana Islands from losing control over land for a limited period (25 years) during the Commonwealth's transition to membership in the American political family. The policy underlying these ownership restrictions is set forth in Covenant § 805. NMI Const. art. XII implemented this policy.

Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 15, 1995) (Opinion at 5-6).

NMI Const. art. XII's ethnic-based prohibition on sale and transfer of ownership of land is unique in American jurisprudence. Prohibition was deemed necessary during Commonwealth's transitional years. Covenant § 805.

Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 15, 1995) (Opinion at 6).

Objective of NMI Const. art. XII is to prevent native Chamorros and Carolinians from losing possession of and control over their most precious resource, land. The mechanism for achieving this is by restricting, during the period of protection, the transfer of land ownership and by prohibiting persons who are not of Northern Marianas descent from acquiring more than a 55-year leasehold in Northern Marianas land.

Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 15, 1995) (Opinion at 5-6).

The purpose of NMI Const. art. XII is to furnish substantive protection to persons of Northern Marianas descent, to further the preservation of their culture, and to protect the underlying social order of the Northern Mariana Islands. Any agreement by which a person who is not of Northern Marianas descent is given, receives, or obtains a right, conditional or otherwise, to acquire title to or an interest in land greater than a 55 year leasehold would violate NMI Const. art. XII.

Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 15, 1995) (Opinion at 11-12).

The sole implementing vehicle for Covenant § 805, requiring that the Commonwealth regulate the alienation of permanent and long-term interests in real property to

restrict acquisition of such interests to persons of Northern Marianas descent, is NMI Const. art. XII, which became operative when the NMI Constitution went into effect on January 9, 1978.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994).

The history of the Constitutional Convention shows that the purpose underlying land alienation restriction was to conserve the land of the Commonwealth for the indigenous people because of its limited quantity. NMI Const. art. XII.

Wabol v. Muna, 2 CR 231 (Trial Ct. 1985), *rev'd in part*, 2 CR 963 (Dist. Ct. App. Div. 1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

2. Constitutional Challenge

Plain terms of Covenant § 805 exempt from U.S. Constitutional requirements the Commonwealth's restrictions on land alienation. U.S. Congress was within its power to enact this exemption from U.S. Constitutional requirements. NMI Const. art. XII.

Yokeno v. Mafnas, 973 F.2d 803 (9th Cir. 1992).

U.S. Congress acted within its power in enacting Covenant §§ 805 and 501(b), requiring Commonwealth government to regulate alienation of permanent and long-term interests in real property so as to restrict their acquisition to persons of NMI descent and excusing such regulation from federal constitutional restrictions. Right to acquire permanent or long-term interests in NMI real estate is not fundamental right protected by the U.S. Constitution. NMI Const. Art. XII is not subject to equal protection attack. U.S. Const. amend. XIV.

Wabol v. Villacrusis, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

U.S. Constitution's Equal Protection Clause does not bar the application of NMI Const. art. XII.

Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 15, 1995) (Opinion at 6).

NMI Const. art. XII, restricting acquisition of permanent and long-term interests in land in the NMI to persons of NMI descent, does not violate equal protection guarantee in NMI Constitution.

Art. XII, § 2

Ferreira v. Borja, 2 N.M.I. 514 (1992),
vacated, 1 F.3d 960 (9th Cir. 1993).

NMI Const. art. XII, restricting acquisition of permanent and long-term interests in land in the NMI to persons of NMI descent, does not violate equal protection guarantee in U.S. Constitution.

Ferreira v. Borja, 2 N.M.I. 514 (1992),
vacated, 1 F.3d 960 (9th Cir. 1993).

Given the history of occupation by foreigners of the NMI, as well as the scarcity of land and the cultural traditions of the people, Covenant and constitutional provisions which restrict the ownership of land to persons of Northern Marianas descent are rationally related to the unique obligation which the United States Congress owes to the people of the NMI, and therefore, these provisions survive scrutiny under the Fifth Amendment. U.S. Const. amend. V; NMI Const. art. XII.

Wabol v. Muna, 2 CR 963 (Dist. Ct. App. Div. 1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

NMI Constitutional restriction on the alienation of land based on the traditions, the cultures, the importance of ownership of land and the potential for exploitation by more powerful economic sources can withstand scrutiny under the equal protection provision of the Fourteenth Amendment and the restriction is a fair and reasonable result of the direction and authority of the U.S. Congress. U.S. Const. art. IV, § 3; U.S. Const. amend. XIV; NMI Const. art. 1, § 6.

Wabol v. Muna, 2 CR 231 (Trial Ct. 1985), *rev'd in part*, 2 CR 963 (Dist. Ct. App. Div. 1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958 F.2d 1450 (1990).

-Particular Cases

In complaint commencing quiet title action, party alleging that NMI Const. art. XII facially violated U.S. Constitution and Covenant lacked standing to claim that NMI Const. art. XII as applied violated federal law, inasmuch as provision had not yet been interpreted and applied to deprive him of right protected by federal law.

Yokeno v. Mafnas, 973 F.2d 803 (9th Cir. 1992).

Section 2: Acquisition. The term acquisition used in Section 1 includes acquisition by sale, lease, gift, inheritance or other means. A transfer to a spouse by inheritance is not an acquisition under this section if the owner dies without issue or with issue not eligible to own land in the Northern Mariana Islands. A transfer to a mortgagee by means of a foreclosure on a mortgage is not an acquisition under this section if the mortgagee is a full

Art. XII, § 2

service bank, Federal Agency or Governmental entity of the Commonwealth and does not hold the permanent or long-term interest in real property for more than ten years beyond the term of the mortgage.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 34. The second and third sentences of this section originally provided:

A transfer to a spouse by inheritance is not an acquisition under this section. A transfer to a mortgagee by means of a foreclosure on a mortgage is not an acquisition under this section if the mortgagee does not hold the permanent or long-term interest in real property for more than five years.

Textual Irregularities: Capitalization of "Section," "Federal Agency" and "Governmental."

Cross Reference: See article XII, § 6 (enforcement).

Related Commonwealth Code Sections: See 2 CMC §§ 4466 and 4467 (protection of non-NMI federal mortgage insurers and mortgagees after foreclosure or succession to title) and 2 CMC § 4636 (purchaser at foreclosure or public sale must be entitled to own property in Commonwealth).

Scholarly Articles: See note to article XII, § 1 (preceding section).

Comment: For analysis of this section and other provisions of article XII, see notes to article XII, § 1 (preceding section).

Notes of Decisions

1. Generally
 2. Marital Property
 3. Mortgages
 4. Option Contracts
- Particular Cases

1. Generally

Under NMI Const. art. XII, only persons of Northern Marianas descent may acquire permanent and long-term interests in real property in the Commonwealth. The only exceptions are (a) transfers to a spouse (who is not of Northern Marianas descent) by inheritance in certain circumstances, and (b) transfers to a mortgagee (such as a bank or lending institution) by foreclosure on a mortgage if the mortgagee does not hold an interest in the property for more than a specified period. NMI Const. art. XII, § 2.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994).

2. Marital Property

Marital Property Act of 1990, providing for division of property in marital dissolutions, may not be applied in a manner that violates NMI Const. art. XII. 8 CMC § 1811 et seq.

Hofschneider v. Hofschneider, Appeal No. 94-010 (N.M.I. Sup. Ct. May 11, 1995) (Opinion

at 2).

3. Mortgages

Exception for acquisition of land by certain mortgagees in NMI Const. art. XII, § 2 does not extend to private mortgagees.

Mafnas v. Yokeno, Civ. Action No. 90-550 (N.M.I. Super. Ct. Dec. 7, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 10).

4. Option Contracts

--Particular Cases

Where plaintiff and defendant entered into a contract whereby plaintiff paid defendant not to lease or otherwise alienate his property for a one year period and this option did not give plaintiff any right to enter or otherwise use the property, and plaintiff did not acquire any possessory interest in property, option period could not be added to length of proposed lease in determining whether long term interest in land had been conveyed in violation of constitutional restriction on alienation of land. NMI Const. art. XII.

Duty Free Shoppers, Ltd. v. Sablan, 3 CR 623 (Trial Ct. 1989).

Art. XII, § 3

Section 3: Permanent and Long-Term Interests in Real Property. The term permanent and long-term interests in real property used in Section 1 includes freehold interests and leasehold interests of more than fifty-five years including renewal rights, except an interest acquired above the first floor of a condominium building. Any interests acquired above the first floor of a condominium building is restricted to private lands. Any land transaction in violation of this provision shall be void. This amendment does not apply to existing leasehold agreements.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 35. This section originally provided: "[t]he term permanent and long-term interests in real property used in section 1 includes freehold interests and leasehold interests of more than forty years including renewal rights."

Textual Irregularity and Error: Capitalization of "Section"; grammatical error in second sentence ("interests . . . is restricted . . .").

Cross References: See article XII, § 6 (enforcement).

Related Commonwealth Code Sections: See 2 CMC § 6101 et seq. (Commonwealth Uniform Condominium Act).

Scholarly Articles: See note to article XII, § 1.

Comment: According to Amendment 35's title, it was intended "to allow the sale and long-term lease of building above the first floor." For analysis of this section and other provisions of article XII, see notes to article XII, § 1.

Notes of Decisions

1. Freehold Interests
--Particular Cases
2. Long-Term Interests
--Particular Cases
3. Renewal Rights
--Particular Cases

1. Freehold Interests

"Freehold interests" subject to constitutional restriction on land alienation are all types of ownership or title--fee simple, fee tail, and life estate. A "freehold" is an estate in land or other real property, of uncertain duration; that is, either of inheritance or which may possibly last for the life of the tenant at the least (as distinguished from a leasehold). An estate to be a freehold must possess these two qualities: (1) immobility, that is, the property must be either land or some interest issuing out of or annexed to land; and (2) indeterminate duration, for if the utmost period of time to which an estate can endure be fixed and determined, it cannot be a freehold. NMI Const. art. XII, § 3.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991),
rev'd, 31 F.3d 756 (9th Cir. 1994).

An equitable interest of indeterminate duration is encompassed within a freehold interest, and is within the constitutional restriction on land alienation. NMI Const. art. XII, § 3.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991),
rev'd, 31 F.3d 756 (9th Cir. 1994).

--Particular Cases

Since equitable interest in property acquired by payers of option consideration was of indeterminate (i.e., uncertain) duration, it was a freehold interest.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991),
rev'd, 31 F.3d 756 (9th Cir. 1994).

2. Long-Term Interests

--Particular Cases

Lease covenant obligating lessor to purchase any improvements to land at end of lease term, secured by lien to non-NMI descent lessees on lessor's reversionary interest (subject to foreclosure 15 days after notice), conferred lessees with long-term interest in leased property, violating NMI Const. art. XII.

Mafnas v. Yokeno, Civ. Action No. 90-550
(N.M.I. Super. Ct. Dec. 7, 1993) (Decision and
Order on Cross-Motions for Summary Judgment
at 10-11).

3. Renewal Rights

The transfer of a right that empowers a person who is not

Art. XII, § 3

of Northern Marianas descent to acquire an interest in land beyond a 55-year leasehold, as for example through an option to renew or to extend, would contravene the purpose of NMI Const. art. XII and, therefore, be invalid.

Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 19, 1995) (Opinion at 8).

"Renewal rights" in NMI Const. art. XII, § 3 include any right, conditional or unconditional, that a person who is not of Northern Marianas descent could exercise to acquire a leasehold interest in land exceeding 55 years.

Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 19, 1995) (Opinion at 8).

Renewal rights are expressly included in the calculus of "interest in real property" under NMI Const. art. XII. They cannot be used to increase the interest in land of a person who is not of Northern Mariana Islands descent beyond a 55-year leasehold.

Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 19, 1995) (Opinion at 9).

NMI Const. art. XII was designed not only to prevent a person who is not of Northern Marianas descent from actual acquisition of a leasehold interest beyond 55 years, but also to prohibit a person who is not of Northern Marianas descent from holding any right or power that would allow it to later acquire a leasehold interest in land in excess of 55 years.

Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 19, 1995) (Opinion at 10).

—Particular Cases

Provision in lease granting non-Northern Marianas descent lessee an option to extend lease term beyond 55 years up to 90 years if Commonwealth law was changed to permit longer maximum term imposed legally-enforceable limit upon lessor's power to sell or encumber remainder fee interest to any party other than lessee for 35 years beyond maximum 55-year term. Although provision was conditional on change in law, it was nonetheless constitutionally-impermissible "renewal right." NMI Const. art. XII, § 3.

Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 19, 1995) (Opinion at 9-12).

Where alien corporation leased land for a term of 30 years with a 20 year option to renew, lease was void *ab initio* under NMI Constitutional provision restricting

leasehold interests of persons not of Northern Marianas descent to 40 years. NMI Const. art. XII.

Wabol v. Muna, 2 CR 963 (Dist. Ct. App. Div. 1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

Lease under which corporation not of Northern Marianas descent took interest in land for a 30 year term with an option to extend for an additional 20 years, at the option of the lessee, violated NMI Constitutional provision prohibiting the acquisition of long-term interests in real property. NMI Const. art. XII.

