

not good judges, of course, that's not true, but the fact is that we might be raising the spectra of the People vs. Yang again in the 9th Circuit, which is one of the worse cases I've ever dealt with. In Yang, the substance was, of course, that they dealt with the problem of the reasonable doubt instruction, that was the good part, because that was the draft was intended from the very beginning. The bad part was they based their review on the fact that they could do de nouveau review because the majority of judges below, in the appellate division, were not from Guam, and therefore shared no particular expertise on the island's law, thereby bringing the 9th Circuit for having to give difference to their decision. I do not want to see the 9th Circuit go back to that decision, whether or not they should grant [cert?] on a Supreme Court decision, and say, "Oh, two of the justices, one is from Palau, one is from CNMI, only one is from Guam, therefore what do they know about Guam, and therefore we can review this de nouveau." That of course, in my view, destroying the very philosophical purpose of the Supreme Court of Guam. So that does worry me.

One thing, I will say now, I was totally opposed to the ethics opinion some years ago, I was off-island so I didn't comment on it at the time, but it basically did end the idea of the part-time justices. That was a beautiful opinion, cited all the proper stateside sources, but nobody thought to consider as to whether or not the Legislature could have the power to pass the law the way they wanted to. Indeed, an adhoc committee drafted the original bill called by the late Senator Frank Santos, I was on it as well as Judge Maraman, and others. We argued quite considerably over the conflict of interest, and thought that the Yang problem was sufficiently great, we wanted to emphasize Guam justices in the new court rather than off-island justices, and the problems often can resolve themselves, but we were aware of the ethics rule that the Legislature decided enact the law as it did anyhow. I was very disappointed in that because of the idea of keeping the Guam Supreme Court a Guam Supreme Court not an original one. So with those comments, I have nothing further, Sir.

Chairman: Thank you, Mr. Troutman. Is there anyone else in the audience who wishes to testify on Bills 48 or 25? If not, Judge Bordallo if you could perhaps bring a chair back up to the table, Mr. Troutman if you could just wait there, and I would open it up to questions by my colleagues, normally I would start the questioning, but as I am the main drafter of this bill and also have a great deal of interest because I'm also a lawyer, I will allow my colleagues the first issues here. Senator Klitzkie, please go ahead and ask any questions you might have.

Klitzkie: Thank you, Mr. Chairman. Mr. Troutman, with respect to the matter you were just discussing, although the matter is inserted in our law by a previous public law, I'm referring to the provision that allows justices from the Federated States and the Northern Marianas to sit on our Supreme Court, you did mention it, so I'll like to ask your opinion on one thing. Is it troubling to you, that under our law, we could conceivable have a Supreme Court staffed by three justices, none of

Troutman: I do not believe we could have a permanent....

Klitzkie: What for re case?

Troutman: The citizenship these days doesn't concern me half as much as what type of law they're interpreting. I think a non-citizen, I've seen a number of lawyers in the states in international law, I think they're just as competent, particularly considering that all of them probably, well not all of them now, but it used to be that all of them had to go to ABA accredited school. I don't believe that's the case anymore, but when this concept was first put in the law that was the case. I'm not nearly so much concerned about the citizenship of a judge as to the source of his knowledge.

Klitzkie: Thank you. Mr. Chief Justice. Good morning, Sir.

Chief Justice: Good morning, Senator.

Klitzkie: You are in favor of Bill 48?

Chief Justice: Yes, I am. As I have indicated in my testimony for primarily for the reasons set out there.

Klitzkie: That's good enough for me. Thank you, Mr. Chief Justice. Thank you, Mr. Chairman.

Chairman: Thank you, Senator.

Chief Justice: Senator Cunliffe, can I just add something in reference to the consideration of other justices and judges in other jurisdictions?

Chairman: Certainly.

Chief Justice: If I could just add that what we're confronted with in our jurisdiction is what is the best alternative, what options do we have. We live in a small jurisdiction where recusals of three justices, at least one of the justices is not uncommon, and then we ask ourselves if one of the justices is recused, where is the pull that we can pull from in which to replace that. We look at the private Bar for many reasons that have been advanced forward, there is a major objection to members of the private Bar being appointed justice pro tem to sit on a panel. Just to cite one main objection, is that it's not uncommon for a member of the Bar to be arguing to the panel with a private member of the Bar on the panel, and then the next day negotiating a settlement on a case when he or she sit opposite each other. There is an influence in that type of setting. So the private Bar is not a good alternative in my mind, nothing to say in terms of the quality and competence of

setting in which they must act. Until, we've had this pool of retired judges there really was not another alternative, the next best alternative, now we have retired Justice Benson, retired Chief Justices Cruz and Siguenza, and Retired Justice Janet Weeks, and they are making themselves available, so we do have that. But beyond that, there are not many options and that's why it may be necessary, maybe not desirable, but necessary for us to look at the jurisdictions closest to us, who have maybe a better familiarity of our law than judges beyond the Micronesian area. I do share the sentiments that it should be someone who have the same qualifications as members of the judges and justices in Guam and I am cognizant of that and will try and preserve that in appointing panel members. Thank you.

Chairman: Thank you, Chief Justice. Senator Jesse Lujan...okay... Senator Tina Muna-Barnes.

Muna-Barnes: Thank you, Mr. Chair. I do just have a question, and I'll go ahead and pose this to the Chief Justice. Good morning, thank you very much for your presentation, but under Section 21, the Clerk of the Courts, the way the Section reads it would have it that the Judicial Council will appoint the Clerk of Court and then the Clerk will have the responsibility for the ministerial and administrative functions of the Deputy Clerks of both courts, my concern is, in fact, something that the Director of the Superior Court had mentioned, that there may be a violation of due process, and I just wanted to hear your thoughts on that and how you will feel, because I do have my reservations and I do believe that there may be a violation in the due process.

Chief Justice: Thank you, Senator Barnes and good morning. I do share the sentiments and I am in agreement with Mr. Sanchez that the two Clerks of Court should be separated. It's only from the time that this bill was introduced that we started doing research on this issue. I indicated to Senator Cunliffe that we should have a memorandum that will provide some background information. We've canvassed to date 35 jurisdictions, and all 35 have separate Clerks of Court from appellate and trial courts, and we've also come across cases rationalizing why, and I think Mr. Sanchez is indicating the authorities that we're starting to find, that there are due process potential problems in terms of the Clerks of Courts having different functions that they should be kept separate. So we'll complete our research and we will provide it to the Chairman, to provide information that there are legal reasons, not only practical, but legal reasons why the Clerks of Courts should be separated.

Muna-Barnes: Thank you very much, Chief Justice and thank you, Mr. Chair.

Chairman: Thank you Senator. Senator Sanford.

Sanford: Thank you, Mr. Chair. I just wanted to make two comments on this Bill, and that

redundancy of effort in financing, and now in this dire times, we need to continue to look for options where we could certainly make our funding better appropriate and eliminate any redundancy of effort in funding. Secondly, I'm in support of trying to define and remove the uniqueness of Guam where there is no definition that's clear and concise that the Supreme Court should be in charge of the administrative functions. This is a step in the right direction, Mr. Chair, I just wanted to voice my support to this Bill, I have no further questions. Thank you.

Chairman: Thank you, Senator. Speaker Pangelinan, I know you came in a few minutes late, but we've also discussed your Bill 25, in correlation with this.

Speaker: Thank you very much. Good morning everyone. Just a couple of questions, maybe a clarification, Bill 25 is a bill that was introduced last year and reintroduced this year, as we know, Section 2 of the Bill was incorporated into a bill that was passed late in the term last year. The provision for allowing the retired judge and retired justices of the courts of record in the CNMI, Republic of Belau, is current law. In the past, it was sitting justices were allowed, and the bill expanded into retired judges and justices, so it did not really change, it expanded the pool from the same region and so forth, so it's not a brand new concept, but it's current law. The other Section of the Bill, actually also allowed the retired justices or retired judges of our local courts to serve pro tem or be called in on a case-by-case basis, and be paid and compensated for their services. Right now, they can be called in to sit on a case should there be conflicts, but the law does not allow them remuneration and compensation for that. I just don't think it's fair, if you work you get paid. The other Section of the Bill allows these justices to receive compensation when they're called in on a case-by-case basis. The reorganization of the Courts, just a couple of issues, number one, Mr. Sanchez you testified that the Legislature really shouldn't be setting the chairmanship of the Judicial Council by law, yet is there any objection to the current set of the Presiding Judge which is set by law, and if that was such a concern, why haven't we received, over the last ten-fifteen years, any objection from the Superior Court saying remove that provision and let us select our own Presiding Judge?

Sanchez: The chairmanship of the Judicial Council on the current is elected.

Speaker: The Presiding Judge position is set by law, and he's there for life set by legislation, if it's so objectionable to set the head of the Courts or the head of the Council, over all these years, I just don't see the rationale. If it's wrong to set in the future, it should have been a concern of the past and the present, and yet we see no concern expressed over the current system, which also sets it by law. The other concern I have is that the compensation provision in the Bill, setting new compensations for the judges, Mr. Sanchez, you probably are more familiar with the compensation. Would this result in a pay raise for judges and associate justices?

Speaker: No. So, if the Associate Justice is 2,000 less than the annual salary of the Chief Justice, is that the way it is in the courts now in the compensation?

Chief Justice: Yes, that's correct Mr. Speaker, this just tracks current law.

Speaker: So the compensation scheme in this will not result in any additional increase in cost for either judges or justices?

Chief Justice: No.

Speaker: Okay. I just think that it's not the final step, in terms of the court reorganization, I know that we've battle this issue and continue to battle it. Of course, the final solution or the ultimate desirability is that the judicial system be set as an organically empowered branch of this government, not subject to legal whims and legislative whims and legislative adventurism that we've had in the past, when we don't like some things. This may set it up, and I commend the author, I think it's a bigger leap than we've taken in the past, but it's not the final place that we want to get to. I think we need to protect the judicial branch empowered as a co-equal branch, not subject to legislative interventions and so forth. Other than the ... in your review of this, Mr. Sanchez, Chief Justice, what will the cost savings involved in this reorganization, if any?

