

LAW OFFICES
THEODORE R. MITCHELL
NAURU BUILDING
POST OFFICE BOX TWENTY TWENTY
SAIPAN, NORTHERN MARIANA ISLANDS 96950
TELEPHONE 670/234-9800
TELECOPIER 670/234-3325
CABLE MITCHLAW

June 1, 1995
VIA FAX 670/235-0842 & DELIVERY

Dr. Carlos S. Camacho, Chair
Subcommittee on Legal Matters
PreConvention Committee
Third Constitutional Convention
Commonwealth of the Northern Mariana Islands
Caller Box 10007
Saipan, MP 96950

Re: Legal Services

Dear Dr. Camacho:

We submit this proposal following our conversation with attorneys Deanne Siemer and Maya Kara regarding the needs of the Convention for legal services.

It is our understanding that the Convention will establish four committees to exercise jurisdiction over Land and Personal Rights, the Legislative Branch and Finance, the Executive Branch and Local Government, and the Judiciary and Voting. Each committee will deal with its core subjects and a number of other topics.

The Convention has employed four full-time attorneys, Howard Willens, Deanne Siemer, Bernard Zimmerman and Maya Kara and additional part-time staff will be employed to assist the committees in their work.

Proposals are to be submitted to provide a full scope of work, for a fixed fee, for particular topics. The work will include assisting committee members with research, with committee investigations and hearings, committee deliberations, committee reports, writing formal proposed amendments and other related work. The fixed fee will be in the range of \$15,000 to \$20,000.

In addition, applicants have been asked to comment on potential "conflicts of interest."

THEODORE R. MITCHELL

Dr. Carlos S. Camacho
June 1, 1995
Page 2

We are pleased to offer our services to the Convention to provide all necessary legal services on the following topics:

A. Committee on Land and Personal Rights:

3. Restrictions on Alienation of Land
(Article XII)
5. Corporations (Art. XVI)
6. Schedule on Transition Matters

D. Committee on Judiciary and Voting:

1. Judicial Branch (Art. IV)

We agree to perform this work for a fixed fee of \$20,000, without regard to the actual time required to complete the work.

We have selected these topics for several reasons. The land alienation and judicial branch subjects will involve a substantial amount of work. Corporations and transition matters should involve comparatively less effort.

The present organization of the judiciary is based on the Judicial Reorganization Act of 1989. At the request of the House Committee on Judiciary and Governmental Operations, we drafted the Judicial Reorganization Act in 1989. It was enacted in substantially the form we proposed. (This Act was one of the relatively rare pieces of legislation to receive nearly unanimous bi-partisan support, although its enactment in any form was vigorously opposed by the Northern Marianas Bar Association and individual members such as Rexford Kosack and Robert O'Connor.) During its pendency we worked with members and committee staff to explain the meaning and purpose of the various provisions of the draft and to assist in its passage in both houses.

We believe that a strong, independent, honest, competent and appropriate judiciary is absolutely essential to the

THEODORE R. MITCHELL

Dr. Carlos S. Camacho

June 1, 1995

Page 3

maintenance of a just society. Without it, a constitution remains, at best, a set of abstract ideals and, at worst, a list of false hopes.

We believe that it is essential that the Commonwealth Supreme Court exercise the full extent of its authority in relation to the Ninth Circuit Court of Appeals, over issues of Commonwealth law. As of the present time, the Ninth Circuit Court of Appeals has infringed upon the exclusive authority of the Commonwealth Supreme Court, in violation of the right of self-government guaranteed by the Covenant.

The Supreme Court has failed to resist or combat this usurpation of its authority. In practical terms, this means that the Ninth Circuit Court of Appeals is in actuality the court of last resort of the Commonwealth.

We have been involved for nearly 10 years in the study of Article XII of the Commonwealth Constitution and in litigation to enforce it. We are counsel to the Wabols in *Wabol v. Villacrusis*, the case which upheld the constitutionality of Section 805 of the Covenant and Article XII. We are counsel to the Article XII claimants in *Aldan-Pierce v. Mafnas*, in *Ferreira v. Borja* and in a number of other Article XII cases.

We believe that Article XII should be retained and strengthened. Based on the treatment which Article XII has received in the legislature, in the Ninth Circuit Court of Appeals and in the Commonwealth Supreme Court, we think it is necessary for the Third Convention to articulate the original intent of Article XII in more explicit and detailed terms. Every effort should be made to identify the ways that have been used to avoid the restrictions of Article XII (the "loopholes," including dummy corporations and personal agents). Amendments should be designed to prevent any and means of circumventing Article XII's restrictions.

The Third Convention should make a thorough study of the judicial decisions (by our Superior Court and Supreme Court, by the Northern Marianas District Court and by the Ninth Circuit) relating to Article XII. It should make a thorough study of Public Law 8-32, the 1993 legislation enacted by our legislature. If time and funds permit, it should make a field

THEODORE R. MITCHELL

Dr. Carlos S. Camacho
June 1, 1995
Page 4

study of the amount of private land which has been acquired by ineligible buyers in violation of Article XII. If time and funds permit, it should study the impact of these Article XII violations on the Northern Marianas society.

The results of these studies will enable the Convention to write amendments to Article XII which will make it more effective, and, to explain the intent and purpose of those amendments in supplementary materials (the "constitutional history") so that the courts, the legislature, executive officials, lawyers, and the general public, will be able to understand clearly what Article XII means. So that they will be able to understand what kinds of land transactions are legal and which ones are not. So that they will be able to understand what can and what cannot be done with corporations and land ownership.

Based on our experience and analysis, Article XII has not achieved its original purpose. It has been violated in thousands of land transactions over the past 15 years. Its true intent and purpose have been opposed by powerful forces, both in the legislature and in the courts. It has not been enforced by the courts.

Unless the Third Convention breathes new life into Article XII, it will remain a dead letter for the remainder of its 25-year life.

Both Jeanne Rayphand and I have had years of experience working with legislative committees and with group clients. We have had years of experience in the Commonwealth studying and working with the very issues on which we propose to assist the Convention. We have had years of experience at legislative drafting.

Finally, a few words about the question of "conflicts of interest" (the term was not defined for us; we were asked to both define it in this context and to discuss it).

We have set forth our interests, our expertise and our opinions in some detail, because we think that we can only be of use to one or another committee if our views are consistent with the views of a majority of the members of that committee.

THEODORE R. MITCHELL

Dr. Carlos S. Camacho
June 1, 1995
Page 5

Knowing our views, the committee can decide for itself whether there is any "conflict" between our views and its own.

The Third Convention is an aggregation of individuals who have been selected because of their particular views and purposes, not because of their "objectivity" or neutrality on issues of public importance. The membership of the committees which will be formed will be more or less varied in their beliefs and purposes. The views of the members of the Convention as a whole are certainly not uniform. The goals of the Convention are to identify the major problems of our current government (both institutional and substantive), to design solutions to those problems and to propose those solutions in the form of constitutional provisions. Its purpose is to decide which values will be adopted for presentation to the people and which will be rejected.

We think that we can be of assistance to the members of the Land and Personal Rights Committee and the members of the Committee on the Judiciary in performing their important work.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Mitchell', with a large, sweeping flourish extending to the left.

THEODORE R. MITCHELL

faxc: Deanne Siemer, Esq.

[CONVENT.102]