Wabol v. Muna, 2 CR 231 (Trial Ct. 1985), *rev'd in part*, 2 CR 963 (Dist. Ct. App. Div. 1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

In analyzing constitutional validity of lease clause providing that lessor was to grant lessee of non-NMI descent title to property if Commonwealth law changed to allow persons of non-NMI descent to own land, time when clause would be acted upon was irrelevant. Time when the decision was made to include clause--to alienate land if law was changed--was relevant. NMI Const. art. XII was designed not only to prevent a person of non-NMI descent from actual acquisition of a leasehold interest beyond 55 years, but also to prohibit a person of non-NMI descent from holding any right or power that would allow person to later acquire leasehold interest in land in excess of 55 years. Lease clause in question, embodying decision in contravention of existing law to grant title in future to person of non-NMI descent, was unconstitutional and void *ab initio*.

Mafnas v. Laureta, Civ. Action No. 88-696 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Plaintiff's Motion for Summary Judgment at 5-6).

Memorandum of agreement specifying that person of NMI descent, lessor of property, was to deed his reversionary interest in property to lessees, persons of non-NMI descent, if NMI Const. art. XII was later adjudged to be unconstitutional or otherwise invalid, and to redeliver blank deed accompanying memorandum of agreement to person of lessees' choosing without additional consideration if NMI Const. art. XII remained in force, violated NMI Const. art. XII. Agreement and deed were thus void *ab initio*.

Mafnas v. Yokeno, Civ. Action No. 90-550 (N.M.I. Super. Ct. Dec. 7, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 8-9).

Art. XII, § 4

Section 4: Persons of Northern Marianas Descent. A person of Northern Marianas descent is a person who is a citizen or national of the United States and who is of at least one-quarter Northern Marianas Chamorro or Northern Marianas Carolinian blood or a combination thereof or an adopted child of a person of Northern Marianas descent if adopted while under the age of eighteen years. For purposes of determining Northern Marianas descent, a person shall be considered to be a full-blooded Northern Marianas Chamorro or Northern Marianas Carolinian if that person was born or domiciled in the Northern Mariana Islands by 1950 and was a citizen of the Trust Territory of the Pacific Islands before the termination of the Trusteeship with respect to the Commonwealth.

History: Ratified 1977, effective 1978.

Cross References: See article XI, § 1 (public lands belong collectively to people of Northern Marianas descent) and article XII, § 5 (eligibility of corporation to be considered person of Northern Marianas descent).

Related Commonwealth Code Sections: See 2 CMC § 4333, as amended by Executive Order 94-3 (eligibility for village homestead program) and 2 CMC § 4354, as amended by Executive Order 94-3 (eligibility for homestead compensation program).

Scholarly Articles: See note to article XII, § 1.

Comment: For analysis of this section and other provisions of article XII, see notes to article XII, § 1.

Notes of Decisions

1. Generally
2. Guamanians
--Particular Cases

1. Generally

Test to determine whether person is of Northern Marianas descent is not racially or ethnically based, but is based on identifying those persons who chose to make the Northern Marianas their home and who acquired Trust Territory citizenship as of 1950. NMI Const. art. XII, § 4.

Boddy v. Leon Guerrero, Civ. Action No. 93-245 (N.M.I. Super. Ct. Nov. 17, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 3-4).

Framers of NMI Const. art. XII, § 4 meant to distinguish between Chamorros living in the Northern Marianas and those from Guam. Chamorros living on Guam and Carolinians living on Truk presumably could not be considered as being of Northern Marianas descent.

Boddy v. Leon Guerrero, Civ. Action No. 93-245 (N.M.I. Super. Ct. Nov. 17, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 4).

Test enunciated in NMI Const. art. XII, § 4 was designed to confine land ownership to those people who worked for the political and economic betterment of the NMI and

who considered NMI their home. Test was not designed to encompass a diaspora of persons whose families at one time lived in NMI as administrators from elsewhere, even if those persons are of Chamorro ethnicity.

Boddy v. Leon Guerrero, Civ. Action No. 93-245 (N.M.I. Super. Ct. Nov. 17, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 5).

2. Guamanians

--Particular Cases

Member of family that came from Guam to Rota in 1891 as colonial administrators and returned to Guam in 1908, and who acquired U.S. citizenship as Guamanian pursuant to Organic Act of Guam, 48 U.S.C. § 1421 et seq., was not person of Northern Marianas descent as defined in NMI Const. art. XII, § 4.

Boddy v. Leon Guerrero, Civ. Action No. 93-245 (N.M.I. Super. Ct. Nov. 17, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 4).

Art. XII, § 5

Section 5: Corporation. A corporation shall be considered to be a person of Northern Marianas descent so long as it is incorporated in the Commonwealth, has its principal place of business in the Commonwealth, has directors one-hundred percent of whom are persons of Northern Marianas descent and has voting shares (i.e. common or preferred) one-hundred percent of which are actually owned by persons of Northern Marianas descent as defined in Section 4. Minors, as defined by applicable laws of the Commonwealth, may not be eligible to become directors of a corporation. No trusts or voting by proxy by persons not of Northern Marianas descent may be permitted. Beneficial title shall not be served from legal title.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 36. This section originally provided:

Section 5: Corporations. A corporation shall be considered to be a person of Northern Marianas descent so long as it is incorporated in the Commonwealth, has its principal place of business in the Commonwealth, has directors at least fifty-one percent of whom are persons of Northern Marianas descent and has voting shares at least fifty-one percent of which are owned by persons of Northern Marianas descent as defined by section 4.

Amendment 36 also amended article XII, § 6 (next section, enforcement).

Textual Irregularity: Capitalization of "Section" in first sentence.

Cross References: See, in addition to cited section, article XII, § 6 (next section, enforcement).

Related Commonwealth Code Sections: See 2 CMC § 4973 (disregard of corporate entity in actions concerning article XII).

Scholarly Articles: See note to article XII, § 1.

Comment: For analysis of this section and other provisions of article XII, see notes to article XII, § 1.

Notes of Decisions

1. Generally
2. Constitutional Challenge
3. Foreign Equity Financing
4. Legislation
 - Particular Cases

1. Generally

Records of 1985 Constitutional Convention indicate that drafters of amendment to NMI Const. art. XII, § 5 intended to close perceived loophole in existing law whereby outside investors were forming dummy corporations using people of Northern Marianas descent as fronts. Framers intended to prohibit private parties from entering into arrangements in which legal title would be severed from equitable title.

Dela Cruz v. Hotel Nikko Saipan, Inc., Civil Action No. 91-259 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Defendants' Motion for Summary Judgment at 7-8).

2. Constitutional Challenge

NMI Constitutional provision which defines an alien corporation survives Fourteenth Amendment scrutiny. U.S. Const. amend. XIV; NMI Const. art. XII.

Wabol v. Muna, 2 CR 963 (Dist. Ct. App. Div. 1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

3. Foreign Equity Financing

Corporations considered to be persons of Northern Marianas descent may use foreign equity financing, through the issuance of non-voting shares, so long as the voting control of the corporation remains in hands of persons of Northern Marianas descent.

Taitano v. South Seas Corp., Civ. Action No. 92-1260 (N.M.I. Super. Ct. Mar. 7, 1994) (Decision and Order on Defendant Marianas

Art. XII, § 6

Public Land Trust's Motion for Sanctions
Against Plaintiff and His Counsel at 16, n.5).

4. Legislation

Statute concerning corporate conformance with NMI Const. art. XII, § 5 requirements precludes inquiry into identity of shareholders or directors beyond showing of record proof, but inquiry is permitted into allegations of fraud, "alter ego" treatment by corporate owners, or other circumstances which may warrant disregard of corporate entity under common law as modified by statute. 2 CMC § 4973.

Dela Cruz v. Hotel Nikko Saipan, Inc., Civil Action No. 91-259 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Defendants' Motion for Summary Judgment at 6-7).

-Particular Cases

Constitutional challenge to statute under which record proof of corporate stock ownership and percentage of directors of NMI descent is conclusive as to which persons are directors or stockholders in NMI Const. art. XII, § 5 analysis would not be considered where challenge was based on assertion that court is prevented from hearing claim that records on file with Registrar of Corporations are false, and claim was not made in case before court. 2 CMC § 4973.

Dela Cruz v. Hotel Nikko Saipan, Inc., Civil Action No. 91-259 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Defendants' Motion for Summary Judgment at 4-5).

Where drafters of NMI Const. art. XII, § 5 intended title severance provision to prohibit private parties from entering into commercial transactions which separated legal and equitable title, in 2 CMC § 4973 legislature transformed title severance phrase into limitation on power of court to respond to such transactions. Title severance provision cannot be read to foreclose inquiry by court into whether a given corporate entity should be disregarded.

Dela Cruz v. Hotel Nikko Saipan, Inc., Civil Action No. 91-259 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Defendants' Motion for Summary Judgment at 8).

Section 6: Enforcement. Any transaction made in violation of Section 1 shall be void ab initio. Whenever a corporation ceases to be qualified under Section 5, a permanent or long-term interest in land in the Commonwealth acquired by the Corporation after the effective date of this amendment shall be immediately forfeited without right of redemption

Art. XII, § 6

to the government of the Commonwealth of the Northern Mariana Islands. The Registrar of Corporation shall issue regulations to ensure compliance and the legislature may enact enforcement laws and procedures.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 36. This section originally provided:

Section 6: Enforcement. Any transaction made in violation of section 1 shall be void ab initio. Whenever a corporation ceases to be qualified under section 5, a permanent or long-term interest in land in the Commonwealth acquired by the corporation after the effective date of this Constitution shall be forfeited to the government.

Amendment 36 also amended article XII, § 5 (preceding section, criteria for determining whether corporation qualifies as person of Northern Marianas descent).

Textual Irregularities and Error: Capitalization of "Section" (two instances), "Corporation" and "Registrar of Corporation"; failure to pluralize "Corporation" in "Registrar of Corporation."

Scholarly Articles: See note to article XII, § 1.

Related Commonwealth Code Sections: See generally 2 CMC § 4941 et seq. (actions concerning article XII).

Comment: For analysis of this section and other provisions of article XII, see notes to article XII, § 1.

Notes of Decisions

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|-----------------------------|---|
| I. Generally | --Particular Cases |
| 1. Constitutional Challenge | |
| 2. Transactions | IV. Remedies |
| --Particular Cases | 1. Reformation of Conveyance |
| 3. Property Right | --Particular Cases |
| --Particular Cases | 2. Severability of Unconstitutional Provisions |
| | --Particular Cases |
| II. Actions | 3. Improvements |
| 1. Justiciability | |
| --Particular Cases | I. Generally |
| 2. Settlements | |
| --Particular Cases | Intention of drafters of NMI Const. art. XII, § 6 could not be clearer; any transaction which violates NMI Const. art. XII, § 1 is completely without force and effect. The language of NMI Const. art. XII, § 6 admits of no equitable exceptions. |
| 3. Summary Judgment | <i>Wabol v. Villacrusis</i> , 958 F.2d 1450 (9th Cir. 1990), cert. den. sub nom., <i>Philippine Goods, Inc. v. Wabol</i> , --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992). |
| --Particular Cases | |
| III. Applications | Intention of drafters of NMI Const. art. XII, § 6 could not be clearer; any transaction which violates NMI Const. art. XII, § 1 is completely without force and effect. The language of NMI Const. art. XII, § 6 admits of no equitable exceptions. |
| 1. Prima Facie Case | <i>Diamond Hotel Co., Ltd. v. Matsunaga</i> , Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 19, 1995) (Opinion at 13). |
| 2. Agency Relationship | |
| --Particular Cases | |
| 3. Control | |
| --Particular Cases | |
| 4. Estoppel | |
| 5. Marital Property | |
| 6. Novel Theories | |
| 7. Partnerships | |
| --Particular Cases | |
| 8. Renewal Rights | |
| 9. Trusts | |
| --Particular Cases | |
| 10. Resulting Trusts | |

Art. XII, § 6

Persons who are not of Northern Marianas descent may not legally acquire "permanent and long-term interests in real property within the Commonwealth" by "sale, lease, gift, inheritance or other means." Any transaction violating the constitutional restriction is void *ab initio*--void from the beginning, as if it never occurred. NMI Const. art. XII, §§ 1, 2, 6.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994).

In assessing possible violations of NMI Const. art. XII, courts should scrutinize carefully any transaction entered into by a non-NMI descent person to determine whether the transaction would result in acquisition of a long-term interest by a person of non-NMI descent, or in having the land pass out of the hands of the people of the NMI.

Mafnas v. Yokeno, Civ. Action No. 90-550 (N.M.I. Super. Ct. Dec. 7, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 5).

1. Constitutional Challenge

Exemption from U.S. Constitution specified in Covenant § 805, which contains broad grant of authority to Commonwealth government to regulate alienation of permanent and long-term interests in real property so as to restrict their acquisition to persons of NMI descent, is limited to regulations adopted pursuant to this grant of authority. However, section 805 leaves to the Commonwealth government the decision over what types of long-term interests to restrict and therefore over which restrictions are insulated from constitutional attack. Enforcement provision of NMI Const. art. XII, which declares any transaction violating its terms void *ab initio*, is within section 805's grant of authority. NMI Const. art. XII, § 6.