Sanchez: Well, we're already reducing our cost by the mandated 20%, and part of it is that we're beginning to share the resources, many of the things that we do separately, if we combine our contracts and so forth, we'll be able to get a savings based on those things. Those are the things that it brings up immediately in the future, and certainly there will be other reductions and cost. It's a step in the right direction, like you said, and I think the end result, other than the federal inclusion, is the fact that the judges and justices will continue toward dealing with the functions of the court and working together to try and reduce the cost. I think ultimately that's the other step that this brings about.

Speaker: Do you think that if this Bill was in place, we would have prevented the unauthorized expenditures of half a million dollars and \$70,000 in lobbying?

Sanchez: I don't think either one of us are in a position, I think....here's what I would say, is that it's probably not one of our greater moments, but at the same time, the fact that we're discussing this matter, before the local senators, it's clearly something that we're moving forward to and putting behind us things of the past.

Speaker: And the question was, if this structure was in place, do you think we would have expended 600,000 of public funds to lobby against each other?

Sanchez: I don't know, Senator, Mr. Speaker, I'm sorry.

Speaker: Thank you very much.

Chairman: Thank you, Mr. Speaker. Senator Respicio. Senator Tenorio.

Tenorio: Thank you, Mr. Chair. Mr. Chair, I'll like to commend you also on the legislation, it's a move in the right direction for the consolidation of the judicial system, and I want to thank each one of you for coming today and giving your testimony, it's always refreshing to hear the inside of the courts and the people who're practicing law. I think that you're looking at shared governance in the composition of this council, and I also commend you on that respect. To the Chief Justice, the composition in the terms of the number of justices in other Supreme Courts, how many justices are seated at the Supreme Court?

Chief Justice: The minimum is 5 in all 50 states, to my knowledge, and the maximum is 9, it's generally around 7, but there are some jurisdictions that do have 9, like New York and California.

Tenorio: So we would be disproportionately low with only 3 justices, is that correct?

Chief Justice: It's less than the smallest jurisdiction, that's correct.

Tenorio: Right. So, you, I would then assume would support because of the issues with the respect that the bill calls for utilization of all the resources of retired justices and others who have practiced in the territory. You would support a move toward 5 justices of the Supreme Court.

Chief Justice: As I've indicated when that question was first posed to me without reflection on it. I believe that increasing the numbers will further and will, in terms of a deliberation, it's always good to have more minds, that I qualify that by saying that I am mindful of our current economic situation and that may be called into question at this date, and of all the things that I've pointed out, we're trying to cut costs in the judiciary.

Tenorio: In that effort, we also have to compensate the justices that are being used, that come and practice in the territory, in the absence of justices that are permanently on the bench, correct?

Chief Justice: Fortunately, our arrangements with the jurisdictions outside of Guam, CNMI and other areas, it's only CNMI Supreme Court that I've used. We have an arrangement where they sit on our court without compensation; we only pay for their airfare and their hotel expenses. That's the same with us, when we sit at their court, we don't charge them a per diem, we don't charge them our time, it's just for us to sit there, the cost of us traveling there, and staying at a hotel if that's necessary.

Tenorio: So, then, you don't actually pay for a part-time justice or you don't budget for that or anything?

Chief Justice: Yes, we do, if we appoint someone as a pro tem justice here on Guam, we do pay them, it's provided in the statute, the hourly rate, up to the hourly rate, of the Associate Justice. We do pay.

Tenorio: Okay. Mr. Arriola, with respect to the composition of the Council, in the past you've sat on a Judicial Council, did you find that your involvement in the Council has been important?

Arriola: I personally never sat on the Judicial Council, immediately prior to my taking office for my first term, the Bar President was **[broke?]**

Tenorio: I see, so then

Arriola: I don't believe the Bar President should sit on the Judicial Council.

Tenorio: Okay, that was my next question. Thank you very much.

Chairman: Thank you, Senator Tenorio. Senator Fernandez.

Fernandez: I thought I was last, because I think I was the last one here. Mr. Chairman, I'll ask this question to both courts, Utah is the only state in the system of the United States that doesn't observe this practice, does anyone know why Utah is not in line? I'm just curious.

Chief Justice: No, I just attached the table regarding the governance of all 50 states, and we just noted that, but I've never spoken to the Chief Justice of Utah Supreme Court as to why it was set up that way. But I do know that the Chief Justice is the head of the Judicial Council in Utah.

Fernandez: Superior Court, you have no response to that?

Sanchez: The Judicial Council overall is a, when it was first created, was patterned after the largest jurisdiction as well as the federal court system, because we were Naval administration going into a civilian administration, as part of the federal court system, and that has a Judicial Council receiving the circuits and the file courts of the district courts.

Fernandez: Okay. I was just interested to note, if anybody knew, because what I would be interested in is the philosophy of why Utah is not doing this as we are. The next question I have, and I'm sure all of our colleagues here are concerned about as well is the adverse impact to any employees in the system right now, with the implementation, so I wanted to ask you to articulate as best you can how you will

Chief Justice: Senator Fernandez, I am very sensitive just like you all are and what you're facing today, if this bill passes, we'll face similar issues in a smaller setting. I am sensitive to the employment issues of our employees, and I'm the last one, I think you all are to want to layoff people, but I think if there is to be a head of a branch of government, there is to be accountability, and if the resources are not there, then someone has to make the decision that cuts have to be made as much as they are unpopular. I would look at the situation, and if it requires cuts, then I will make the cuts. As I pointed out, there are economic realities that we need to address, I will say that we'll avoid duplications and we would look at programs to see if it's properly within the judicial branch, if it's not, then we will to speak to the Executive and consolidate those functions. There will be no function in the judiciary that will not be reviewed, if we have an input in the administrative oversight.

Fernandez: Tony do you have any comments on that question, the implementation side, how do you envision implementation and any adverse impact on the employees and how would you address that?

Sanchez: Basically, I think that echoing some of the Chief Justice that the justices and judges of the court system are very concerned with regards to the economic issues, we're doing thing to try and wean ourselves from the General Fund or the taxpayer dollars, we're trying to do things like raise fees for users who specifically are used by us, specifically court services or so forth, and try and use things like that, we're looking towards federal programs. But, overall, in the end, that's one of the positions that we're taking is to try and remove as much as we can the cost to the General Fund and the taxpayers as much as we can. Short of that, I'm sure that we will always do the things that we have to do to live within the appropriations this body uses.

Fernandez: Okay. Thank you very much, Mr. Chairman.

Chairman: Thank you, Senator. Senator Kasperbauer.

Kasperbauer: Si Yu'os ma'ase and good morning, everyone. I understand the earlier comments [Senator was not speaking into microphone, audio barely picked up what he was saying; however he was asking questions on cost savings and lobbying.....]

Chief Justice: No it's not, New York has a State Court of Appeals, which is the highest court, and it's comparable to the State Supreme Court, and it consists of 9 justices. Maybe the mistake is a Unified Judiciary.

Troutman: Senator Kasperbauer, the typical problem comes with New York is that they call their Trial Court the Supreme Court, so which is unique in New York, so that when you say the New York Supreme Court Trial Division did such and such,

you're talking about not the Supreme Court as we think of it, but as the Superior Court, it's their normal cultures that causes everybody difficulties.

Kasperbauer: So what we call the Superior Court they call it the Supreme Court.

Troutman: That right, yes.

Chief Justice: Yes, the State Supreme Court, State Court of Appeals.

Troutman: Yes.

Kasperbauer: I see.

Chief Justice: But there is a 3-tier and that is the Trial Court, the Intermediate Appellate Court, and the Highest Court.

Bordallo: Senator, that might have to do with the random assignment of cases in the Supreme Court. Where if a case is filed and who it's assigned to, we don't have that here, but I think that what that system is all about.

Chief Justice: I would like to add to Judge Bordallo's comments, that we are working in that direction of random, we've formed a committee, a sub-committee of members of the Bar, and Superior and Supreme Court, and that is the direction we are taking.

Kasperbauer: In your testimony, Chief Justice, you incorporated a letter from your administrator to Senator Klitzkie, I get the impression from it that the work load is equal, but from what I've heard earlier the work load is considerable different, isn't there? About 12 employees of the Supreme Court? And 100's of employees of the Superior Court? Is that correct?

Chief Justice: There are quite a number of employees, I don't know the exact number, Mr. Sanchez can testify as to how many employees the Superior Court has, but yes we have less than 20, including the justices full-time positions.

Kasperbauer: I guess that the inferences that the salaries of the individuals holding similar titles should be the same, but yet if there's 18 employees in the Supreme Court for 2 judges, and I don't know how many in the Superior Court? It appears to me that maybe the information is factual, but it might be a little misleading, if the workload is so different. What is the situation of the Superior Court?

Sanchez: We have 300 General Fund employees and 18 federally-funded employees.

Kasperbauer: And you elaborated on the workload earlier?

Sanchez: Yes, and I delineated the workload we have a 12,000 caseload each year.

Kasperbauer: Well, it looks like we have some duplication that certainly the proposed bill would deal with. In terms of money-saving, just on that account, it probably wouldn't be substantial as we might have anticipated or as implied here. Of course, every little bit helps. Mr. Chair, I have...I guess I'm still trying to get more information on this, it seems pretty clear-cut that this is a good bill, but I'm still trying to get some more information. Thank you.

Chairman: Thank you, Senator Kasperbauer. Senator Lujan.

Lujan: Good morning. Just a couple of questions, and turn the table around a little bit, be a lawyer at this point and just answer with a yes or a no, and approximate figures, okay, and I'll ask both courts. In consolidation of the courts, the Superior Court, we see cost-savings in the consolidation, and approximately how much in cost-savings?

Sanchez: Would we see a cost-savings in consolidation?

Lujan: Yes.

Sanchez: Yes, with the cost-savings, if we consolidate services and contracts, yes.

Lujan: Yes.

Sanchez: There are certain things that we

Lujan: Yes, and the approximate figure of that consolidation, will be?

Sanchez: Maybe about 35,000.

Lujan: 35,000?

Sanchez: Yes.

Lujan: Okay, does the Supreme Court feel the same consolidation, save that amount?

Chief Justice: The consolidation will save money, the consolidation, if I have anything to say of it will be substantially more than that.

Lujan: Okay, so it'll go from 5 figures to maybe 6 figures.

Chief Justice: I have know idea, Senator, I just have to look at and see what the circumstances are, but in a cursory review, it's going to be more that 35,000.