Yokeno v. Mafnas, 973 F.2d 803 (9th Cir. 1992).

2. Transactions

In NMI Const. art. XII, § 6, providing that any "transaction" made in violation of NMI Const. art. XII, § 1 (restricting acquisition of permanent and long-term interests in land in Commonwealth to persons of NMI descent) is void *ab initio*, term "transaction" means the acquisition of an illegal interest by a person of non-NMI descent. That acquisition is the transaction which is void under NMI Const. art. XII. Term cannot be construed to abrogate acquisition of interest by a co-grantee (in instrument of conveyance) who is a person of NMI descent.

Manglona v. Kaipat, 3 N.M.I. 322 (1992).

The term "transaction" has a flexible meaning defined in

light of the purposes behind NMI Const. art. XII. NMI Const. art. XII, § 6.

Mafnas v. Yokeno, Civ. Action No. 90-550 (N.M.I. Super. Ct. Dec. 7, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 5).

—Particular Cases

Intention of parties expressed in three documents--ground lease, blank warranty deed and memorandum of agreement--executed same day, between same parties, involving the same consideration and concerning transfer of property interests in same property, was that ground lease be considered separate from memorandum of agreement and blank warranty deed. For purposes of NMI Const. art. XII analysis, ground lease was one "transaction" and memorandum of agreement and warranty deed another "transaction."

Mafnas v. Yokeno, Civ. Action No. 90-550 (N.M.I. Super. Ct. Dec. 7, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 6-8).

3. Property Right

A plaintiff does not have a vested property right in an NMI Const. art. XII cause of action based on operation of NMI Const. art. XII, § 6, providing that violative transaction is void *ab initio*. Only a court can declare a transaction to be violative of NMI Const. art. XII, and until that is done, no voiding of transaction takes place. Alleged rights of original landowner can not vest until there has been final, unreviewable judgment.

Mafnas v. Laureta, Civ. Action No. 88-696 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Plaintiff's Motion for Summary Judgment at 10).

—Particular Cases

Retroactive application of statute under which record proof of corporate stock ownership and percentage of directors of NMI descent is conclusive as to which persons are directors or stockholders in NMI Const. art. XII, § 5 analysis did not violate vested property rights in action challenging constitutional validity of property transaction. Property rights do not vest, in constitutional sense, until final, unreviewable judgment is obtained. Since whatever property rights plaintiffs had were inchoate, they were not subject to constitutional protection from retroactive enactments. 2 CMC § 4973.

Dela Cruz v. Hotel Nikko Saipan, Inc., Civil Action No. 91-259 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Defendants' Motion for Summary Judgment at

Art. XII, § 6

4-5).

II. Actions

When the issue has been properly raised, violations of NMI Const. art. XII, restricting acquisition of permanent and long-term interests in real property within the Commonwealth to persons of Northern Marianas descent, may be addressed in proceedings involving only private parties.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994).

1. Justiciability

—Particular Cases

Because alien corporation was an alien corporation from the outset of land transaction, land lease made by it for term over 40 years was void *ab initio*, and original owners had standing to sue by virtue of their interest in protecting their land.

Wabol v. Muna, 2 CR 963 (Dist. Ct. App. Div. 1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

Where lease provided plaintiff with a lien on defendant's reversionary interest to secure defendant's performance of his obligation to purchase any permanent improvements constructed by plaintiff during term of lease, and defendant maintained that it was highly unlikely that he would be able to purchase multimillion-dollar improvements contemplated by plaintiff and, therefore, it was probable that he would lose property by default, giving plaintiff an interest in the land exceeding the permissible limit, court would not render advisory opinion based on speculative events that could occur in next 55 years of lease period. NMI Const. art. XII.

Duty Free Shoppers, Ltd. v. Sablan, 3 CR 623 (Trial Ct. 1989).

For court to consider defendant's claim of illegality based on NMI Const. art. XII, there must be a justiciable controversy regarding plaintiff's lien on defendant's reversionary interest and, without a justiciable controversy, court did not have jurisdiction to entertain summary judgment motion. NMI Const. Art XII.

Duty Free Shoppers, Ltd. v. Sablan, 3 CR 623 (Trial Ct. 1989).

Persons alleging that they were owners of property in question and were entitled to rental from the property had standing to challenge contract as a violation of NMI Constitutional restriction on alienation of land.

Wabol v. Muna, 2 CR 231 (Trial Ct. 1985), *rev'd in part*, 2 CR 963 (Dist. Ct. App. Div. 1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

2. Settlements

—Particular Cases

Where parties had stipulated to settlement of action, court would sua sponte void settlement as violative of land alienation restriction of NMI Constitution. NMI Const. art. XII.

Ferreira v. Borja, 3 CR 472 (Trial Ct. 1988), *aff'd*, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

3. Summary Judgment

—Particular Cases

Undisputed facts that person of NMI descent purchased property in the NMI with funds provided entirely by persons who were not of NMI descent in furtherance of a partnership agreement were sufficient for purposes of a summary judgment proceeding involving claimed violation of NMI Const. art. XII.

Ferreira v. Borja, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

Where defendant presented no facts on motion for summary judgment raising genuine issue of material fact as to whether agent/principal relationship continued between person of NMI descent who acquired fee title to property on behalf of persons of non-NMI descent and then leased property to them, grant of summary judgment was proper on issue of whether arrangement violated land alienation restriction. Com.R.Civ.P. 56(c); NMI Const. art. XII.

Aldan-Pierce v. Mafnas, 3 CR 326 (Dist. Ct. App. Div. 1988).

In action alleging violation of NMI Const. art. XII, because material facts were undisputed and only question presented was question of law, case was ripe for summary judgment. It was undisputed that person of non-NMI descent wholly financed purchase of land by person of NMI descent who became financier's lessor under agreement containing provision that in the event of a change in law removing land alienation restriction, person of NMI descent was to grant title to land to financier. Question of whether change of law provision constituted long term interest in contravention of NMI Const. art. XII was question of law.

Art. XII, § 6

Mafnas v. Laureta, Civ. Action No. 88-696 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Plaintiff's Motion for Summary Judgment at 3).

Summary judgment was inappropriate on severability of lease provision violating NMI Const. art. XII and constitutionality of 2 CMC § 4982, providing for severability of contractual provisions violating NMI Const. art. XII, where Commonwealth Supreme Court decision setting forth new tests for severability and implicating factual issues had been issued after parties had filed and argued summary judgment motions; factual issues had not been briefed and could have been source of contention.

Mafnas v. Laureta, Civ. Action No. 88-696 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Plaintiff's Motion for Summary Judgment at 6-9).

In action challenging constitutionality of conveyance of property to person of NMI descent based on fact that consideration was furnished by man of NMI descent and wife of non-NMI descent, defendants' claim that transaction did not violate NMI Const. art. XII as matter of law was not ripe for summary judgment. Facts were not sufficiently developed to allow careful scrutiny of transaction required in alleged NMI Const. art. XII violations.

Boddy v. Leon Guerrero, Civ. Action No. 93-245 (N.M.I. Super. Ct. Nov. 17, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 6-7).

III. Applications

1. Prima Facie Case

There can never be a situation where there is an automatic illegal purpose (in a conveyance) under NMI Const. art. XII. There must first be an acquisition of an interest in land. Then a court may analyze the acquisition to determine if it violates NMI Const. art. XII. If it makes such a determination, then the acquisition (i.e., transaction) becomes void *ab initio*.

Manglona v. Kaipat, 3 N.M.I. 322 (1992).

For a person to succeed in a cause of action alleging a violation of NMI Const. art. XII, certain material facts have to be clearly present and undisputed: (1) acquisition of land in the NMI; (2) the acquisition is a permanent and long-term interest; and (3) the acquisition was made by a person who is not of NMI descent.

Ferreira v. Borja, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

A prima facie case establishing an NMI Const. art. XII violation must demonstrate that an acquisition of NMI land by a person who is not of Northern Marianas descent was made and that the acquisition is a permanent and long-term interest.

Mafnas v. Laureta, Civ. Action No. 88-696 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Plaintiff's Motion for Summary Judgment at 3).

2. Agency Relationship

--Particular Cases

In challenge to sale of property to person of Northern Marianas descent on basis that third parties not of Northern Marianas descent furnished purchase money, because purported transaction to be accomplished (acquisition of constitutionally-prohibited interest by third parties) had illegal purpose under NMI Const. art. XII, no resulting trust could arise in favor of third parties. Since agency theory was also inapplicable, court would not consider constitutionality of agreements person of Northern Marianas descent may have had with third parties. Title to property would be quieted in person of Northern Marianas descent.

Ferreira v. Borja, Appeal No. 90-047 (N.M.I. Sup. Ct. Jan. 3, 1995) (Opinion on Remand at 2-3).

In action challenging sale of property to person of Northern Marianas descent on basis that third party not of Northern Marianas descent furnished purchase money, where claimed violation of NMI Const. art. XII based on agency-trust theory was essentially agency theory that had been rejected by Commonwealth Supreme Court, Superior Court would grant defendant's cross-motion for summary judgment that no agency-trust arose from transactions.

Mafnas v. Laureta, Civ. Action No. 88-696 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Plaintiff's Motion for Summary Judgment at 4).

In action challenging sale of property to corporations based on claimed violation of NMI Const. art. XII, where plaintiffs claimed that corporations purchasing property acted for foreign corporation under agency-trust and agency-trust theory had been rejected in NMI Const. art. XII analysis by Commonwealth Supreme Court, Superior Court would grant defendant's motion for summary judgment that no agency-trust arose from transaction.

Dela Cruz v. Hotel Nikko Saipan, Inc., Civ. Action No. 91-259 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Defendants' Motion for Summary Judgment at

Art. XII, § 6

8-9).

Where persons not of Northern Marianas descent directed plaintiff, a person of Northern Marianas descent, to exercise option agreement on land owned by defendant, paying purchase price and, in turn, executing long term lease to those persons, transaction did not violate NMI Constitutional provision restricting permanent and long term interests in land to persons of Northern Marianas descent. NMI Const. art. XII, § 1.

Aldan-Pierce v. Mafnas, 2 CR 855 (Trial Ct. 1986), *aff'd*, 3 CR 326 (Dist. Ct. App. Div. 1988).

3. Control

Any agreement whereby person of non-NMI descent could extend his or her rights beyond 55 years, or pursuant to which person of NMI descent would be stripped of his or her interest in land, upon occurrence of conditions subsequent outside control of person of NMI descent, or without independent assent by person of NMI descent, renders transaction violative of NMI Const. art. XII.

Mafnas v. Yokeno, Civ. Action No. 90-550 (N.M.I. Super. Ct. Dec. 7, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 8).

—Particular Cases

Lease provisions prohibiting lessor from mortgaging his reversionary interest in property to anyone other than non-NMI descent lessees without lessees' consent and obligating lessor to execute mortgage or loan agreement subordinating his fee interest to institutional lender so that lessees could obtain construction financing deprived lessor of control over encumbrance of fee interest and granted lessees almost total discretion to mortgage leasehold and fee. Lessees were empowered to obtain as many loans under whatever terms they could, and to default on loans, causing foreclosure resulting in loss of lessor's fee. Because lessor could be stripped of his interest in property upon occurrence of conditions subsequent which were outside his control, lease provisions violated NMI Const. art. XII.

Mafnas v. Yokeno, Civ. Action No. 90-550 (N.M.I. Super. Ct. Dec. 7, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 11-13).

4. Estoppel

Public policy dictates that estoppel is inapplicable in action challenging land transaction as a violation of Constitutional provision restricting ownership of land to

protect native born Northern Marianas islanders from foreign exploitation. NMI Const. art. XII.

Wabol v. Muna, 2 CR 963 (Dist. Ct. App. Div. 1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

5. Marital Property

See Notes of Decisions to article XII, § 2.

6. Novel Theories

Counsel should be given latitude in advancing new NMI Const. art. XII arguments; the history of NMI Const. art. XII litigation demonstrates that this text is subject to a variety of arguably valid interpretations. However, where an argument contradicts or ignores either an express provision of NMI Const. art. XII or a directly-applicable part of the reported legislative history, court must consider that argument foreclosed by binding law.

Taitano v. South Seas Corp., Civ. Action No. 92-1260 (N.M.I. Super. Ct. Mar. 7, 1994) (Decision and Order on Defendant Marianas Public Land Trust's Motion for Sanctions Against Plaintiff and His Counsel at 12-13).

7. Partnerships

Partnership of persons who are not of NMI descent and person who is of NMI descent is not recognized in NMI Const. art. XII as person capable of owning permanent and long-term interest in real property in the Commonwealth.

Ferreira v. Borja, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

—Particular Cases

Acquisition of land by person of Northern Marianas descent for herself where she had a partnership agreement with her husband and two other persons not of Northern Marianas descent, using their combined money to acquire land in the Northern Mariana Islands, violated land alienation restriction of the Northern Marianas Constitution. NMI Const. art. XII.