Lujan: Okay, now, in earlier testimony and some oversights, Chief Justice, you testified that you agreed to 2 more justices needed to be added on to the Supreme Court?

Chief Justice: No, that was a question that was posed to me, what was my position, would I have any objection, and I said “no”, but I’m not advocating that.

Lujan: Okay. If 2 justices, how many supporting staff per justice does it require for, again per justice?

Chief Justice: You would need a Chamber Clerk, a Law Clerk, and a Justice.

Lujan: So, basically, a justice and 2 other people.

Chief Justice: You would probably have to add, a justice’s salary is 126, a Chamber Clerk is 43, and a Law Clerk, beginning Entry Law Clerk is 41, and whatever the benefits are, I think when someone added it up, it’s about 250,000 per justice, if that was to be entertained by the Legislature.

Lujan: So, basically, if 2 justices were added and also their supporting staff would come with benefits and all that, will come to closer to a million dollars or half a million dollars.

Chief Justice: That’s correct.

Lujan: Okay, thank you, Mr. Chair.

Chairman: Thank you, Senator Lujan. Members of the panel, I just would like to comment on some of the things that have been testified to today, and I would like to thank both Chief Justice Carbullido and the Presiding Judge Alberto Lamorena and Tony Sanchez, who have had a great deal of input into the creation of this Bill. Judge Bordallo, I’m very interested in the incident where the Presiding Judge came and took over a case. Was it an ongoing proceeding that you were already assigned to, and the proceeding was going forward?

Bordallo: I believe at the time it was not assigned to anyone, and I was acting as the ex parte judge, and the case was pulled upstairs. The example is just one of, I don’t know where the language came from, it’s always been in the code, and it seems to be if an effort has been made to rewrite the Judiciary Code, then things in a sense are archaic,

Chairman: Unnecessary.....

Bordallo:should be addressed....

Chairman: Right. We try to do that. Mr. Troutman, you have some comment on that.

Troutman: Yes. Mr. Chairman, that language comes, is indeed archaic, it dates from the middle 1800’s, and what it refers to is not so much daily sessions, as far as I can

back in common law days, colonial days, goes back before the 1800's, had fixed sessions, going from

Chairman: October 1st

Troutman: ...whenever the snow melted, the snows came again, or something like that. In that case, what they're saying is when the court's in session between April and November, the Presiding Judge can come in and sit anywhere in the Circuit. Well, we don't have snow, we don't have Circuits, and we've never had sessions, quite frankly, at least in my knowledge on Guam. That is sessions, the way that old term is used. In date, that is quite an [acronymism?].

Chairman: Would you agree with Judge Bordallo, that that could be removed from the legislation?

Troutman: Quite safely.

Chairman: Okay. That make you feel better? The other thing is, with regard to the make up of the Judicial Council, I understand the Attorney General's position, and being a person who by law is permitted to sit on the Judicial Council, if such a Council meeting were called, which has not happened since I've been in this position, I would attend, because I think it's important, but as a lawyer, I find it offensive that a Senator would sit on the Judicial Council and make determinations, and I find it offensive that a member of the Executive Branch would sit on the Judicial Council and make those positions. It may have a chilling affect, because when you make those decisions, you affect what judges are doing on a day-to-day basis, and as both of us happen to be practitioners before the court, and some of my predecessors of course have not been in this position, I think that's a very dangerous situation to have members of that Judicial Council. I would presume, Mr. Troutman, that you are not taking the position that the Judicial Council as it's created in this bill is organic, because we don't have any

Troutman: Oh, no, definitely not, you're free to create the composition basically as you want, there's nothing in the Organic Act that even requires it, so no, I'm not saying that at all.

Chairman: To echo the sentiments of the Speaker, I too, have a very long period of time felt that we need to create an organic court, and get the Legislature at of the business of passing laws on a whim to make a decision of what happens, what I think is a, needs to be a co-equal branch of government and totally independent. A number of years ago, and Mr. Troutman, you are certainly aware of the call that when out to create our own Supreme Court, and the divisiveness that occurred among members of the Bar, who felt that the creation of the Guam Supreme Court would not be a good thing, because it wouldn't be independent, and it would be ineffective, and we needed to stay with the 9th Circuit, and that was a position I've

Troutman: Oh, yes, I remember writing a minority report back....way back when...

Chairman: And now we have seen that the Supreme Court is indeed a very fine instrument of our judiciary. It has been doing a very good job, and I agree with you, Mr. Troutman, and I am very offended that we have justices who sit by designation who come from other jurisdictions. I have been before panels where there was only one justice from Guam, and I think that creates a real problem for following through in future decisions, if you happen to have 3 justices sitting on a panel, they could just very quickly and easily reverse the decision of the panel, that's had some short period of time ago, because they are not the same justices and they come from different locations, and they don't want to give them the precedence.

Troutman: Mr. Chairman, let me give you a concrete example, I argued a case some time ago in the Appellate Division before the Supreme Court existed, and the Presiding Judge was from the CNMI District Court, and I was arguing a particular Guam statute, and he interrupted, and said, "I don't really know the Guam law, could you please read me the statute in question?" Which, of course, I did, but that indicates his immediate familiarity with what we are dealing with.

Chairman: Right, and I agree with you there, and through discussions with the Chief Justice, he has assured me that it is his intention to use the retired justices of the Guam ...[end of Tape 1, Side B]... but we do have 3 retired justices who are now available, and I think that bodes well of the future of the court. One final note, on the concerns of Judge Bordallo and the make up of the Judicial Council to include judges, there's been a lot of give and take in the creation of this law, and although I have the signature of the author before this Legislature, of course, as I've said, I had a lot of assistance from the Chief Justice and from the Presiding Judge. There are areas that people must understand had to be negotiated, because none of us are unaware of the political nature of things, and in order to take a step forward, I think it's necessary that compromise has to take place, and we've tried to include that compromise in this Bill, so that we can hopefully have this passed by the Legislature and signed by the Chief Executive, so that we can start moving forward. Thank you very much, all for your testimony. If there's any more testimony that people wish to submit, please get it in and we will include in the record, and hopefully we'll be acting on this in the very near future.

[Chairman goes on to Bill No. 6, however Acting Presiding Judge Maraman arrives late, inserted here is her testimony on Bill No. 48]

Chairman: There being no more testimony on Bill 6, I noticed that Acting Presiding Judge Maraman has come in, did you want to address Bill 48?

Maraman: I could wait if you want.

Chairman: Well, we've already gone through it, so if you want to just come forward and put forward your testimony.

Maraman: Thank you, Mr. Chair. I apologize for being late, but we have the arraignment calendar on Wednesdays.

Chairman: That's fine, Judge Maraman.

Maraman: Mr. Chairman, Senator Cunliffe, and members of the Committee on Judiciary & Transportation, I appear today in opposition to the enactment of Bill No. 48. **[Verbatim from written testimony. Attached.]**..... Thank you, Mr. Chairman.

Chairman: Thank you, Judge Maraman. Any of the Committee Members have any questions for Judge Maraman?

Klitzkie: I just like to say "good morning" to Judge Maraman. That's all, thank you, Mr. Chair.

Chairman: Thank you very much, and if you would leave your copies of your testimony.

Maraman: Thank you.

Chairman: Thank you.



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Testimony of the Honorable F. Philip Carbullido
Chief Justice of Guam
on Bill No. 48
Wednesday, March 19, 2003

Hafa Adai and Good Morning Mr. Chairman, Committee Members, and Senators. Thank you for the invitation to testify on Bill 48.

Today, I would like to concentrate on two issues, the relationship of this Bill with the current economic crisis facing the government and the island; and the effect of the Bill on the development of the local judiciary as an institution within this government.

It goes without saying that the most pressing issue facing everyone in this room, is the fact that this government is, in the words of Governor Camacho, "broke." You don't have to be Alan Greenspan to recognize the problem inherent when the income generated does not meet the level of expenditures. I don't profess to be an economics guru, but I can say with confidence that Bill 48 is an immediate step in the direction of a solution; not only short-term, but long-term.

The recent budget bill is the most obvious expression of the present economic reality facing the government. The budgets for all three branches have been cut by unprecedented levels. The most extreme being DOE, which claims it has had 50% of its budget slashed, with the possibility of further cuts to come. Employees' hours have been cut to 32 per week, and in some cases, salaries have been cut across the board. In other cases, employees have been fired and their duties have been outsourced to private companies. Further, the funding for operations within each agency has taken similar hits.

As far as revenue generating efforts are concerned, the GRT has been increased from 4 to 6 %, and there was talk about getting rid of the Santos exemption. There has been an increase in tax on alcohol and tobacco.

The list goes on. These are just a few examples of the measures this government has been required to take to solve the problem prompted by the lack of funds to operate the government. It was clear when you took office that measures had to be taken in light of this economic reality; and they *have* been taken.

I stand here today to give testimony to my firm conviction that Bill 48 is similarly in furtherance of

Bill 48 contains a wealth of cost-cutting measures. First and foremost, it expressly consolidates positions within the Supreme and Superior courts for which duplication is unnecessary, including, for example, the Court Administrator and Head Marshal positions. Significantly, the Bill indirectly paves the way for the consolidation of other positions, including those within the Human Resources, Procurement, and M.I.S. departments of both courts. Attached to this testimony is a letter from our Executive Officer, Dan Tydingco, to Senator Robert Klitzkie. In his letter, Dan summarizes the duplication currently in existence within the Judicial Branch, which, upon a mere cursory review, totals over \$1.9 million. By consolidating positions, the Bill will offer an immediate savings of more than one million dollars. This is a significant percentage of the total combined budget of the Superior and Supreme Courts, and there is no reason why this 1.9 million dollars could not be used for school books, hiring teachers, or buying medical supplies. Furthermore, by expanding the authority of the Judicial Council over court administration and finances, including personnel, procurement, facilities, and travel, Bill 48 allows for a centralized approach to management of the judicial branch, which will increase the efficiency of the operations of the entire judiciary, thus assuring tremendous additional savings in the future.

The duplication resulting from the present structure of the judiciary led to the past practices of overspending and procedural inefficiencies. As far as the judicial branch is concerned, this is a disservice to both the taxpayers and practitioners of the law.

I commented earlier that this government is facing an economic crisis. "Crisis" is entirely accurate as it is defined as "a time of great danger or trouble, whose outcome decides whether possible bad consequences will follow." (Webster's New World Dict., 3d ed., at 328). In resolving any crisis situation, the starting point of analysis must be the cause. The present situation is a reality which has been fostered by a duplication in work, inefficient government spending, and an imprudent application of limited resources. The point is, the current economic situation is an overdue manifestation of past practices, one of which is the division of the judiciary.

Bill 48 offers an immediate solution but will have long-term effects. Unlike a temporary increase on the GRT, a temporary hiring freeze, or a cut in employees' hours or salaries, Bill 48 offers a permanent structural solution. Such permanent solutions are what this island needs not only to get back on its feet, but to continually maintain a responsible level of spending in the future. It is these types of long-term solutions that the government needs to attain continued viability. Bill 48 is not just necessary to alleviate the current shortfalls; it is the most logical and practical approach to maintaining a level of efficiency which is necessary for responsible and lasting government operations.

Aside from its enormous fiscal implications, Bill 48 is vitally important on an institutional level. The Bill offers fundamental changes to the structure of the judiciary.

The most significant changes relate to the Judicial Council, which is given administrative control over the judicial branch. First, Bill 48 places the chairmanship of the Judicial Council with the Chief Justice of Guam. This particular amendment to the current structure finally brings Guam's judicial branch in line with all 50 states. With the single exception of Utah, the judicial branch of every single state in the U.S. is headed by either the Chief Justice of the highest appellate court of the state, or the state's highest appellate court. Even in Utah, where the judiciary is headed by the Judicial

Council, the constitution provides that "The Judicial Council shall consist of the chief justice of the Supreme Court, as presiding officer," and that "the chief justice of the Supreme Court shall be the chief administrative officer for the courts and shall implement the rules adopted by the Judicial Council." (Utah Const. Art. 8, § 12). The fact that every single state in the U.S. has adopted such a structure, giving the authority over the judicial branch to the Supreme Court or Chief Justice, must mean something. It means it is the most logical way to organize the judicial branch. It is a universally known principle in the law that courts have the inherent powers to develop rules governing court practice and its administration. It only makes sense, from a consistency and uniformity standpoint, that the highest court of a particular jurisdiction be charged with the administration over all inferior courts.

Bill 48 appropriately gives the chairmanship of the Judicial Council to the Chief Justice of Guam, which is entirely consistent with the role of the highest court in any jurisdiction *vis-à-vis* the inferior courts. To the same end, the Bill amends section 3107(b) of Title 7 GCA, to give the Guam Supreme Court the authority to promulgate rules governing the practice and procedure of the local courts.

Furthermore, Bill 48 changes the composition of the Judicial Council. Currently, the Judicial Council is composed of justices and judges, *as well as* one member from the Legislative and Executive branches of the government. Bill 48 eliminates the non-judicial members from participation on the Council. In giving administrative control over the judiciary to the Judicial Council and altering the composition of the Council, Bill 48 properly gives the authority over the judiciary to a centralized body consisting only of members of the judiciary. Bill 48 creates a fundamentally better system because it reserves the power over purely judicial matters to members of the judiciary. This is a major precept essential to judicial independence. It is simply a matter of separation of powers: a concept which is so basic to the organization of our form of government that it bears no point to belabor the issue.

Finally, I have every confidence that the judges who have the best interest of the judiciary in mind will work together and act responsibly in deciding issues related to the administration of the courts.

Overall, the modifications to the judicial structure contained in Bill 48 are absolutely necessary for the responsibility of the judiciary to develop as an institution both at an internal level, which will undoubtedly promote efficiency, uniformity, and accountability, and a governmental level, by advancing judicial independence and thus reinforcing the role of the courts as the ultimate arbiter of the legal rights of the citizens of Guam.

Again, I thank you Mr. Chairman for allowing me to testify on Bill 48. I am convinced that Bill 48 will achieve immediate economic savings and will serve as a model of governmental restructuring which promotes long-term economic survival, while maintaining high standards in the delivery of public services. I am further convinced that Bill 48 will result in a substantial improvement to the judiciary as an integral institution within this government.

Si Yu-us Ma'ase, Thank You.

Supreme Court of Guam

February 24, 2003

Honorable Robert Klitzkie
Senator
Twenty-Seventh Guam Legislature
155 Hesler Street
Hagatna, Guam 96910

Dear Senator Klitzkie:

As you had requested during the Supreme Court of Guam's budget oversight hearing, the following is data and information pertaining to functions and/or services that are essentially duplicated by the Superior and Supreme Courts.

Ever since the Supreme Court opened its doors in 1996, we adopted and fostered a policy of striving to be as fiscally frugal and efficient as possible without compromising our mandate. We believe we have been successful in this regard by eliminating positions, re-working our staffing pattern to properly reflect our needs, containing costs in categories other than personnel salaries and benefits, and outsourcing and privatizing services when appropriate. As testament to our efforts, I note the remittance and return of \$500,000 from the Supreme Court to the General Fund coffers a couple of years ago: an historical first in the history of GovGuam.

Overall, however, we believe, as articulated repeatedly over time, that such efforts may be for naught; considering that a majority of your predecessors have opted to divide the Judiciary with separate administrations. Thus, resulting in redundancy, duplication, and the unintended consequence of burdening taxpayers with a disjointed Judiciary requiring separate operational appropriations.

Presently, we have the overall direction of the court system vested in a Superior Court Director (\$115,220), Superior Court Deputy Director (\$100,834) and a Supreme Court Executive Officer (\$96,876.89). The cost for all three is \$312,930.89 per annum for salaries and benefits.

There is a Superior Court Staff Attorney (\$93,657) and a Supreme Court Staff Attorney (\$84,468.36) that totals \$178,125.36 in salaries and benefits per annum.

There is Superior Court Human Resources Administrator (\$83,153), a Superior Court Procurement Administrator (\$47,121) and a Supreme Court Administrative Services Officer (\$59,240.91) that handles the same functions as the former two lower court counterparts. The sum for all three is \$189,514.91 per annum for salaries and benefits.

Further, there is a Superior Court Chief Marshal (\$83,100) and a Supreme Court Marshal Supervisor (\$69,192.76) that costs \$152,292.76 per annum in salaries and benefits.

There is a Superior Court facilities and maintenance division that costs \$679,507 per annum in salaries and benefits and an outsourced Supreme Court maintenance services contract that costs \$8,400 per annum. The total is \$687,907 annually.

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There is a Superior Court management information systems division that costs \$353,722 per annum in salaries and benefits. The Supreme Court has one Junior Programmer Analyst (\$48,597.30) and privatized computer consultants (\$40,640). The total for computer/automation work is \$442,959.30 per annum. The total for all the aforementioned is \$1,963,730.02 per annum.

As you and your colleagues search high and low for scant resources, I respectfully ask again, as in our oversight hearing, and on several occasions prior to then, that these ridiculous redundancies be addressed in a comprehensive fashion.

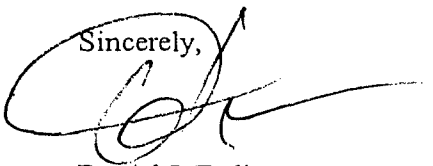
In doing so, there must be not only a focus on the obvious financial reasons, there must also be a focus on the overall administrative authority of the Judiciary and the need for centralization and accountability. Simply chopping or cutting resources will not provide for efficiency. Please note that since the Supreme Court does not have administrative authority over personnel and resources attached to the Superior Court, our needs for services are subject to whims. When the janitorial maintenance for our offices was abruptly cut, we could not order maintenance personnel from the lower court to clean our offices and had to consequently secure a reliable provider. We did so by outsourcing.

Similarly, when our Justices and staff had computer problems, we could not have our tools sit idle and work product delayed because computer personnel from the lower court had to stop servicing us to attend to personnel and equipment within their "own" court. Nevertheless, we have managed by outsourcing.

In closing, as we are tasked with our mandate, I want to note my appreciation for your interest in an issue we have been raising. At the Supreme Court, we will continue to vigorously advocate a Unified Judiciary that is efficient and accountable to all we serve and to those who have entrusted us.

I am available if you should have any further inquiries.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Tydingco', with a large, sweeping flourish extending to the right.

Daniel J. Tydingco
Executive Officer

Cc: Chief Justice, Committee on Judiciary and Transportation, Speaker

Table 13 -- Governance of the Judicial Branch

States:	Who is the head of the judicial branch?	What authority establishes the head of the judicial branch?	Cite Source of Authority:
Alabama	Chief Justice of highest appeals court	State Constitution	Title 12 - Code of AL, 1975, Article VI, Sec
Alaska	Chief Justice of highest appeals court	State Constitution	Article IV Section. 2, Constitution of
Arizona	Chief Justice of highest appeals court	State Constitution	Article VI, Paragraph III
Arkansas	Chief Justice of highest appeals court	Statute	A.C.A. 16-10-101
California	Chief Justice of highest appeals court	State Constitution	Article VI, Section. 6, State Constitut
Colorado	Chief Justice of highest appeals court	State Constitution	Article VI, State Constitution
Connecticut	Chief Justice of highest appeals court	Statute	Connecticut General Statutes 51-1b
Delaware	Chief Justice of highest appeals court	State Constitution	Article IV, 13
District of Columbia	Chief Justice of highest appeals court	Statute	Section 11-1701 D.C. code
Florida	Chief Justice of highest appeals court	State Constitution	Article V, Section 2
Georgia	Chief Justice of highest appeals court	State Constitution	Article 6, Section 9, Para. 1
Hawaii	Chief Justice of highest appeals court	State Constitution	Article VI, Sections 1 and 2
Idaho	Chief Justice of highest appeals court	State Constitution	Article 5, Section 6
Illinois	Chief Justice of highest appeals court	State Constitution	IL Con. 1970, Article 6, Section 16
Indiana	Chief Justice of highest appeals court	Statute	IC 33-13-14-2
Iowa	State's highest appeals court	Statute	Iowa Code, Section 602.1102
Kansas	Chief Justice of highest appeals court	State Constitution	KS Constitution, Article 3, Sections 1 and 2, 20-101
Kentucky	Chief Justice of highest appeals court	State Constitution	Section 110(5)(b)
Louisiana	Chief Justice of highest appeals court	State Constitution	LA Constitution of 1974, Article V, Secti
Maine	Chief Justice of highest appeals court	Statute	4 M.R.S.A. Section 1
Maryland	Chief Justice of highest appeals court	State Constitution	MD Constitution, Article IV, Section 11
Massachusetts	The state's highest appeals court	State Constitution	MGL C.211 S3 General superintendent
Michigan	Chief Justice of highest appeals court	State Constitution	Article VI, Section 3
Minnesota	Chief Justice of highest appeals court	Statute	MS 2.724
Mississippi	Chief Justice of highest appeals court	Statute	Sec. 9-3-11, MS Code 1972
Missouri	The state's highest appeals court(a)	State Constitution	Article V, Section 4
Montana	Chief Justice of highest appeals court	State Constitution	Article VII, Section 2
Nebraska	Chief Justice of highest appeals court	State Constitution	Article V, Section 2
Nevada	Chief Justice of highest appeals court	State Constitution	Article VI, Section 19
New Hampshire	Chief Justice of highest appeals court	State Constitution	Part 2, Article 73-A
New Jersey	Chief Justice of highest appeals court	State Constitution	Article 6, Section 7, Part 1
New Mexico	Chief Justice of highest appeals court	State Constitution	Article 6 Section 3
New York	Chief Justice of highest appeals court	State Constitution	Article VI
North Carolina	Chief Justice of highest appeals court	State Constitution and Statute	Article IV, Sections 6 and 11; NC GS, Chap
North Dakota	Chief Justice of highest appeals court	Statute	NDCC 27-02-01
		State Constitution and Statute	Article IV of Ohio Constitution
Oklahoma	Chief Justice of highest appeals court	State Constitution	Article 7 Sections 2 and 6
Oregon	Chief Justice of highest appeals court	Statute	ORS 1 002 (1)
Pennsylvania	The state's highest appeals court	State Constitution	Article V, Sections 2 and 10