Ferreira v. Borja, 3 CR 472 (Trial Ct. 1988), *aff'd*, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

8. Renewal Rights

See Notes of Decisions to article XII, § 3.

9. Trusts

Art. XII, § 6

Acquisition of freehold interest in Commonwealth real property by persons who are not of Northern Marianas descent through a trustee who is of such descent is one of the "other means" of acquisition prohibited by NMI Const. art. XII, § 2. The constitutional restriction would be undermined if persons who are not of Northern Marianas descent could acquire a prohibited interest via a trust relationship.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994).

–Particular Cases

Although trial court erroneously applied agency principles instead of trust law in summary judgment ruling that acquisition of property in the NMI violated NMI Const. art. XII, court's ruling that acquisition violated NMI Const. art. XII was correct.

Ferreira v. Borja, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

10. Resulting Trusts

Since Commonwealth could not constitutionally deprive purchasers of property interest through the expedient of untenable judicial interpretation of local law denying that property interest ever existed, NMI Supreme Court decision recognizing existence of resulting trust and using trust as basis for avoiding sale and giving land back to sellers would be vacated and remanded to NMI Supreme Court for reconsideration.

Ferreira v. Borja, 1 F.3d 960 (9th Cir. 1993).

NMI Supreme Court decision applying resulting trust and using trust as basis for avoiding sale of land and giving land back to sellers was untenable. A resulting trust is a trust implied in law from the intentions of the parties to a given transaction; purpose of doctrine is to protect persons who are rightful owners of land even though they do not have legal title. Courts have refused to find a resulting trust in favor of a person who purchased land under another's name if that person did so to accomplish an illegal purpose. Court cannot use equitable powers to create resulting trust in favor of someone and then use existence of resulting trust as basis for finding that that person violated the law. NMI Const. art. XII.

Ferreira v. Borja, 1 F.3d 960 (9th Cir. 1993).

If a resulting trust in real property in the Commonwealth has arisen in favor of a person who is not of Northern Marianas descent, it is subject to being declared invalid in a judicial proceeding if the equitable interest held for them in trust violates NMI Const. art. XII.

Ferreira v. Borja, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

If a person of NMI descent purchases land in the NMI with money entirely provided by a person of non-NMI descent, but it is clear that the intent of the transaction was that the person of non-NMI descent would only obtain a 55-year lease, or less, and the fee interest would be in the person of NMI descent, then constitutional prohibition would not be violated. NMI Const. art. XII.

Ferreira v. Borja, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

Resulting trust arising in favor of person who provides money to purchase land in NMI cannot be rebutted by disclaimer on part of payor, after unconstitutional act has been completed, of any intention to take more than a leasehold of 55 years. A person cannot violate the constitution and later attempt to correct the violation by saying that all that was intended was acquisition of a constitutionally permissible interest. NMI Const. art. XII.

Ferreira v. Borja, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

Although a resulting trust arising in favor of purchaser of land in NMI may be rebutted by evidence of purchase to accomplish an illegal purpose, a violation of NMI Const. art. XII does not occur unless and until a court declares a transaction to be violative of article XII. There can be no automatic illegal purpose under article XII; a court must first declare a transaction to be unconstitutional.

Ferreira v. Borja, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

A resulting trust in real property in the Commonwealth arising in favor of a person who is not of Northern Marianas descent is valid, unless the equitable interest held for them in trust is declared, in a judicial proceeding by a court of competent jurisdiction, to be violative of NMI Const. art. XII. If the equitable interest is ruled violative of article XII, the underlying transaction through which the person who is not of Northern Marianas descent acquired the interest becomes void *ab initio*. NMI Const. art. XII, § 6.

Ferreira v. Borja, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

A resulting trust in real property in favor of a person who is not of Northern Marianas descent is valid, unless the equitable interest held for them in trust is declared, in a judicial proceeding, to be violative of NMI Const. art. XII. If the equitable interest is ruled violative of art. XII, the underlying transaction through which the person who is not of Northern Marianas descent acquired the interest becomes void *ab initio*. NMI Const. art. XII, § 6.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994).

Art. XII, § 6

Although, under *Restatement (Second) of Trusts* § 441 (1959), it may be possible to limit resulting trust to leasehold interest despite fact that a transferee acquiring legal title did not pay any of the purchase price, principle would nullify NMI Const. art. XII and therefore does not apply in the NMI.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991),
rev'd, 31 F.3d 756 (9th Cir. 1994).

If a resulting trust in real property in the Commonwealth has arisen in favor of a person who is not of Northern Marianas descent, it is subject to being declared invalid in a judicial proceeding if the equitable interest held for them in trust violates NMI Const. art. XII.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991),
rev'd, 31 F.3d 756 (9th Cir. 1994).

A resulting trust in real property in the Commonwealth arising in favor of a person who is not of Northern Marianas descent may be rebutted by clear evidence that the money used to purchase the property was a valid gift, loan, or payment to discharge a debt or other obligation.

Restatement (Second) of Trusts §§ 445, 446, 447 (1959).
Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991),
rev'd, 31 F.3d 756 (9th Cir. 1994).

—Particular Cases

In challenge to sale of property to person of Northern Marianas descent on basis that third parties not of Northern Marianas descent furnished purchase money, because purported transaction to be accomplished (acquisition of constitutionally-prohibited interest by third parties) had illegal purpose under NMI Const. art. XII, no resulting trust could arise in favor of third parties. Since agency theory was also inapplicable, court would not consider constitutionality of agreements person of Northern Marianas descent may have had with third parties. Title to property would be quieted in person of Northern Marianas descent.

Ferreira v. Borja, Appeal No. 90-047 (N.M.I. Sup. Ct. Jan. 3, 1995) (Opinion on Remand at 2-3).

Under partnership agreement in which partner of NMI descent agreed to purchase land in NMI and hold title for partnership, which included partners of non-NMI descent who provided purchase money, partner of non-NMI descent was never meant to be fee simple owner of land. Agreement dispelled any exception to resulting trust arising in favor of partners who provided purchase money. Under agreement, partner of NMI descent was to hold fee simple title to land for the benefit of the partnership, subject to certain restrictions--including duty to convey to the partnership if land alienation restriction changed and other partners could legally hold title, or to

a person of NMI descent designated by the partnership if partner of NMI descent withdrew from partnership.

Ferreira v. Borja, 2 N.M.I. 514 (1992),
vacated, 1 F.3d 960 (9th Cir. 1993).

Under partnership agreement in which partner of NMI descent agreed to purchase land in NMI and hold title for partnership, which included partners of non-NMI descent who provided purchase money, resulting trust arising in favor of partners who provided purchase money was not rebutted by terms of agreement. Under agreement, there was no clear evidence that partner of NMI descent was to obtain title as a gift or loan, or to discharge a debt or other obligation, to rebut resulting trust.

Ferreira v. Borja, 2 N.M.I. 514 (1992),
vacated, 1 F.3d 960 (9th Cir. 1993).

Under partnership agreement in which partner of NMI descent agreed to purchase land in NMI and hold title for partnership, which included partners of non-NMI descent who provided purchase money, a trust was clearly contemplated. Partner of NMI descent was to lease land to partnership with proviso that if land alienation restriction changed and other partners could legally hold title, the partnership would obtain title for no additional consideration. If there was no change in the law, partner of NMI descent was to purchase improvements on land at the end of the lease term. Finally, partner of NMI descent was required to transfer her interest in the land if she left the partnership. Accordingly, partners of non-NMI descent acquired equitable interest of indeterminate duration in land under resulting trust.

Ferreira v. Borja, 2 N.M.I. 514 (1992),
vacated, 1 F.3d 960 (9th Cir. 1993).

Resulting trust arising in favor of persons of non-NMI descent who provided money to purchase land was not rebutted by any evidence that person of NMI descent who acquired title was a relative or natural object of their bounty.

Ferreira v. Borja, 2 N.M.I. 514 (1992),
vacated, 1 F.3d 960 (9th Cir. 1993).

Because NMI Const. art. XII, § 6 provides that transactions underlying impermissible acquisitions of real property are void *ab initio*, decision that payers acquired constitutionally impermissible interest in real property under resulting trust sprang back to date when option (the underlying transaction) to purchase property was executed. Payers were retroactively divested of their interest, and thus could not subsequently make a gift of that interest.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991),
rev'd, 31 F.3d 756 (9th Cir. 1994).

Where record indicated that payers intended to retain

Art. XII, § 6

equitable interest of indeterminate duration, paid entire option consideration and clearly intended to pay entire purchase price, resulting trust was not rebutted in part. Payers acquired equitable interest of indeterminate duration in real property in the Commonwealth.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994).

Because payers of option consideration who acquired freehold interest in real property under resulting trust were not of Northern Marianas descent, their acquisition violated NMI Const. Art. XII. The underlying transaction (the option contract) was thus void *ab initio*.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994).

Asserted violation of NMI Const. art. XII in conveyance of property to person of NMI descent based upon claim that resulting trust arose in favor of person of non-NMI descent who paid consideration would be rejected based upon appellate court ruling and legislation providing that resulting trust does not arise under such circumstances. 2 CMC § 4962 [PL 8-32, § 4 (§ 4922)].

Mafnas v. Yokeno, Civ. Action No. 90-550 (N.M.I. Super. Ct. Dec. 7, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 14).

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Boddy v. Leon Guerrero, Civ. Action No. 93-245 (N.M.I. Super. Ct. Nov. 17, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 5-6).

Where prospective payors disavowed a fee simple interest in land to be purchased with their funds, and manifested clear intention to take only a legal leasehold interest in land, execution of a lease agreement was the culmination of agency/trust activities between the title holder and prospective payors, and a clear rebuttal of a resulting trust.

Aldan-Pierce v. Mafnas, 2 CR 855 (Trial Ct. 1986), *aff'd*, 3 CR 326 (Dist. Ct. App. Div. 1988).

IV. Remedies

1. Reformation of Conveyance

NMI Const. art. XII, § 6, providing that any transaction

made in violation of NMI Const. art. XII, § 1's restriction on land alienation is void *ab initio*, precludes reformation of lease agreement that violates section. Language admits of no equitable exceptions.

Wabol v. Villacrusis, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

The better and more enlightened rule and one which more effectively addresses the equities involved where lease is held to violate the Constitutional restriction on the alienation of land is that lease will be declared void only as to the excess term which violates the constitutional provisions. NMI Const. art. XII.

Wabol v. Muna, 2 CR 231 (Trial Ct. 1985), *rev'd in part*, 2 CR 963 (Dist. Ct. App. Div. 1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

--Particular Cases

NMI Const. art. XII, restricting acquisition of long-term interests in NMI land to persons of NMI descent, prohibited grantee of non-NMI descent from taking title to one-half interest in property conveyed under deed of gift. Accordingly, grantee's one-half interest in property reverted to grantor's estate and passed via grantor's will (if any) to her devisees, or by the laws of intestate succession to her heirs. Devisees or heirs taking the one-half interest would share tenancy in common with other grantee.

Manglona v. Kaipat, 3 N.M.I. 322 (1992).

In action in which deed of gift conveying land to one grantee of NMI descent and one grantee of non-NMI descent was challenged as violative of NMI Const. art. XII, although conveyance to grantee of non-NMI descent was void *ab initio*, entire deed was not void, and grantee of NMI descent took interest in property.

Manglona v. Kaipat, 3 N.M.I. 322 (1992).

Where alien corporation leased land for a term of 30 years with a 20 year option to renew, lease was void *ab initio* under NMI Constitutional provision restricting leasehold interests of persons not of Northern Marianas descent to forty years. NMI Const. art. XII.

Wabol v. Muna, 2 CR 963 (Dist. Ct. App. Div. 1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

Trial court did not err in concluding that contract for the

Art. XII, § 6

sale of land was void in part because it violated restriction on alienation of land to persons not of Northern Marianas descent, but unenforceability of one provision did not void the whole agreement. NMI Const. art. XII.

Hemlani v. Villagomez, 1 CR 203 (Dist. Ct. App. Div. 1981).

Where defendants negotiated lease for 30 year term with option to extend for 20 years, portion of lease purporting to transfer interest greater than 40 years was void *ab initio* under NMI Constitution. NMI Const. art. XII.

Wabol v. Muna, 2 CR 231 (Trial Ct. 1985), *rev'd in part*, 2 CR 963 (Dist. Ct. App. Div. 1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

2. Severability of Unconstitutional Provisions

NMI Const. art. XII does not preclude severance of unconstitutional provision in lease where parties have agreed to do so under severability clause in order to save underlying lease.

Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 19, 1995) (Opinion at 17).

Where Commonwealth Supreme Court held, in decision grounded in NMI Const. art. XII, that if lease provision violating Constitution is an integral part of lease, court must declare entire agreement void *ab initio* notwithstanding severability clause in lease, Supreme Court's test prevailed over 2 CMC § 4982(b), calling for automatic enforcement of severability clauses in agreements found to transgress NMI Const. art. XII. Insofar as it mandated severability of integral provision within a transaction, statute was unconstitutional.

Mafnas v. Laureta, Civ. Action No. 88-696 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Plaintiff's Motion for Summary Judgment at 9).

-Particular Cases

Unconstitutional provision in lease granting non-Northern Marianas descent lessee an option to extend lease term beyond 55 years up to 90 years if Commonwealth law was changed to permit longer maximum term could be severed without offending void *ab initio* mandate of NMI Const. art. XII, § 6 because: (1) parties agreed to severance of any illegal provision by including severability clause; (2) language of severability clause indicated that option provision was not integral to lease because parties anticipated that provision might violate NMI Const. art. XII. With severance of unconstitutional

option provision, lessee was left with constitutionally-valid 55-year lease.

Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 19, 1995) (Opinion at 17-20).

Retroactive application of statute calling for automatic enforcement of severability clauses in agreements found to transgress NMI Const. art. XII did not infringe due process rights of plaintiff in action challenging validity of property sale and subsequent lease. Claim that original landowner remained vested with title by operation of NMI Const. art. XII, § 6, providing that violative transaction is void *ab initio*, failed because only a court can declare a transaction to be violative of NMI Const. art. XII, and until that is done, no voiding of transaction takes place. Alleged rights of original landowner could not vest until there had been final, unreviewable judgment, which had not occurred. 2 CMC § 4982(c); U.S. Const. amend. XIV; NMI Const. art. I, § 5.

Mafnas v. Laureta, Civ. Action No. 88-696 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Plaintiff's Motion for Summary Judgment at 10).

In action challenging validity of land transaction under NMI Const. art. XII, restricting ownership of long-term interests in real property to persons of NMI descent, claim by plaintiff that retroactive application of statute calling for automatic enforcement of severability clauses in agreements transgressing NMI Const. art. XII violated his equal protection rights because it was designed to discriminate against NMI Const. art. XII plaintiffs failed because plaintiff was neither within suspect classification nor infringed of fundamental right. 2 CMC § 4982(c); NMI Const. art. I, § 6; U.S. Const. amend. XIV.

Mafnas v. Laureta, Civ. Action No. 88-696 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Plaintiff's Motion for Summary Judgment at 10-11).

Pursuant to statute requiring strict enforcement of severability clauses in agreements found to violate NMI Const. art. XII, court would sever unconstitutional provisions of lease and uphold remaining unobjectionable provisions. Unconstitutional provisions had no effect upon property rights of parties as they passed to current fee owner of property and lessee. 2 CMC § 4982 [PL 8-32, § 8 (§ 4952)].

Mafnas v. Yokeno, Civ. Action No. 90-550 (N.M.I. Super. Ct. Dec. 7, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 13).

3. Improvements

Art. XIII, § 1

If a property transaction is rendered void as violative of NMI Const. art. XII, an equitable remedy may be available to a possessor of property who constructed improvements under the good-faith (but erroneous) belief that they held clear title or a valid leasehold.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994).

ARTICLE XIII: EMINENT DOMAIN

Section 1: Eminent Domain Power. The Commonwealth may exercise the power of eminent domain as provided by law to acquire private property necessary for the accomplishment of a public purpose.

History: Ratified 1977, effective 1978.

Cross References: See article XIII, § 2 (next section, limitation on eminent domain power), and article XIV, § 3 (places and things of cultural and historical significance).

Related Commonwealth Code Sections: See generally 1 CMC § 9211 et seq. (procedure) and 7 CMC § 3101 (no right to jury trial); see also 2 CMC § 4711 et seq. (acquisition of land by negotiation), 2 CMC § 4721 et seq. (relocation assistance and housing for displaced persons) and 2 CMC § 6107 (condominiums).

Comment: One provision of the U.S. Constitution applicable within the Northern Mariana Islands pursuant to Covenant § 501(a) is the Fifth Amendment, which provides, in part: "nor shall private property be taken for public use, without just compensation." According to Covenant § 806(c):

In the event it is not possible for the United States to obtain an interest in real property for public purposes by voluntary means, it may exercise within the Commonwealth the power of eminent domain to the same extent and in the same manner as it has and can exercise the power of eminent domain in a State of the Union. The power of eminent domain will be exercised within the Commonwealth only to the extent necessary and in compliance with applicable United States laws, and with full recognition of the due process required by the United States Constitution.

Notes of Decisions

Generally

The government is required to pay "just compensation" for private property taken for a public purpose. NMI Const. art. XIII, § 1.

Commonwealth v. Bordallo, 1 N.M.I. 208 (1990), *appeal after remand*, 2 N.M.I. 226 (1991).

The Commonwealth has the authority to condemn property for public uses and public purposes and the Commonwealth has the authority to condemn lands for the benefit of the United States government in order to meet the Commonwealth's obligations under the Covenant. 1 CMC § 9211 et seq.; NMI Const. art. XIII, § 1.

Commonwealth v. Bordallo, 3 CR 805 (Dist. Ct. App. Div. 1989).

In condemning land, governmental authorities may take land beyond that geographically required for the specific public purpose, or an estate in land of a greater nature than is specifically required, whenever the additional taking can be viewed as beneficial to the taking authority and justified by the public purpose of the project.

Commonwealth v. Bordallo, 3 CR 805 (Dist. Ct. App. Div. 1989).

Art. XIII, § 2

Section 2: Limitations. Private property may not be taken without just compensation. Private land may be taken only if no suitable public land is available for the accomplishment of the public purpose.

History: Ratified 1977, effective 1978.

Cross Reference: See article XIII, § 1 (preceding section, eminent domain power).

Related Commonwealth Code Sections: See 1 CMC § 9224 (fair value of land established by court).

Comment: One provision of the U.S. Constitution applicable within the Northern Mariana Islands pursuant to Covenant § 501(a) is the Fifth Amendment, which provides, in part: "nor shall private property be taken for public use, without just compensation."

Notes of Decisions

Generally

The government is required to pay "just compensation" for private property taken for a public purpose. NMI Const. art. XIII, § 1.

Commonwealth v. Bordallo, 1 N.M.I. 208 (1990), *appeal after remand*, 2 N.M.I. 226 (1991).

ARTICLE XIV: NATURAL RESOURCES

Section 1: Marine Resources. The marine resources in waters off the coast of the Commonwealth over which the Commonwealth now or hereafter may have any jurisdiction under United States law shall be managed, controlled, protected and preserved by the legislature for the benefit of the people.

History: Ratified 1977, effective 1978.

Cross Reference: See article XI, § 1 (public lands) and article XI, § 2 (management and disposition of submerged lands).

Related Commonwealth Code Sections: See generally 2 CMC § 3101 et seq., as amended by Executive Order 94-3 (Commonwealth Environmental Protection Act); see also 2 CMC § 1501 et seq., as amended by Executive Order 94-3 (Coastal Resources Management Act of 1983).

Scholarly Articles: See Donald C. Woodworth & Tim Bruce, Symposium: Extension of the U.S. Territorial Sea to Twelve Miles: Legal and Policy Issues, *United States' Claims to Pacific Island Ocean Resources Trouble its Political Union with the Commonwealth of the Northern Mariana Islands*, 2 Terr. Sea J. 297 (1992); and Victoria King, Comment, *The Commonwealth of the Northern Mariana Islands' Rights Under United States and International Law to Control its Exclusive Economic Zone*, 13 U. Haw. L. Rev. 477 (1991).

Comment: According to the *Analysis*:

Marine resources are those resources found in the water such as fish, dissolved minerals, plant life suspended in the water and other resources. Marine resources do not include resources found on or under the submerged lands. Those resources are public lands and are provided for by article XI, section 2.

Art. XIV, § 2

Id. at 181.

Section 2: Uninhabited Islands. The island of Managaha shall be maintained as an uninhabited place and used only for cultural and recreational purposes. The islands of Maug, Uracas, Asuncion, Guguan and other islands specified by law shall be maintained as uninhabited places and used only for the preservation and protection of natural resources, including but not limited to bird, wildlife and plant species.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 37. The second sentence of this section originally provided: "[t]he islands of Sariguan and Maug and other islands specified by law shall be maintained as uninhabited places and used only for the preservation of bird, fish, wildlife and plant species except that the legislature may substitute in place of Sariguan another island as well suited for that purpose."

Related Commonwealth Code Sections: *See generally* 2 CMC § 3101 et seq., as amended by Executive Order 94-3 (Commonwealth Environmental Protection Act); *see also* 2 CMC § 1501 et seq., as amended by Executive Order 94-3 (Coastal Resources Management Act of 1983), and 1 CMC § 2651 et seq., as amended by Executive Order 94-3 (duties and authority of Department of Land and Natural Resources, including conservation).

Comment: According to Amendment 37's title, it sought "to include two other uninhabited islands to be protected and preserved."

Section 3: Places and Things of Cultural and Historical Significance. Places of importance to the culture, traditions and history of the people of the Northern Mariana Islands shall be protected and preserved and public access to these places shall be maintained as provided by law. Artifacts and other things of cultural or historical significance shall be protected, preserved and maintained in the Commonwealth as provided by law.

History: Ratified 1977, effective 1978.

Cross Reference: *See* article XIII, § 1 (eminent domain power).

Related Commonwealth Code Sections: *See generally* 1 CMC §§ 2381 and 2382 (Historic Preservation Office), 2 CMC § 4811 et seq. (Commonwealth Historic Preservation Act of 1982), 2 CMC § 1511 (coastal resources management policy), and 9 CMC § 5807 (motor vehicle driving restriction).

Comment: According to the *Analysis*:

This section does not deprive any owner of private property although the legislature may use eminent domain power to acquire such places if that is necessary to protect them or to maintain public access.

. . .

This section does not deprive any owner of any artifact or thing of cultural or historical significance although the power of eminent domain may be used to acquire such things if that is necessary to preserve them. This section does not give the right of public access to these artifacts and things. A private owner may bar the public.

Id. at 183.

ARTICLE XV: EDUCATION

Section 1: Elementary and Secondary Education.

a) Every person in the Northern Mariana Islands has the right to free, compulsory and public elementary and secondary education within age and educational levels provided by law. The educational system shall provide maximum educational and training opportunities and be sensitive and responsive to the needs and desires of the community as it pursues its central objective of developing human potential. The educational system shall also provide support and guidance for students in assessing areas of interest and ability, in clarifying values and goals, and in providing students with clear and accurate information so they may gain the most from their educational experience. The educational system shall recognize the distinct and unique cultural heritage and indigenous way of life of the people and shall be committed to provide for the language needs of the people and the preservation of their cultural integrity within a global community.

b) Administration of the public elementary and secondary education system of the Commonwealth shall be the responsibility of a superintendent of education appointed by a representative board of education. The board of education shall formulate policy and exercise control over the public school system through the superintendent. Other matters pertaining to its operations and duties shall be provided by law.

c) The board of education shall have five members, elected at large on a non-partisan basis as follows: one from the first senatorial district, one from the second senatorial district and three from the third senatorial district. Elected members of the board of education shall serve terms of four years except that the terms of the first members elected shall be determined by drawing of lots with three members serving a term of four years and two members serving a term of two years. The governor shall appoint three nonvoting ex-officio members to the board of education: one member shall be a student attending a public school; one member shall be a representative of nonpublic schools; and one member selected by an exclusive bargaining representative of the teachers within the Department of Education. Elected members of the board shall serve commencing on the second Monday of January in the year following the regular general election at which they were elected.

d) A member of the board of education shall be qualified to vote in the Commonwealth, at least twenty-five years of age, and a resident and domiciliary of the Commonwealth for at least five years immediately preceding the date on which the member takes office. A longer residency and domicile requirement may be provided by law.

e) The public elementary and secondary education system shall be guaranteed an annual budget of not less than fifteen percent of the general revenues of the Commonwealth. The budgetary appropriation may not be reprogrammed for other purposes, and any unencumbered fund balance at the end of a fiscal year shall be available for reappropriation.

Art. XV, § 2

History: Ratified 1977, effective 1978; amended 1985 by Amendment 38, effective the second Monday of January, 1988 (January 11, 1988). This section originally provided:

Section 1: Education.

a) Every person in the Northern Mariana Islands shall have the right to free, compulsory and public elementary and secondary education within age and educational levels provided by law.

b) There shall be higher education and adult education within the Northern Mariana Islands consistent with the needs and resources of the people as provided by law.

Amendment 38 also adopted article XV, § 2 (next section, higher and adult continuing education) and repealed article III, § 13 (establishing department of education headed by superintendent and board of education), effective the second Monday of January, 1988 (January 11, 1988).

Cross Reference: See article XV, § 2 (next section, higher and adult continuing education).

Related Commonwealth Code Sections: See generally 3 CMC § 1101 et seq. (3 CMC, Div. 1, education) and 1 CMC § 2261 et seq. (board and commissioner of education).

Comment: All elected public officials, including members of the board of education, are subject to recall pursuant to article IX, § 3.