Table 13 -- Governance of the Judicial Branch

States:	Who is the head of the judicial branch?	What authority establishes the head of the judicial branch?	Cite Source of Authority:
Rhode Island	Chief Justice of highest appeals court	State Constitution and Statute	Article 10, S. 1 RI GL 8-15-2
South Carolina	Chief Justice of highest appeals court	State Constitution	Article V
South Dakota	Chief Justice of highest appeals court	State Constitution	Article 5
Tennessee	Chief Justice of highest appeals court	Judicial Branch Rule Statute	Rule 11, Rules of the Supreme Court of TN
Texas	The state's highest appeals court	State Constitution and Statute	Article 5, Section 31, TX Constitution and Section TX Government Code
Utah	State Judicial Council(s)	State Constitution and Statute	Article 8, UT Constitution, 78-3-1 ET. Seg. State.
Vermont	Highest appeals court	State Constitution	Chapter II, Section 30
Virginia	Chief Justice of highest appeals court	State Constitution	Article VI - Section 4
Washington	The state's highest appeals court		
West Virginia	Chief Justice of highest appeals court	State Constitution	Article 8, Sect. 3
Wisconsin	Chief justice of highest appeals court	State Constitution	Article 7, Section 4, WI Constitution
Wyoming	Chief justice of highest appeals court	State Constitution and Statute	Article 5 Section 2 - WY Constitution, W.S. 5-2-102
Puerto Rico	Chief justice of highest appeals court	State Constitution	Article 5, Section 7, PR Constitution, 4 L.P.R
Federal	Supreme Court	US Constitution	Article III, US Constitution

FOOTNOTES:

Missouri:

(a) The Chief Justice serves as the chief administrative officer.

North Carolina:

(a) Article IV of the NC Constitution, see Sections 6 and 11; NC GS Chapter 7A, see Section 7A-10; the Chief Justice has extensive appointment and other authorities, including appointment of the Director of the AOC. Numerous authorities are also vested in the Supreme Court as a whole.

Utah:

(a) Judges from each level of court, and designee of Utah Bar Association.



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Transmit Fax No. 671	Date 3/14/03	Pages 2
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Co. Dept.	Co. SUPREME COURT	
Phone # 477-1310	Phone # 475-3413	
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Chamber of the Honorable F. Philip Carbullido

03-0208

Direct Line: (671) 475-3413

Direct Email: fpcarbullido@guamsupremecourt.com

March 14, 2003

Honorable F. Randall Cunliffe
 Chairman, Committee on Transportation and the Judiciary
 27th Guam Legislature
 210 Archbishop Flores St, Suite 200
 Hagatna, Guam 96910

Subject: Immunity from Liability for Members of the Guam Bar Relative to Attorney Discipline

Dear Senator Cunliffe:

I write in support of the Guam Bar Ethics Committee's request to re-adopt the language of 7 GCA § 9209 which was repealed by P.L. 21-147, the Frank G. Lujan Court Reorganization Act. Section 9209 provided:

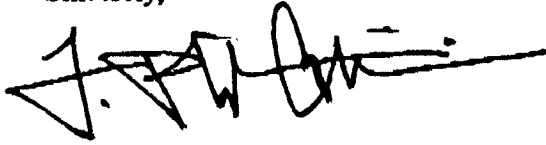
Members of the Bar of Guam, and employees and agents of the Bar shall not be held liable for any action performed in the course of their official duties undertaken pursuant to this Article relative to the discipline of attorneys and to the unauthorized practice of law.

The significance of this immunity provision cannot be understated. The Ethics Committee performs a critical function in investigating, prosecuting and hearing complaints by the citizenry against attorneys, and in preventing the unauthorized practice of law. The Guam Bar is self-policing. Members of the Ethics Committee are members of the Bar who are willing to investigate fellow members of the Bar. Without such immunity, it would be difficult, if not impossible, to find persons willing to undertake such responsibility and risk.

It should be pointed out that an existing law, 7 GCA § 9107, provides immunity for those acting as employees or agents of the Supreme Court in attorney disciplinary matters. However, an express provision, such as in section 9209, would make it absolutely clear that the Ethics Committee will not be liable for their official actions.

As always, please feel free to call me to discuss this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'F. Philip Carbullido', written in a cursive style.

F. PHILIP CARBULLIDO
Chief Justice

cc: Joaquin C. Arriola, Jr., Esq., President, Guam Bar Association
All members of the Guam Bar Ethics Committee
Duncan G. McCully, Esq., Chairman
Oliver J. Bordallo, Esq.
Loretta T. Gutierrez-Long, Esq.
Vincent E. Leon Guerrero, Esq.
Alberto E. Tolentino, Esq.
Jacqueline T. Terlaje, Esq.
Jeffrey E. Cook, Esq.
Arthur R. Barcinas, Esq.

Testimony on Bills 48, 50, and 25
Anthony P. Sanchez
Administrative Director, Superior Court of Guam
March 19, 2003

Mr. Chairman Senator F. Randall Cunliffe, distinguished members of the Committee on Judiciary and Transportation and Senators of the Guam Legislature; Good morning and thank you for allowing us the opportunity to testify on Bills 48 and 50 concerning the reorganization of the Judiciary and the establishment of the Superior Court of Guam Adult Drug Court respectively; as well as a brief comment on Bill 25 authorizing the appointment of retired Judges and Justices of various jurisdictions to sit as designated Justices on the Supreme Court of Guam.

I certainly embrace the intent of Bill 48 with regards to re-organization of the Judiciary. Since the local courts inception in Public Law 1-17 -- enacted in 1951 (over half a century ago) – the First Guam Legislature created the Judicial Council of Guam as part of the Island Court. 23 years later, in 1974, Public Law 12-85 or “The Court Reorganization Act” the Island Court became the Superior Court of Guam and the Supreme Court of Guam with the Judicial Council of Guam still attached to the branch for purpose of administration; replacing the Judge of the District Court of Guam with the Chief Justice on the Judicial Council. Though the Supreme Court was later ruled null and void, the Superior Court of Guam and the Judicial Council of Guam remained intact.

In 1987 this same Judicial Council would enter into a loan agreement that built the Guam Judicial Center. In 1992, Public Law 21-174, known as the Frank G. Lujan Memorial Court Reorganization Act, created the Supreme Court of Guam with the Judicial Council of Guam attached to the judicial branch for purposes of administration. In 1996 the second Supreme Court of Guam Justices would be sworn in and the Judicial Council of Guam’s powers would be reaffirmed. For the last seven years we have seen a Judicial Council of both Judges and Justices for two years, a Judicial Council of Superior Court of Guam for three years and two years of the current Judicial Council that includes three

Justices and Judges and the Legislature's Chairman of the Judiciary and the Attorney General of Guam.

The Judicial Council has played an administrative role for Guam's Judiciary for the last 53 years. It was there when Guam's first generation under U.S. Citizenry created their first court called Island Court. It was there when the Superior Court of Guam and both Supreme Courts of Guam were enacted. The Judicial Council has adopted policies, job standards, set direction, approved budgets, handled personnel matters and built three (3) different courthouses in the old Guam Legislature, the old Agana Courthouse and the new Guam Judicial Center. The Judicial Council is older than every Judge and Justice, save one, who currently sits on the bench and has seen three generations of Judges serve as one of its member. As part of the third Court Reorganization Act, the Judicial Council is the one constant in Guam's local court system that is the forum needed to reorganize and guide the administration of Guam's Judiciary.

Having said this, the overall concept of today's bill would not be possible without the work of three individuals; specifically our Chairman, Senator F. Randall Cunliffe who has practiced as both Public Defender and Private Attorney for many years; Chief Justice Phillip Carbullido who recognized in form and writing the administrative role of the Judicial Council; and Presiding Judge Alberto C. Lamorena III who has maintained the Judicial Councils administrative role and adhered to the appellate powers and the rules of court the Supreme Court of Guam retains. Though each may differ with certain provisions in the bill, the intent remains true.

With that noted I would like to express some of Superior Court managements concerns. I also request that Presiding Judge Alberto C. Lamorena, Judges Joaquin Manibusan Jr., Steve Unpingco and Elizabeth Barret-Anderson be allowed to submit written testimony at a latter time as their schedule did not permit them to have one prepared by this morning.

Under Bill 48's Legislative intent as introduced; it is Superior Court management's position that Probation and Client Services remain with the Superior Court and that any

consolidation of services with other agencies, or more importantly, functions be combined and handled by those already existing with Superior Court of Guam.

The Superior Court diversified functions of Probation and Counseling and all they encompass are intricately involved as part of the day to day workings with the trial courts. They have direct bearing on the progress of the many cases, orders and decisions that are made; handling matters for victim, defendant, perpetrator and community alike. The overall cost of removing them from the court to the executive branch would be prohibitive and enormous at a time we are all trying to reduce cost. The combining of certain current executive functions under the trial court would not violate the separation of powers as other trial courts in the nation administer probation, counseling, monitoring and enforcement of court orders as part of their operations. This is seen in the very national movement such as drug courts which Bill 50 establishes for adults on Guam. I respectfully ask that this be considered in your deliberation of Bill 50.

Under Section 5 of the bill with regards to Supreme Court Composition, I share the position of Chief Justice Carbullido who when asked would support the addition of two Justices to the Supreme Court bench, as finances permit. Though Bill 25 -- which is also being heard today -- is admirable in its intent, the designation of Justices from the CNMI, Belau or the FSM has two potential issues of concern.

All three of Bill 25's jurisdictions render rulings based on their own local Constitution adopted by their own people for their own community, taking into account its relationship with other courts and the United States. Guam does not. Two of the jurisdictions do not require an ABA law degree, nor do they adopt all the court practices of our U.S. courts. Guam does. Thirdly, under (f) of this section, our own local Superior Court Judges will no longer sit as Justices, which I agree with. However, Justices from other jurisdictions who may not have an understanding of the legal or historical precedence set in Guam over the course of the last 53 years would now be allowed to make the appellate decision governing Guam's future. It is rare, if any, that a Supreme Court hears the same issue twice, so they are set in stone. Bill 25 does speak towards the need for designated

Justices, which underscores the need to expand the bench of the Supreme Court of Guam in the future.

Under Section 14 of Bill 48 concerning the composition of the Judicial Council, it is our position that the trial court Judges be given an equal voice on the Council and that the Chairperson be elected by the members. The trial court volume of work is such that one Judge handles more cases in one day than the Supreme Court handles in a year. This is not to in anyway meant to discount the importance of the either court, but highlight its differences and roles. Supreme Courts by nature, establish overall legal precedence and local interpretation that requires intensive research and lengthy deliberation that is not determined by time, but by the depth of legal issues. Once set, it is the law of the land unless overturned.

Superior Court on the other hand, as Guam trial court is governed by due process involving magistrates, arraignments, speedy trial, defendant and victim's rights; juries, ex-parte matters, restraining orders, warrants, writs of mandamuses, summons, motions, filing dates, court calendars, plea agreements, as well as progress, order to show cause, status, revocations, probation, counseling, child support, custody, guardianship, evidentiary, pre-trial and other such hearings. They handle on a daily basis juvenile, criminal felony and misdemeanor matters; civil, small claim, domestic, child support, probate and other matters. From this we enforce the many court orders that involve, but are certainly not limited to, monitoring, supervision, diversion, counseling, treatment, analyzing, educating, drug testing, restitution, protecting, sealing, levying, detaining, apprehending, securing persons and property, and so forth. Thus trial courts by their very nature require and involve more personnel, space and administration of resources.

Neither court nor their cases they handle is more important than the other. Each is the most important issue in the life of a litigant, defendant, victim and their legal representative. Thus I respectfully ask that each court have an equal voice on the Judicial Council which sets administratively policy and procedures, establishes resources and sets overall direction of the respective courts. Likewise, to my knowledge, all Chairpersons

of a board or government body is elected from among its members. As a co-equal branch the Judicial Council, like the Guam Legislature, should not only be allowed to establish its rules, but select its Chair from among the members and not have it established by law. Judges and Justices, like Senators, face the electorate at some point. This is not in any way meant to be disrespectful to the Chief Justice who is the head of the branch outside of the court administration, as the Speaker is outside of the Legislature's administration. The true power of both the Speaker and the Chief Justice is in overseeing the deliberation and decision of its members and not the individual Senators or Judges respective staff.

Under Section 15 concerning the power of the Judicial Council I would like to add the powers to lease, evict, sue on behalf of. These are provisions some of which are contained in existing statute and contracts.

Under Section 20 of this Bill, regarding Court Administrators, while our positions holds to separate administrations, we support that combining the court administration be a decision of the Justices and Judges of the Judicial Council of whom the employees also serve. Moreover, I feel that the two courts are already moving toward consolidating administrative resources without creating legal entanglements that could be created by external or permanent decisions not cognizant of the legal ramifications of cases or legal matters. As the two courts are seeing a reduction in force – currently Superior Court has reduced its force by 15% or 45 individuals with others pending—both courts are seeking to supplement or providing staff support with the remaining personnel. In addition, discussion will be initiated concerning the use of human resources, financial services, security and combining resources for common items such as supplies, copying machines and so forth to further reduce costs. This is being done without any specific law except that governing appropriation.

Under Section 21 regarding clerks of court; In line with the Chief Justice and other Judges, I feel that consolidating the clerk's office may in fact violate due process and the impartiality that is one of the basic foundations of a U.S. court proceeding. Quite frankly I have never heard of a U.S. Appellate or Trial Court without a Clerk of Court.

The very clerks who service the trial courts and handle filing in one court should not be the same to handle the appeal to the Supreme Court just from the appearance of lack of impartiality. Moreover, the very accessibility to the issues reviewed, discarded or openly pondered by a trial judge are not contained in court files so as to not undermine the very decision of the appellate level. It for this reason we do not combine and certainly safeguard judges bench notes, law clerk references, unaccepted plea agreements, jury selection proceedings or non-entered evidence (unless they be the issue). Sometimes financially expediency cannot take precedence over due process and individual rights.

Under Section 25 of the Bill regarding Marshal Services; Trial courts utilize 99.9% of the Marshal duties and currently provide security for the Attorney General, the Public Defender, Child Support, Erica's House and the Superior Court and Supreme Court main entrances. A US Marshal report on our court system pointed out that the Supreme Court of Guam Marshals were redundant security. Our Marshals willingly protect and safeguard both Judges and Justices alike in times of escape or threats, via patrols or direct intervention. Superior Court marshal serve some 60,000 documents and secure some 72,000 hearings a year. Superior Court could absorb the three Supreme Court Marshals and provide the services requested or required by the Supreme Court Justices.

Under Section 29: Probation, like Referees, is clearly a function of only the trial courts. We feel the appointment should remain with the Presiding Judge. The one area where issues directly involving the trial court procedures and practices that have been appealed have been in Probation. Therefore having the Supreme Court of Guam Justices being entangled in this area may recuse them from hearing matters before them. We believe Justices should be insulated from this one area and limited to overall personnel policy. The fact that the Justices have a hand in the selection of the Chief Probation officer who assigns and sets forth procedures may prompt defense attorneys to make this the first act of defense once beyond the trial courts. The other issues concerning combining the function of monitoring and testing parolees with probation is one that would be less costly by remaining with the courts.

As I wind down my testimony on Bill 48, I certainly would like to reiterate that these points of concerns on specific issues is for your deliberation and should not in anyway be viewed as non-support of the intent of the bill. The courts have borne their share of the government wide 20% cost reductions by doing more with less, being proactive, without overt laws dictating our actions. The Judges and Justices, despite opposing positions in some matters, continue to carry out their responsibilities and duties to make the courts less costly and burdensome on the General Fund or tax-payers. From receiving millions in Federal Funds, to reducing court-appointed costs by \$2.9 million over the last three years without a corresponding appropriation, to extending its networks or automation resources beyond to include local, federal, national and regional agencies, to enhancing security and law enforcement beyond the courts and so on.

I would like to thank Chairman Randy Cunliffe, Chief Justice Phillip Carbullido, Presiding Judge Alberto Lamorena and the judges of the Superior Court for their perseverance, patience and forthrightness in addressing this issue from the start and taking into account both courts concerns. We have taken the opportunity to express our positions in a manner that prompts discussion as opposed to debate. In the end as this generation of jurists, we are all seeking answers and resolutions to the changes our entire Government is going through while protecting individual rights and doing what is best to upgrade services to the community while reducing costs. The first step taken in respect is the greatest step towards unity.

Before closing I would also like to thank Chairman Cunliffe for Bill 50 which by law recognizes the Adult Drug Court and will allow us to receive the half a million in federal funding.

I, the Chief Probation Officer, Chief Marshal and Clerk of Court are now prepared to respond to any questions the committee may have. Thank you and si yu'os ma'ase.

Douglas B. Moylan
Attorney General



Charles H. Troutman
Compiler of Laws

Office of the Attorney General

March 18, 2003

Senator F. Randall Cunliffe
Chairman, Committee on Judiciary and Transportation
27th Guam Legislature
Hagåtña, Guam

Re; Bill No. 48

Dear Mr. Chairman,

I wish to testify regarding Bill No. 48 on behalf of Douglas Moylan, Attorney General, who is off-island this week attending to matters in Washington, DC. His position on Bill No. 48 relative to court reorganization is that the only matter that he would like to have changed is the composition of the Judicial Council. The Attorney General believes that both he and you, Mr. Chairman, should retain your seats. He believes that part of the duties to which he was elected was his participation on the Judicial Council and that this should remain.

In my experience, the membership of non-judicial members of the Council has had a mixed history. The District court judge, Judge Duenas and his predecessors, sat on the Council up until 1974, when Judge Duenas recused himself because he believed that his court was no longer a "local court" having had all of its local jurisdiction removed in 1975 by the Reorganization Act of 1974.

Senator Concepcion Barrett, who held your position in 1975-76, attended some meetings but refused to attend when matters, such as employee discipline hearings were held. She believed that this was not a function for a senator. I attended as Attorney General at that time and, according to the custom, wrote the bar exams and participated in their grading with the other non-judicial attorney members of the council. Then, in 1978, I believe, when the Pacific Islands Committee held hearings on the future Organic Act changes that would lead to our present supreme Court, I raised the Organic Act issue to the panel. Judge Ely cut me off with the comment that such an arrangement on the Judicial Council was a very good idea. I have not had the opportunity to raise the question in a court case since, so in my mind, the Organic Act issue is still unresolved and there is no clear cut prohibition to the practice. It may be, as Judge Ely said, a very good way to run the courts. Certainly the Attorney General believes so.