Section 2: Higher and Adult Continuing Education.

a) **The legislature shall established by law a Northern Marianas College that shall be headed by a president. The president of the college shall be appointed by a representative board of regents. The board of regents shall be appointed to staggered terms by the governor and shall have autonomy in the administration of its affairs and shall formulate policy relating to the higher education needs of the Commonwealth of the Northern Mariana Islands. The composition of the board of regents and other matters pertaining to its operations and duties shall be provided by law.**

b) **The mission of the college shall be to provide the best quality and meaningful postsecondary and adult educational opportunities for the purpose of improving the quality of life for the individual and for the Commonwealth as a whole. The college shall be responsible for providing education in the areas of adult and continuing education, postsecondary and adult vocational education and professional development for the people of the Commonwealth.**

c) **The college shall be guaranteed an annual budget of not less than one percent of the general revenues of the Commonwealth. The budgetary appropriation may not be reprogrammed for other purposes, and any unencumbered fund balance at the end of a fiscal year shall be available for reappropriation.**

History: Adopted 1985 by Amendment 38. Amendment 38 also amended article XV, § 1 (preceding section, elementary and secondary education) and repealed article III, § 13 (establishing department of education headed by superintendent and board of education), effective the second Monday of January, 1988 (January 11, 1988).

Cross Reference: See article XV, § 1 (preceding section, elementary and secondary education).

Related Commonwealth Code Sections: See generally 3 CMC § 1301 et seq. (Postsecondary Education Act of 1984);

Art. XVI, § 1

see also 4 CMC § 1803 (tax revenue to college trust fund). Concerning scholarships, *see* 3 CMC § 1341 et seq., as amended by Executive Order 94-3 (Postsecondary Education Scholarship Act of 1990) and 10 CMC § 2201 et seq. (Tinian Municipal Scholarship Act of 1986).

ARTICLE XVI: CORPORATIONS

Section 1: Corporations. No private business corporation shall be organized and no existing corporate charter shall be extended or amended except by general laws.

History: Ratified 1977, effective 1978.

Cross References: *See* article XI, § 4(d) (Marianas Public Land Corporation to have powers available to corporation under Commonwealth law) and Schedule on Transitional Matters § 6 (continuity of corporations).

Related Commonwealth Code Sections: *See generally* 4 CMC § 4101 et seq.; *see also* 4 CMC §§ 5118 and 5121 (suspension of corporate charter for Consumer Protection Act violations).

Comment: According to the *Analysis*:

A private business corporation is a corporation organized for the purpose of making a profit that does not include government participation or have government sponsorship. The phrase "business corporation" includes, but is not limited to, joint stock companies, mutual companies and private associations. Charitable, educational, scientific and other types of non-profit corporations are not covered by this section. Public corporations such as the Marianas Public Land Corporation established under [article] XI are not covered by this section.

Id. at 185-86.

ARTICLE XVII: OATH OF OFFICE

Section 1: Oath of Office. All members of the legislature and officers and employees of the Commonwealth and its political subdivisions taking office shall take and subscribe to the following oath or affirmation:

I do solemnly affirm (or swear) that I will support and defend the Constitution and laws of the Commonwealth of the Northern Mariana Islands, the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the applicable provisions of the Constitution, laws and treaties of the United States of America, and that I will faithfully discharge my duties to the best of my ability (so help me God).

History: Ratified 1977, effective 1978.

Cross Reference: *See* article VIII, § 4 (taking office after elections).

Related Commonwealth Code Sections: *See* 3 CMC § 5209 (loyalty oath for civil defense program employees).

Comment: Covenant § 204 provides: "[a]ll members of the legislature of the Northern Mariana Islands and all officers and employees of the Government of the Northern Mariana Islands will take an oath or affirmation to support this Covenant, those provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands, and the Constitution and laws of the Northern Mariana Islands."

Art. XVIII, § 1

According to the *Analysis*:

The term "officers and employees of the Commonwealth" includes salaried positions, non-salaried positions, permanent positions and temporary positions. It does not include contractors, regardless of the length of the contract term. . . .

. . .

Taking the oath prescribed by this section is a requirement for taking office. A person who refuses to take this oath cannot take office. No substitute oath can be used or required.

Id. at 186-87.

ARTICLE XVIII: CONSTITUTIONAL AMENDMENT

Section 1: Proposal of Amendments. Amendments to this Constitution may be proposed by constitutional convention, legislative initiative or popular initiative.

History: Ratified 1977, effective 1978.

Comment: According to Covenant §202, "[a]mendments to the Constitution may be made by the people of the Northern Mariana Islands without approval by the Government of the United States, but the courts established by the Constitution or laws of the United States will be competent to determine whether the Constitution and subsequent amendments thereto are consistent with this Covenant and with those provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands."

Section 2: Constitutional Convention.

a) The legislature, by the affirmative vote of a majority of the members of each house, may submit to the voters the question, "Shall there be a constitutional convention to propose amendments to the Constitution?" The legislature, or the governor in the event the legislature fails to act, shall submit this question to the voters at a regular general election no later than ten years after the question was last submitted and as provided by law. An act of the legislature under this subsection may not be vetoed by the governor.

b) An initiative petition may submit to the voters the question, "Shall there be a constitutional convention to propose amendments to the Constitution?" The petition shall be signed by at least twenty-five percent of the persons qualified to vote in the Commonwealth or by at least seventy-five percent of the persons qualified to vote in a senatorial district. An initiative petition shall be filed with the attorney general for certification that the requirements of this subsection have been met. An initiative petition certified by the attorney general shall be submitted to the voters at the next regular general election that is held at least thirty days from the date the petition has been certified.

c) If two-thirds of the votes cast are affirmative on the question of holding a convention, the legislature shall convene a convention promptly.

d) The number of delegates to the convention shall be equal to the number of members of the legislature. The delegates to the convention shall be elected on a

Art. XVIII, § 3

nonpartisan basis.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 39. The second sentence of subsection (a) originally provided: "[t]he legislature, or the governor in the event the legislature fails to act, shall submit this question to the voters at a regular general election no later than seven years after the effective date of this constitution and as provided by law." Amendment 39 also amended article XVIII, § 5 (ratification of amendments).

Cross Reference: *See* article XVIII, § 5 (ratification of amendments).

Comment: According to Amendment 39's title, it was intended "to require that voters be asked within ten years whether there should be another constitutional convention; and . . . to allow proposed amendments to be ratified in a special election."

In House Joint Resolution 44 (adopted October 4, 1983) the legislature directed the Board of Elections to submit the question specified in subsection (a) of this section to Commonwealth voters. On November 6, 1983, voters approved a second constitutional convention in Referendum 2. Twenty-four delegates were later elected to the convention, which convened on Saipan June 18, 1985. On July 22, 1985, 23 of the delegates adopted 44 proposed amendments, all of which were ratified November 3, 1985. Amendment 44, concerning Schedule on Transitional Matters § 8, was subsequently ruled invalid. See comment to that section for analysis.

On November 6, 1993, voters approved a third constitutional convention in 'Questionnaire 1,' a ballot proposition requested by Governor Lorenzo I. De Leon Guerrero. Pursuant to an enabling act (PL 9-18, effective January 6, 1995), 27 delegates were later elected to the convention, which convened on Saipan June 5, 1995, to continue for up to 60 days.

Section 3: Legislative Initiative. The legislature by the affirmative vote of three-fourths of the members of each house present and voting may propose amendments to this Constitution. A proposed amendment may not embrace the subject matter of more than one article of this Constitution. An act of the legislature under this section may not be vetoed by the governor.

History: Ratified 1977, effective 1978.

Cross References: *See* article XVIII, § 4 (next section, amendments proposed by popular initiative) and article XVIII, § 5 (ratification of amendments).

Related Commonwealth Code Sections: *See* 1 CMC § 6432 (ratification in special election).

Comment: As of June, 1995, four legislative initiatives have been submitted to Commonwealth voters. All were approved. Legislative Initiative 1 (House Bill 5-198), ratified November, 7, 1987, amended all eight sections of article VI, relating to local government. Legislative Initiative 2 (House Legislative Initiative 6-2), ratified November 4, 1989, amended article II, §§ 16 and 17, relating to the legislative budget ceiling. Senate Legislative Initiative 7-1, ratified November 6, 1993, amended article II, § 7, relating to legislative consideration of a gubernatorial veto. Senate Legislative Initiative 7-3, ratified November 6, 1993, amended article XI, § 1, eliminating reference to United States law as a basis for the Commonwealth's claim to ownership of submerged lands off its coast. See notes to those sections.

A fifth legislative initiative, House Legislative Initiative 9-1, has been approved by the legislature and will be submitted to Commonwealth voters in the November 4, 1995, general election. Legislative Initiative 9-1 proposes to amend article II, §§ 16 and 17, increasing the budget ceilings for the legislature and legislative bureau, setting a two-year term for the legislative bureau director and requiring the director to annually submit an itemized budget. See notes to those sections.

Art. XVIII, § 4

Section 4: Popular Initiative.

a) The people may propose constitutional amendments by initiative. An initiative petition shall contain the full text of the proposed amendment. The petition shall be signed by at least fifty percent of the persons qualified to vote in the Commonwealth and at least twenty-five percent of the persons qualified to vote in each senatorial district. A petition shall be filed with the attorney general for certification that the requirements of this subsection have been met.

b) An initiative petition certified by the attorney general shall be submitted to each house of the legislature. If the proposal is approved by the affirmative vote of a majority of the members of each house of the legislature, the proposed amendment shall be submitted for ratification in the same manner as an amendment proposed by legislative initiative. The proposed amendment shall be submitted for ratification to the voters at the next regular general election with or without legislative approval.

History: Ratified 1977, effective 1978.

Cross References: See article IX, § 1 (initiatives proposing statutory laws), article XVIII, § 3 (preceding section, amendments proposed by legislative initiative), and article XVIII, § 5 (next section, ratification of constitutional amendments).

Comment: As of June, 1995, only one popular initiative has been submitted to Commonwealth voters. Popular Initiative 1, a 1989 ballot measure, sought to amend article XXI to ban gambling activities conducted as a business and the use of gambling devices, except for activities and related devices for raffles, bingo, batu and cockfighting. Popular Initiative 1 failed to win approval. It is the only proposed Constitutional amendment ever rejected by Commonwealth voters.

Notes of Decisions

1. Generally
2. Regulations
--Particular Cases

Generally

NMI Attorney General has constitutional duty to certify (or not certify) an initiative petition before an initiative is submitted to the voters.

Tenorio v. Superior Court, 1 N.M.I. 1 (1989).

Regulations

--Particular Cases

Superior Court's decision to invalidate NMI Board of Elections regulations concerning certification of initiative to ballot because no provision was made for proportional increase in the number of qualified voter signatures to match increase in number of voters between initial cut-off date and date of final submission of petitions was clearly erroneous. NMI Const. art. XVIII, § 4(a).

Tenorio v. Superior Court, 1 N.M.I. 1 (1989).

NMI Board of Elections regulations concerning certification of initiative measure for ballot based on number of registered voters at time of cut-off date were neither inherently nor expressly unconstitutional. NMI Const. art. XVIII, § 4(a).

Tenorio v. Superior Court, 1 N.M.I. 1 (1989).

Art. XVIII, § 5

Section 5: Ratification of Amendments.

a) A proposed amendment to this Constitution shall be submitted to the voters for ratification at the next regular general election or at a special election established by law.

b) An amendment proposed by legislative initiative shall become effective if approved by a majority of the votes cast. An amendment proposed by constitutional convention or by popular initiative shall become effective if approved by a majority of the votes cast and at least two-thirds of the votes cast in each of two senatorial districts.

History: Ratified 1977, effective 1978; amended 1985 by Amendment 39. Subsection (a) originally provided: "[a] proposed amendment to this Constitution shall be submitted to the voters for ratification at the next general election that is held at least sixty days after the amendment is proposed." Amendment 39 also amended article XVIII, § 2.

Cross References: See article XVIII, § 3 (amendments proposed by legislative initiative) and article XVIII, § 4 (preceding section, amendments proposed by popular initiative).

Comment: According to Amendment 39's title, the amendment to this subsection was intended "to allow proposed amendments to be ratified in a special election." Amendment 39 also amended article XVIII, § 2.

According to the *Analysis*, "[a] proposed amendment approved by the voters takes effect immediately after the approval unless the text of the amendment provides otherwise." *Id.* at 193.

ARTICLE XIX: CODE OF ETHICS

Section 1: Code of Ethics. The legislature shall enact a comprehensive Code of Ethics which shall apply to appointed and elected officers and employees of the Commonwealth and its political subdivisions, including members of boards, commissions, and other instrumentalities. The Code of Ethics shall include a definition of proper conduct for members of the legislature with conflicts of interest and a definition of the proper scope of debate in the legislature, shall require disclosure of financial or personal interests sufficient to prevent conflicts of interest in the performance of official duties, shall define the offense or corrupt solicitation of public officials, and shall provide for punishment of offenses by fine and imprisonment.

History: Adopted 1985 by Amendment 40. Amendment 40 also amended article II, § 15, and article III, § 6.

Textual Irregularities and Error: Section number not specified (one has been provided); capitalization of "Code of Ethics" (two instances); "or" instead of "of" in "shall define the offense or corrupt solicitation of public officials" in the second sentence.

Related Commonwealth Code Sections: See generally 1 CMC § 8501 et seq., as amended by Executive Order 94-3 (Government Ethics Code Act of 1992); see also 1 CMC §§ 3403 and 3503 (judicial ethics code), 1 CMC § 6341 (campaign financing disclosure) and 1 CMC § 9411 et seq. (Lobbying Disclosure Act).

ARTICLE XX: CIVIL SERVICE COMMISSION

Section 1: Civil Service. The legislature shall provide for a non-partisan and independent civil service with the duty to establish and administer personnel policies for the

Art. XXI, § 1

Commonwealth Government. The Commission shall be composed of seven members appointed by the governor with the advice and consent of the senate. Six members shall serve a term of six years, staggered in such manner that the term of one member expires each year, and one member shall serve a term of four years expiring concurrently with the term of the governor. Members of the civil service commission may be removed only for cause. The commission's authority shall extend to positions other than those filled by election or by appointment of the governor in the departments and agencies of the executive branch and in the administrative staffs of the legislative and judicial branches. Exemption from the civil service shall be as provided by law, and the commission shall be the sole authority authorized by law to exempt positions from civil service classifications. Appointment and promotion within the civil service shall be based on merit and fitness demonstrated by examination or by other evidence of competence.

History: Adopted 1985 by Amendment 41. Amendment 41 also repealed article III, § 16 (the former provision concerning the civil service, which included the first, fourth and last sentence of this section). Amendment 41 included the following addendum:

Transition Provision. Upon ratification, the governor is authorized to adjust the terms of members currently sitting on the civil service commission in such manner that one member's term will expire the same day as the governor's term and the term of one member shall expire in January of each of the following years: 1986, 1987, 1988, 1989, 1990 and 1991.

Textual Irregularity: Capitalization of "Government" in "Commonwealth Government" (compare, e.g., article III, § 15); omission of "commission" after "civil service in first sentence (compare former article III, § 16).

Related Commonwealth Code Sections: *See generally* 1 CMC § 8101 et seq., as amended by Executive Order 94-3, § 214 (Commonwealth Civil Service Act).

ARTICLE XXI: GAMBLING

Section 1: Prohibition. Gambling is prohibited in the Northern Mariana Islands except as provided by Commonwealth law or established through initiative in the Commonwealth or in any senatorial district.

History: Adopted 1985 by Amendment 42.

Cross Reference: *See* article IX, § 1 (initiatives).

Related Commonwealth Code Sections: *See generally* 6 CMC § 3151 et seq.; *see also* 1 CMC § 1402 (local laws), 4 CMC § 1504 et seq. (gambling amusement machines), 10 CMC § 1401 et seq. (Rota Cockfighting Act of 1990), 10 CMC § 2411 et seq. (Tinian Cockfighting Act of 1988), 10 CMC § 2511 et seq. (Tinian Casino Gaming Control Act of 1989), PL 9-29 (Pachinko Slot Machine Act, effective February 16, 1995), and Saipan LL 9-8 (Saipan Cockfighting Act of 1994, effective May 11, 1995).

Comment: *See* comments to article IX, § 1 (initiatives) and article XVIII, § 4 (popular initiatives proposing constitutional amendments).

Notes of Decisions

1. Generally
2. Tinian Casino Gaming Control Act
--Particular Cases

1. Generally

NMI Const. art. XXI specifically empowers a senatorial

Art. XXI, § 1

district to establish gambling by local initiative.

Commonwealth v. Tinian Casino Gaming Control Comm'n, 3 N.M.I. 134 (1992).

NMI Const. art. XXI, adopted in 1985, provides a unique exception to the legislature's general power to define the subject of local laws. It expressly permits gambling to be "established" by a senatorial district through local initiative.

Commonwealth v. Tinian Casino Gaming Control Comm'n, 3 N.M.I. 134 (1992).

2. Tinian Casino Gaming Control Act

In analyzing validity of Tinian initiative permitting gambling, three factors should be considered in balancing test. First, there is a presumption that a local gambling initiative enacted pursuant to NMI Const. arts. IX and XXI is valid, unless any initiative provision conflicts with the U.S. Constitution, NMI Constitution, or a Commonwealth-wide law. Opponent of initiative has the initial burden of showing by clear and convincing evidence which provisions are inconsistent and in conflict, and why. Second, if any initiative provision conflicts with the U.S. Constitution, NMI Constitution, or a Commonwealth-wide law, that provision must fall, unless, with respect to application of a Commonwealth-wide law, the Commonwealth-wide law would frustrate establishment of gambling in a senatorial district. Third, once it clearly is shown that there is a conflict between a Commonwealth-wide law and the initiative, the Commonwealth-wide law prevails, unless the proponent of the initiative demonstrates by clear and convincing proof that application of the Commonwealth-wide law would violate NMI Const. art. XXI, permitting senatorial district to establish gambling by local initiative. Proponent of initiative must show that if Commonwealth-wide law supersedes a provision of the initiative, it would unduly and unreasonably interfere with constitutional right to establish gambling. 10 CMC § 2511 et seq.

Commonwealth v. Tinian Casino Gaming Control Comm'n, 3 N.M.I. 134 (1992).

--Particular Cases

Parties in action challenging validity of provisions in local gambling initiative enacted pursuant to NMI Const. arts. IX and XXI were required to establish contentions by clear and convincing evidence because issue implicated constitutional concerns, and because particularly important individual interests or rights were at stake. 10 CMC § 2511 et seq.

Commonwealth v. Tinian Casino Gaming Control Comm'n, 3 N.M.I. 134 (1992).

Art. XXII, § 1

ARTICLE XXII: OFFICIAL SEAL, FLAG AND LANGUAGES

Section 1: Official Seal. The official seal of the Commonwealth shall consist of a circular field of blue having in its center a white star superimposed on a gray latte stone, surrounded by the traditional Carolinian mwáár consisting of the following flowers: langilang, flores mayo (seyúr) angagha, and teibwo, on the outer border, and the words encircling the mwáár, "Commonwealth of the Northern Mariana Islands" and "Official Seal".

History: Adopted 1985 by Amendment 43.

Textual Irregularity: Period after quotation marks at end of section.

Related Commonwealth Code Sections: *See generally* 1 CMC § 211 et seq.; *see also* 1 CMC § 2153 (custody of and use by attorney general) and 1 CMC §§ 9604 and 9605 (use of facsimile seal).

Section 2: Official Flag. The official flag of the Commonwealth shall consist, on both sides of a rectangular field of blue, a white star in the center, superimposed on a gray latte stone, surrounded by the traditional Carolinian mwáár. The dimensions of the flag, the mwáár, the star and latte stone shall be provided by law.

History: Adopted 1985 by Amendment 43.

Related Commonwealth Code Sections: *See* 1 CMC § 221 et seq.

Section 3: Official Language. The official language of the Commonwealth shall be Chamorro, Carolinian and English, as deemed appropriate and as enforced by the legislature. The legislature may provide that government proceedings and documents shall be in at least one of the three languages. This section shall not be subject to judicial review.

History: Adopted 1985 by Amendment 43.

Textual Error: In heading and first sentence, "language" rather than "languages" (compare article heading).

Related Commonwealth Code Provisions: *See* 3 CMC § 1201 et seq., as amended by Executive Order 94-3, § 308 (Chamorro-Carolinian Language Policy Commission Act); *see also* 1 CMC § 2268 (Board of Education may recommend policies governing use of English, Chamorro and Carolinian languages in public schools), 2 CMC § 4533 (mortgage default notice to be in English and either Chamorro or Carolinian), and 2 CMC § 5302 (quarantine orders and regulations to be translated from English to Chamorro or Carolinian). *See also* 4 CMC § 1805, as amended by Executive Order 94-3 (business records to be maintained in English) and 1 CMC § 2454, as amended by Executive Order 94-3 (enforcement by Department of Commerce); 4 CMC § 4104 (similar requirement for corporations) and 4 CMC § 6606 (similar requirement for offshore banks).

SCHEDULE ON TRANSITIONAL MATTERS

The following transitional provisions shall remain in effect until their terms have been executed. Once each year the attorney general shall review the following provisions and certify to the governor which have been executed. Any provisions so certified shall be removed from this Schedule and no longer published as an attachment to the Constitution.

Sched. on Transit'l Matters § 1

Section 1: Effective Date of Constitution. [Certified as executed November 28, 1983.]

History: Ratified 1977, effective 1978. This section provided: "[t]he Constitution shall take effect on a date proclaimed by the President of the United States after its approval by the Government of the United States and otherwise as provided by the Covenant."

Comment: Covenant § 1004(b) provides:

The Constitution of the Northern Mariana Islands will become effective in accordance with its terms on the same day that the provisions of this Covenant specified in Subsection 1003(b) become effective Upon the establishment of the Commonwealth of the Northern Mariana Islands the Constitution will become effective in its entirety in accordance with its terms as the Constitution of the Northern Mariana Islands.

In Presidential Proclamation 4534, 42 Fed.Reg. 56593 (October 24, 1977), *reprinted in CMC Vol. I at B-401 and 402*, President Jimmy Carter proclaimed that the provisions specified in Covenant § 1003(b) and the Constitution of the Northern Mariana Islands "shall come into full force and effect at eleven o'clock on the morning of January 9, 1978, Northern Marianas local time." See also comment to Schedule on Transitional Matters § 14 (approval of Constitution by U.S.).

Section 2: Continuity of Laws. Laws in force in the Northern Mariana Islands on the day preceding the effective date of the Constitution that are consistent with the Constitution and the Covenant shall continue in force until they expire or are amended or repealed.

History: Ratified 1977, effective 1978.

Related Commonwealth Code Sections: See PL 3-90, § 2, *reprinted in CMC Vol. I at v* (incorporation of Trust Territory Code provisions in Commonwealth Code).

Comment: According to the *Analysis*:

The laws that continue in effect under this section include the Trust Territory Code, the Mariana Islands District Code, and any ordinances and other rules enacted by municipal councils on Rota, Saipan and Tinian. This section includes only laws in force on the day preceding the day the Constitution takes effect. . . . The laws that continue in effect must be consistent with the Constitution and the Covenant. Any law that is inconsistent with either the Constitution or the Covenant is void as of the effective date of the Constitution.

Id. at 194. Covenant § 505 provides:

The laws of the Trust Territory of the Pacific Islands, of the Mariana Islands District and its local municipalities, and all other Executive and District orders of a local nature applicable to the Northern Mariana Islands on the effective date of this Section and not inconsistent with this Covenant or with those provisions of the Constitution, treaties or laws of the Northern Mariana Islands will remain in force and effect until and unless altered by the Government of the Northern Mariana Islands.

Section 3: Continuity of Government Employment and Operations. [Certified as executed November 28, 1983.]

History: Ratified 1977, effective 1978. This section provided:

As of the effective date of the Constitution employees of the Government of the Northern Mariana Islands and its political subdivisions shall be employees of the Commonwealth on the same terms and conditions

Sched. on Transit'l Matters § 4

of employment as were enforceable against the Government of the Northern Mariana Islands or its political subdivisions until provided otherwise by law, regulation or ordinance. Employees of the Government of the Northern Mariana Islands shall have the same functions and duties after becoming employees of the Commonwealth until provided otherwise by law, regulation or ordinance.

Comment: According to the *Analysis*: "[t]he employees included in this section are those employed by the Government of the Northern Mariana Islands under the separate administration established by Secretarial Order No. 2989, promulgated by the United States Secretary of the Interior on March 24, 1976, except for the Resident Commissioner." *Id.* at 195. Secretarial Order 2989 is reprinted in CMC Vol. I at B-201 et seq.

Section 4: Continuity of Judicial Matters. [Certified as executed June 14, 1994.]

History: Ratified 1977, effective 1978. This section provided:

As of the effective date of the Constitution the Marianas District Court of the Government of the Northern Mariana Islands shall become the Commonwealth trial court and the judges serving on the Marianas District Court shall be judges of the Commonwealth trial court serving at the pleasure of the governor until the governor appoints judges of the Commonwealth trial court under article IV, section 4, of the Constitution. Civil and criminal matters pending before the Marianas District Court on the effective date of the Constitution shall become matters pending before the Commonwealth trial court. Civil and criminal matters pending before the High Court of the Trust Territory of the Pacific Islands on the effective date of the Constitution that involve matters within the jurisdiction of the Commonwealth trial court of the United States District Court for the Northern Mariana Islands shall remain within the jurisdiction of the High Court until finally decided.

Cross Reference: *See* article IV (judicial branch).

Notes of Decisions

Jurisdiction

When the NMI Constitution took effect on January 9, 1978, the High Court lost jurisdiction over any actions filed in the Commonwealth on or after that date, including actions against the Trust Territory government or the High Commissioner.

Temengil v. Trust Territory, 1 CR 417 (Dist. Ct. 1983), *rev'd in part and aff'd in part*, 881 F.2d 647 (9th Cir. 1989).

It is the intent of the Commonwealth Constitution's Schedule on Transitional Matters that a "finally decided" case over which the District Court may take jurisdiction is one in which the Trial Division of the Trust Territory High Court has rendered a final judgment and even though the judgment had been appealed to the Appellate Division of the High Court, the District Court of the Northern Mariana Islands may recognize and reduce the final judgment of the Trial Division of the High Court to a District Court judgment. NMI Const. Sched. on Transitional Matters § 4.