I have several comments on the provisions of Bill No. 48. First, amended §3103 should read "original and appellate" when referring to the jurisdiction of the Supreme Court. Section 4104 of 7 GCA permits the Governor and Legislature to bring declaratory judgments directly to the Supreme Court in certain circumstances. I believe we need reference to original jurisdiction, for this is what it is, in §3103 to avoid any problems in the future.

You need to add a new section pointing to where the judges' and justices' salaries in actual dollars are now found. The former CCP §123, which contained the figures and to which the references point (as codified in the GCA) in the present law, was accidentally or intentionally left out of the bill that eventually created the Supreme Court. It was in the original draft as §2206, but there is now no Article 2 of Chapter 2 in the code. I have searched and can find no actual statement in law as to what the salaries should be. I believe that they are established by the Hay Study in Level L, but I am not sure on this. But somehow, you should make a pointer to whatever the present salaries are for these positions as there are a number of sections that refer to them and now have nothing to refer to.

It is unclear from the version of the Bill you sent to me just what is the status of designated judges of the Supreme Court. Will they still exist and from where will they come?

Therefore, I respectfully urge passage of the Bill No. 48 with the changes that have been suggested.

Sincerely yours,



CHARLES H. TROUTMAN
Compiler of Laws

TESTIMONY OF JUDGE KATHERINE ANN MARAMAN BEFORE THE COMMITTEE
ON JUDICIARY AND TRANSPORTATION RE BILL NO. 48

Mr. Chairman, Senator Cunliffe, and Members of the Committee on Judiciary and Transportation I appear today in opposition to the enactment of Bill No. 48., *AN ACT TO RE-ORGANIZE THE JUDICIARY AS THE THIRD CO-EQUAL AND INDEPENDENT BRANCH OF THE GOVERNMENT OF THE TERRITORY OF GUAM; TO DESIGNATE THE JUDICIAL COUNCIL AS HEAD OF A UNIFIED JUDICIARY; AND TO AMEND TITLE 7 AND 19 OF THE GUAM CODE ANNOTATED RELATIVE TO THE JUDICIARY AND ITS OPERATIONS.*

I recall that one of the early premises in discussions about creation of the Guam Supreme Court was the desire to provide litigants meaningful access to the appellate process. Few could afford the expense of sending their counsel to San Francisco or Honolulu to appear before a panel of judges of the Ninth Circuit Court of Appeals, many of whom were unfamiliar with Guam, its customs, its commerce and its laws. There was an outcry for fair and impartial appellate hearings before locally appointed Justices.

Due process requires nothing less than a fair and impartial hearing before an independent tribunal. I suggest that enactment of Bill No. 48 jeopardizes this fundamental tenet of due process. The continuing independence of the tribunal, Justices of the Guam Supreme Court, is questionable because this measure causes excessive entanglement between Justices and judges and the higher and lower courts.

The Justices and two judges will sit as equals on the Judicial Council according to section 14. Governance demands familiarity. Just as this legislative body does -- members of the council will have to meet together frequently to discuss issues and reach compromises. There will have to be give and take as difficult personnel matters, expenditure priorities and budget questions and procurement decisions are addressed. If the council follows the philosophy of the Unified Judiciary Committee then there will be numerous committees requiring judges and Justices to work together on broad policy issues.

Judicial ethics demand that jurists disqualify themselves with even an appearance of impropriety. I believe that this measure creates numerous opportunities for appearances of impropriety. If the Justices depend on support from judges on the Council in financial and other matters will litigants begin to wonder if they have gotten a fair appellate hearing when one of those judges has ruled against them and the ruling is sustained? Is it in the best interest of the judicial system to place Justices and judges in the position of explaining that equality and interdependence as members of the Council is discarded during appellate hearings?

If Bill No. 48 is enacted the Justices will become involved in the day to day management of the Superior Court -- the lower court from which they are supposed to be independent. Under Section 20 *et seq.* the Justices will have appointing authority over the Administrator of the Courts and key middle management of the Superior Court. With the authority to hire comes accountability for the actions of the employees and usually that means that the appointing authority engages in direct supervision. And when the Justices are managing the lower court there will be no independent tribunal to hear appeals from the lower court. A litigant's fundamental right to due process is compromised.

I recommend that the Committee consider separation of the administration of the Courts as the most effective means to fulfill the due process mandate. I refer to Section 3 of this measure. The Supreme Court should administer itself as it chooses and as it has successfully done for the past seven years.

In my eight years as a judge I have been a member of a Judicial Council composed of the three full-time Justices, three judges, the Attorney General and Chair of this Committee with limited authority over policy; a Judicial Council composed of judges and community members that addressed matters only pertaining to the Superior Court and the Unified Judiciary Committee composed of Justices, judges and court administrators with an advisory role. In my opinion the "council" that was most effective was the judicial council composed of judges and community members that addressed matters pertaining only to the Superior Court.

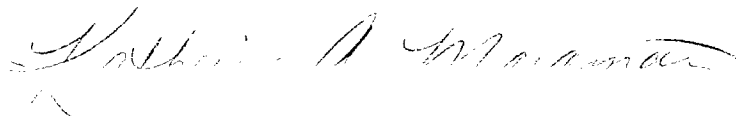
The seven judges and community members sat as equals. We disagreed about some issues and did not always decide matters unanimously. We did not always agree with the management's recommendations. We all were free to express our opinions without reservation or fear. But we took care of personnel appeals that had lingered for many months, we engaged new programs such as Erica's House, the marshal reserve, and the juvenile drug court and expanded the CJIS. What the council did not do is become embroiled in the day to day operations of the court. We did not select nor consent to the selection of any person for any position in the Superior Court. We did not choose vendors. We did not assign duties to personnel other than our immediate chamber staff. It worked to let the court administrator and middle management do their jobs.

I would like to take a minute to illustrate my point. Several years ago it became apparent that indigent defense expenses were spiraling out of control. The Superior Court had a

huge list of payables and mounting invoices for ongoing proceedings. In order to address this problem the management began using all lapses at the end of a fiscal year to pay lawyers and reduced the mountain of debt. Meanwhile the Judicial Council decided to issue a request for proposal for an alternative defense firm to handle the bulk of cases from which the Public Defender conflicted. As a result current indigent defense costs dropped to a manageable level for the first time in several years.

When the government's cash shortage created payment problems the Superior Court suggested to the Legislature that certain court fees be increased and the new revenues used to pay indigent defense costs. That proposal has languished for the past five months before the Unified Judiciary Committee. When the infusion of \$200,000 is gone then indigent defense costs are once again unfunded and invoices cannot be paid. The Supreme Court continues to expect the Superior Court to resolve this issue but its only action on the issue has further aggravated the problem. In November 2002 the Supreme Court increased fees for investigators by 66%, interpreters by 25% and attorneys by 20%. I find myself choosing lawyers for indigents among the attorneys still willing to honor their duty to defend the defenseless and who still submit their invoices at the \$75 per hour rate. Frankly, continued delays in addressing this problem aggravates the situation further. Frankly, the lower court has no way to propel the higher court into action.

In conclusion I respectfully ask the Committee to reconsider this measure. There has never been nor will there ever be any doubt that the Supreme Court is head of the judicial branch. The Supreme Court fulfills its solemn duty of declaring the law of Guam. It should do so without being embroiled in administration of the courts.



JANET HEALY WEEKS
P.O. Box 20969 GMF
Barrigada, Guam 96921

25 March 2003

Office of Senator F. Randall Cunliffe
I Mina Bente Sietè Na Liheslaturan Guåhan
Chairman
Committee on Judiciary and Transportation
Ada's Commercial & Professional Center
138 E. Marine Drive
Hagåtña, Guam 96910

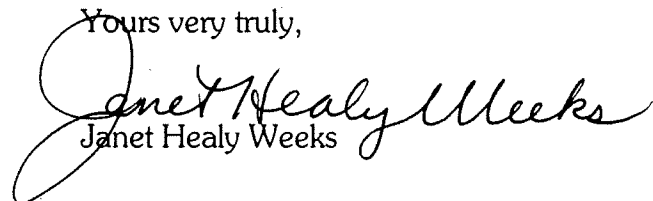
Dear Senator,

As you know, I was present at the hearing you conducted on 19 March 2003 regarding **Bills 25 and 48**. Having heard the testimony of witnesses and comments of the panel and now being fully informed, I give my endorsement to the proposed legislation.

As you pointed out, these bills are a product of negotiation and therefore not perfect, but their enactment will be a giant step towards an integrated and independent Judiciary.

I welcomed the civility shown at this hearing by all participants. Surely that will bring achievement of considered and respectful interaction among the tiers of our Court closer to reality.

Yours very truly,


Janet Healy Weeks

cc: Chief Justice of Guam
Presiding Judge, Superior Court of Guam

V. FINDINGS AND RECOMMENDATION

The Committee finds that Bill 48 (COR) as amended would further strengthen the independence and development of Guam's Judiciary by consolidating administrative authority with the Judicial Council, of which Judges and Justices shall make full determination, as to the operations of the Judiciary. The Committee also finds that the consolidation of administrative authorities and court operations will improve efficiency. The Committee further finds that there will be an immediate cost savings for the Courts of Guam with the elimination of duplicitous court positions.

The Committee also finds that there remains a need for additional full-time associate justices to hear all matters before the Supreme Court of Guam, as suggested by Senator Ray Tenorio at the hearing and by Mr. Anthony P. Sanchez. The issue also surfaced during budget hearings conducted by the Committee on Appropriations and Budgeting in January of this year. At that hearing, Chief Justice Carbullido suggested the need for an increase in the number of justices.

The Committee finds that in most jurisdictions, matters pending before appellate courts are determined by a panel of not less than five (5) justices. However, the current fiscal situation does not allow for the costs for additional justices to be incurred by the government at this time. The Committee intends to entertain this matter should it be raised at the appropriate time in concert with the fiscal realities.