Diaz v. Diaz, 1 CR 319 (Dist. Ct. 1982).

The Schedule on Transitional Matters of the NMI Constitution mandates that cases decided before or after January 9, 1978 in the Trial Division of the High Court remain in the court system of the High Court until the

matter is finally disposed of, including the processing of all appeals. NMI Const. Sched. on Transitional Matters § 4.

Camacho v. Camacho, 1 CR 620 (Trial Ct. 1983).

The term "finally decided," when used to describe court action, is that time when a judgment is rendered, the availability of an appeal is decided, and the time for any petition for certiorari has elapsed. NMI Const. Sched. on Transitional Matters § 4.

Camacho v. Camacho, 1 CR 620 (Trial Ct. 1983).

The Schedule on Transitional Matters in the NMI Constitution contemplated and requires that High Court matters remain within the High Court system until any appeals are finally determined, including any remand from the Appellate Division to the Trial Division. NMI Const. Sched. on Transitional Matters § 4.

Camacho v. Camacho, 1 CR 620 (Trial Ct. 1983).

Trust Territory High Court lacked jurisdiction after the effective date of the NMI Constitution to enforce final judgments, including actions against the Trust Territory.

Babauta v. Trust Territory, 1 CR 291 (Dist. Ct. 1982).

Sched. on Transit'l Matters § 5

In criminal matters a case is "finally decided" for purposes of interpreting NMI Constitution transitional provision when sentence has been imposed. NMI Const. Sched. on Transitional Matters § 4.

Commonwealth v. Guerrero, 1 CR 190 (Trial Ct. 1983).

After January 9, 1978, the High Court had no enforcement power in the Commonwealth. NMI Const. Sched. on Transitional Matters § 4.

Commonwealth v. Guerrero, 1 CR 190 (Trial Ct. 1983).

Once a new court is created which supplements the former, there is a transfer of operation of law either expressly or impliedly. NMI Const. Sched. on Transitional Matters § 4.

Commonwealth v. Guerrero, 1 CR 190 (Trial Ct. 1983).

-Particular Cases

After January 9, 1978, Commonwealth Trial Court had jurisdiction over post-sentence motion to revoke probation where action was originally brought and sentence imposed in High Court.

Commonwealth v. Guerrero, 1 CR 190 (Trial Ct. 1983).

Section 5: Continuity of Legislative Matters. [Certified as executed November 28, 1983.]

History: Ratified 1977, effective 1978. This section provided:

The terms of office of members of the Northern Mariana Islands Legislature shall expire on the effective date of the Constitution. Bills enacted by the Northern Mariana Islands Legislature but not approved by the Resident Commissioner on the effective date of the Constitution shall be void.

Section 6: Continuity of Corporations and Licenses. Corporations incorporated or qualified to do business in the Northern Mariana Islands on the effective date of the Constitution shall continue to be incorporated or qualified until provided otherwise by law. Licenses in effect in the Northern Mariana Islands on the effective date of the Constitution shall continue in effect until provided otherwise by law except that no license possessed by a land surveyor, ship officer, health professional or a practicing trial assistant may be amended or revoked except for incompetence or unethical conduct.

History: Ratified 1977, effective 1978.

Cross Reference: See article XVI, § 1 (corporations).

Related Commonwealth Code Sections: See generally 4 CMC § 4101 et seq. (corporations); see also 1 CMC § 9101 et seq. (Administrative Procedure Act), specifically 1 CMC § 9111 (expiration of existing license and procedure for revoking, suspending, annulling or withdrawing existing license), and 1 CMC § 9101 (defining "license" and "licensing").

Sched. on Transit'l Matters § 7

Comment: According to the *Analysis*, the exception specified in the second sentence is for "professions presently [1976] licensed under Trust Territory laws." *Id.* at 199.

Section 7: Statutes of Limitations. The legislature shall study whether to repeal a statute of limitations currently in force in the Commonwealth with respect to land in order for the Commonwealth to provide compensation for past transactions. If a statute is repealed after study, the compensation provided by the Commonwealth shall be limited to priority with respect to the distribution of public lands and shall not affect a right in property that vested under the repealed statute of limitations.

History: Ratified 1977, effective 1978.

Related Commonwealth Code Sections: See 7 CMC § 2502 (twenty years for recovery of land) and 2 CMC § 4551 (actions for recovery of interest arising prior to mortgage foreclosure sale barred after redemption period), both of which were in force as Trust Territory and district laws in 1978 when the Constitution became effective.

Comment: For detailed analysis of this section, see *Analysis* at 199-202.

Section 8: Interim Definition of Citizenship. [Certified as executed June 14, 1994.]

History: Ratified 1977, effective 1978; Amendment 44 ratified 1985 and ruled invalid 1986 (see comment, below). This section provided:

For the period from the approval of the Constitution by the people of the Northern Mariana Islands to the termination of the Trusteeship Agreement, the term United States citizen or United States national as used in the Constitution includes those persons who, on the date of the approval of the Constitution by the people of the Northern Mariana Islands, do not owe allegiance to any foreign state and who qualify under one of the following criteria:

a) persons who were born in the Northern Mariana Islands, who are citizens of the Trust Territory of the Pacific Islands on the date of the approval of the Constitution by the people of the Northern Mariana Islands, and who on that date are domiciled in the Northern Mariana Islands or in the United States or any territory or possession thereof;

b) persons who are citizens of the Trust Territory of the Pacific Islands on the date of the approval of the Constitution by the people of the Northern Mariana Islands, who have been domiciled continuously in the Northern Mariana Islands for at least five years immediately prior to that date, and who, unless under age, registered to vote in elections for the Mariana Islands District Legislature or for any municipal election in the Northern Mariana Islands prior to January 1, 1975; or

c) persons domiciled in the Northern Mariana Islands on the date of the approval of the Constitution by the people of the Northern Mariana Islands who, although not citizens of the Trust Territory of the Pacific Islands, on that date have been domiciled continuously in the Northern Mariana Islands beginning prior to January 1, 1974.

Related Commonwealth Code Sections: See 3 CMC § 4111 (defining interim citizenship) and 3 CMC § 4121 et seq. (Certificate of Identity Act).

Comment: Amendment 44, proposed by the second constitutional convention and ratified November 3, 1985, sought to amend the clause preceding subsection (a) by adding "and laws" after the second reference to "Constitution" and ", as well as their children regardless of their date of birth" after "criteria." The amendment was ruled invalid as an ultra vires act in *Pangelinan v. Commonwealth*, Civ. Action No. 85-022 (Dist. Ct., Feb. 13, 1986) (Opinion, Judgment and Order), an unpublished ruling. The District Court was subsequently requested, in another action, to reconsider its decision. In *Taguchi v. Commonwealth*, 2 CR 518 (Dist. Ct. 1986), the court reiterated its reasoning and ruling in

Sched. on Transit'l Matters § 9

Pangelinan. See **Notes of Decisions**, below.

For detailed analysis of this provision, see *Analysis* at 202-09. See also Covenant §§ 301-303 and 506.

Notes of Decisions

Amendment

The Schedule on Transitional Matters is an attachment to the Constitution, not a part of the body of the Constitution, and is not subject to amendment by a Constitutional Convention and any attempt by a Constitutional Convention to amend the schedule is null and void. NMI Const. Sched. on Transitional Matters § 8.

Taguchi v. Commonwealth, 2 CR 518 (Dist. Ct. 1986).

Citizenship

--Particular Cases

Provision of permanent residency law stating that persons who before effective date of Commonwealth Constitution were present in the Commonwealth through work or other temporary permit were not domiciled in NMI violated equal protection guarantees of Commonwealth Constitution and Trust Territory Code. 1 CMC § 6203(f) [PL 5-19, § 6(c)(6)]; 1 TTC § 7; NMI Const. art. I, § 6.

Pablo v. Board of Elections, 1 CR 381 (Trial Ct. 1983).

Provision of permanent residency law that excluded from qualifying for citizenship persons who were present in the Northern Marianas pursuant to a work or other temporary permit was in direct conflict with the intent and design of the Covenant and the Commonwealth Constitution as to those persons who lived in the Commonwealth before January 1, 1974. 1 CMC § 6203(f) [PL 5-19 § 6(c)(6)]; Covenant § 301; NMI Const. Sched. on Trans. Matters § 8(c).

Pablo v. Board of Elections, 1 CR 381 (Trial Ct. 1983).

Section 9: Commonwealth. [Certified as executed June 14, 1994.]

History: Ratified 1977, effective 1978. This section provided:

For the period from the approval of the Constitution by the people of the Northern Mariana Islands to the termination of the Trusteeship Agreement, the term Commonwealth as used in the Constitution and this Schedule to describe a geographical area means the Northern Mariana Islands as defined by article X, section 1005(b), of the Covenant and otherwise means the government established under this Constitution.

Related Commonwealth Code Sections: See 1 CMC § 101 (defining "Northern Mariana Islands") and 1 CMC § 102 (defining "Commonwealth").

Sched. on Transit'l Matters § 10

Section 10: Elections. [Certified as executed November 28, 1983.]

History: Ratified 1977, effective 1978. This section provided:

Within one hundred twenty days after the approval of the Constitution by the Government of the United States under article II, section 202, of the Covenant, an election shall be held on a date set by the Northern Mariana Islands Legislature to fill the elective offices established by the Constitution. Persons shall be eligible to vote who are eligible to vote under article VII of the Constitution and the laws in force in the Northern Mariana Islands to the extent those laws are consistent with the Constitution. The Northern Mariana Islands Legislature shall establish those procedures, including registration of voters, required to conduct the election required by this section and shall appropriate sufficient funds for the implementation of this section. If the Northern Mariana Islands Legislature does not act to set the election date and establish the necessary registration and election procedures within thirty days after the approval of the Constitution by the United States, the Resident Commissioner may set the election date and establish registration and election procedures.

Section 11: Saipan Election Districts. [Repealed by PL 3-78, § 2.]

History: Ratified 1977, effective 1978. This section provided:

For the purpose of electing twelve members of the house of representatives from Saipan under article II, section 3, Saipan shall be divided into the following six election districts:

first district: municipal districts six and ten, electing two representatives;

second district: municipal district four plus census enumeration district thirty-eight, electing one representative;

third district: municipal districts two and five plus census enumeration district thirty-one, electing two representatives;

fourth district: census enumeration districts twenty-nine, thirty and thirty-seven, electing one representative;

fifth district: municipal districts seven and eleven plus the islands north of Saipan minus census enumeration district eleven, electing four representatives;

sixth district: municipal districts eight and nine plus census enumeration district eleven, electing two representatives.

These election districts shall remain in effect until otherwise provided by law enacted under the Constitution.

Related Commonwealth Code Sections: See 1 CMC § 1501 et seq. (Reapportionment Act of 1991, providing for increase in membership in house of representatives and specifying Saipan election districts).

Section 12: Commencement of Terms. [Certified as executed November 28, 1983.]

History: Ratified 1977, effective 1978. This section provided:

Officials elected in the election required by section 10 shall take office on the effective date of the Constitution. The oath of office shall be administered by a judge designated by the Commonwealth trial court. For the purpose of determining the date the terms of officials elected under section 10 expire, the officials shall be considered to have taken office on the second Monday in January in the year after the year in which the election is held, except that if the election is held before the first day of the month of July the officials shall be considered to have taken office on the second Monday in January of the year in which the election is held.

Sched. on Transit'l Matters § 13

Section 13: Succession. As of the effective date of the Constitution the Commonwealth of the Northern Mariana Islands shall succeed to all rights and obligations of the previous Government of the Northern Mariana Islands.

History: Ratified 1977, effective 1978.

Section 14: Approval of Constitution by the United States. [Certified as executed November 28, 1983.]

History: Ratified 1977, effective 1978. This section provided:

After approval of the Constitution by the people of the Northern Mariana Islands it shall be submitted to the Government of the United States for approval under the provisions of article II, section 202, of the Covenant. If the Constitution is disapproved by the Government of the United States, the Northern Mariana Islands Legislature by the affirmative vote of three-fourths of the members may amend the specific provisions of the Constitution disapproved by the Government of the United States and submit the amended Constitution to the people for approval within sixty days after receipt of the disapproval message from the Government of the United States. Upon approval by the people of the amended Constitution it shall be submitted to the Government of the United States for approval.

Comment: Covenant § 202 provides, in part: "[t]he Constitution will be submitted to the Government of the United States for approval on the basis of its consistency with this Covenant and those provisions of the Constitution, treaties and laws of the United States to be applicable to the Northern Mariana Islands."

NMI voters ratified the Constitution March 6, 1977. On April 21, 1977, the Constitution was submitted to President Jimmy Carter on behalf of the U.S. Government. In Presidential Proclamation 4534, 42 Fed.Reg. 56593 (October 24, 1977), *reprinted in CMC* at B-401, President Carter proclaimed that the Constitution was "deemed approved" and that it would "come into full force and effect at eleven o'clock on the morning of January 9, 1978, Northern Marianas local time."