Based on the submission of these testimonies, the Committee has incorporated the following amendments:

- (1) Section 8 of this bill has been amended to provide compensation for retired Justices, designated and assigned judicial duties by the Chief Justice of the Supreme Court, as recommended by Speaker Vicente C. Pangelinan in Bill 25(COR).**
- (2) Section 9 of this bill has been amended to vest the Supreme Court with original jurisdiction over Attorney Discipline Matters as recommended by Compiler of Laws, Attorney Charles Troutman.**
- (3) Section 12 of this bill has been amended to remove the power of the Presiding Judge of the Superior Court of Guam to "preside at any session of the Court, which he or she attends", as recommended by Judge Michael J. Bordallo of the Superior Court of Guam and concurred by Attorney Troutman.**
- (4) Section 15 of this bill has been amended to vest the power to lease, evict, and sue in behalf of the Courts, relative to Court properties, equipment, and facilities, as recommended by Mr. Anthony Sanchez, Superior Court**

- (5) Section 19 of this bill has been added to authorize compensation for retired Justices designated and assigned judicial duties by the Chief Justice of the Supreme Court, as included in Bill 25(COR) sponsored by Speaker Vicente C. Pangelinan.**
- (6) Section 22 of this bill has been amended to eliminate the consolidated position of Clerk of Courts and restores the language authorizing the Superior Court Clerk and the Supreme Court Clerk as recommended by Committee Member, Senator Tina R. Muña-Barnes.**
- (7) Section 34 of this bill has been added to provide immunity from liability to members of the Guam Bar Ethics Committee, designated Ethics Prosecutors, and their employees or agents relative to the discipline of attorneys and to the unauthorized practice of law, as requested by the Guam Bar Association and recommended by Supreme Court Chief Justice F. Philip Carbullido in correspondence to Committee Chairman F. Randall Cunliffe.**
- (8) Section 39 of this bill has been added to protect the retirement and/or pension benefits of retired Justices designated and assigned judicial duties by the Chief Justice of the Supreme Court, as included in Bill 25(COR) sponsored by Speaker Vicente C. Pangelinan.**

Therefore, it is the finding and recommendation of the Committee on Judiciary & Transportation for Bill 48 (COR) to pass as amended, and for the Committee on Rules and Health to consider Bill 48 (COR) as amended, for placement on the next session agenda.

Fred Edg
4/2/03

**MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN
2003 (FIRST) Regular Session**

Bill No. 48(COR)

**(As Substituted by the Committee on
Judiciary and Transportation)**

Introduced by:

F.R. Cunliffe

J.M. Quinata

**AN ACT TO RE-ORGANIZE THE JUDICIARY AS THE
THIRD CO-EQUAL AND INDEPENDENT BRANCH OF
THE GOVERNMENT OF THE TERRITORY OF GUAM;
TO DESIGNATE THE JUDICIAL COUNCIL AS HEAD OF
A UNIFIED JUDICIARY; AND TO AMEND TITLE 7 AND
19 OF THE GUAM CODE ANNOTATED RELATIVE TO
THE JUDICIARY AND ITS OPERATIONS**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Intent.** The provisions contained in this Act
3 hereby unify and reorganize the judiciary of Guam as the third co-equal and
4 independent branch of government. This Act contains significant amendments
5 to Title 7 of the Guam Code Annotated relative to the Judicial Council, the
6 Supreme Court of Guam, the Superior Court of Guam and the appointment
7 and consolidation of the officers of the court.

1 *I Mina' Bente Siete Na Liheslaturan Guåhan* finds that other legislation
2 may be necessary to address the further reorganization of the Court and the
3 separation of powers relative to the Parole Board, the Pardon Review Board,
4 the Probation Office, Court Administration and Client Support Services in an
5 effort to further enhance the rights of those being served with or by the legal
6 process of Guam.

7 With the passage of this Act, the Judicial Council of Guam shall serve as
8 head of the Judicial Branch of government for the Territory of Guam. *I*
9 *Liheslaturan Guåhan* further recognizes that there remains a need to protect the
10 integrity of the Judiciary from infraction by the other branches of government
11 that must be resolved either through the establishment of the Judiciary by
12 virtue of an amendment to the Organic Act of Guam by the United States
13 Congress in behalf of the government of Guam; or preferably through an act
14 of self-government by virtue of the adoption of a Constitution by the people of
15 Guam.

16 **Section 2.** A new Section 1100.01 is added to Chapter 1, Division 1 of
17 Title 7 of the Guam Code Annotated as follows:

18 **§1100.01. Legislative Intent.** The legislature intends herein to

1 recognize and empower the Supreme Court of Guam as the highest
2 court of our Territory with oversight over the judicial branch.

3 **Section 3.** Section 2101(a) of Chapter 2, Division 1 of Title 7 of the Guam
4 Code Annotated is hereby amended as follows:

5 **§2101. Courts of Justice in General.** (a) The courts of justice of the
6 territory of Guam shall consist of the Supreme Court of Guam and the
7 Superior Court of Guam. The Supreme Court of Guam shall be the
8 highest Court of Guam and shall have supervisory, but not
9 administrative, authority over the Superior Court of Guam and all other
10 local courts in Guam in accordance with rules and regulations
11 promulgated by the Supreme Court. The Supreme Court may, by rules
12 of court, create such divisions of the Supreme and Superior Courts as
13 may be desirable, and may designate which of the divisions of the
14 Superior Court are to be courts of record and which shall be courts not
15 of record; **provided**, however, that four (4) such divisions of the
16 Superior Court shall continue, one being the Traffic Division, not a court
17 of record, one being the Small Claims Division, not a court of record, a
18 third being the Family Division, a court of record, and the fourth, being

1 the Drug Court, a court of record. The Supreme Court of Guam and the
2 Superior Court of Guam, **except** for the Traffic and Small Claims
3 Divisions of the Superior Court, are courts of record.

4 **Section 4.** A new Section 2102 is added to Chapter 2, Division 1 of Title
5 7 of the Guam Code Annotated as follows:

6 **§2102. Administration of the Courts of Guam.** The Judicial Council
7 shall administer the operations of the Supreme Court and Superior
8 Court and shall promulgate rules, regulation and policy governing
9 personnel, procurement, finance and travel for the Judicial Branch. The
10 Judicial Council shall adopt a unified pay schedule for the employees of
11 the Judicial Branch. The Judicial Council shall recommend and submit,
12 under the signature of its Chairperson, the annual budget of the Judicial
13 Branch to the Guam Legislature by the first day of May of each year.

14 **Section 5.** Subsections 3103 (a), (e), (f), (l), and (m) of Chapter 3, Division
15 1 of Title 7 of the Guam Code Annotated, are hereby amended to read as
16 follows:

17 **§3103. Supreme Court; Composition.** (a) The Supreme Court of Guam
18 is established pursuant to 22A of the Organic Act of Guam and has such

1 original and appellate jurisdiction as is prescribed by the Organic Act of
2 Guam and by this Title. The Supreme Court shall consist of three (3)
3 full-time Justices who shall be appointed by I Maga'láhen Guåhan, the
4 Governor of Guam, subject to the advice and consent of the Legislature.

5 Two (2) of the full-time Justices shall be Associate Justices and one (1)
6 shall be Chief Justice, who shall be selected as provided herein. The

7 ~~Supreme Court shall consist of a full-time Chief Justice selected as~~
8 ~~herein provided, two (2) full-time Associate Justices, and up to four (4)~~
9 ~~part-time Associate Justices, in such numbers as are determined by the~~
10 ~~Judicial Council, in addition to Superior Court Judges as assigned by the~~
11 ~~Presiding Judge of the Superior Court upon request of the Chief Justice.~~

12 ~~Initially, the Governor shall appoint four (4) part-time Associate~~
13 ~~Justices. All such appointments are subject to the advice and consent of~~
14 ~~the Legislature.~~

15 (e) The term *designated justice* refers to a judge or justice who is
16 qualified by this Title to sit any Judge of the Superior Court or
17 other Judge from some other jurisdiction who is qualified by this
18 Title to sit.

1 (f) A Superior Court judge who is elevated to the Supreme Court of
2 Guam, may sit as a designated judge of the Superior Court at the
3 direction of the Chief Justice as requested by the Presiding Judge
4 of the Superior Court for the purpose of hearing matters, which
5 were pending before the justice, immediately prior to his or her
6 elevation from the Superior Court to the Supreme Court. ~~In~~
7 ~~addition to the Supreme Court Justices, a Superior Court Judge~~
8 ~~may sit as a designated Justice at the direction of the Presiding~~
9 ~~Judge of the Superior Court as requested by the Chief Justice if no~~
10 ~~conflict exists and the designated Superior Court Judge did not~~
11 ~~hear the matter under appeal in the court below. While so sitting~~
12 ~~as a designated Justice, the Judge shall have the same powers as~~
13 ~~an Associate Justice. A Superior Court Judge so sitting shall~~
14 ~~receive no additional compensation.~~

15 (l) In the event of the absence or disqualification of the Chief Justice,
16 the senior full-time Associate Justice, who is the Justice with the
17 longest years of service in the Supreme Court of Guam, shall act
18 as Chief Justice. ~~If no full-time Justice is available, then one (1) of~~

1 ~~the part-time Associate Justices shall act as Chief Justice, in order~~
2 ~~of seniority. If no full-time or part-time Justice is available, then~~
3 ~~one (1) of the Superior Court Judges sitting as a designated Justice~~
4 ~~shall act as Chief Justice, in order of seniority.~~

5 (m) In the event of a disqualification, conflict, or recusal, of the Chief
6 Justice in a given matter, the senior full-time Associate Justice
7 shall act as Chief Justice as to that matter in making assignments
8 of Justices ~~or Judges~~ and in other procedural matters. If no full-
9 time Justice is available, then one (1) designated Justice shall act as
10 Chief Justice, ~~of the part-time Associate Justices shall act as Chief~~
11 ~~Justice in the matter,~~ in order of seniority. ~~If no full-time or part-~~
12 ~~time Justice is available, then one (1) of the Superior Court Judges~~
13 ~~sitting as a designated Justice shall act as Chief Justice, in order of~~
14 ~~seniority.~~

15 **Section 6.** Subsections 3103(d) and (g), of Chapter 3, Division 1 of Title
16 7 of the Guam Code Annotated are hereby repealed and all existing sub-items
17 shall be renumbered accordingly:

18 ~~§3103(d) The term en banc refers to all Justices (both full-time and~~

1 ~~part time) sitting together. If any Justice is unavailable or~~
2 ~~disqualified, the Chief Justice shall fill the position with a~~
3 ~~designated Justice; and~~

4 ~~(g) A part time Justice or a designated Justice may sit as a~~
5 ~~designated Judge of the Superior Court at the direction of~~
6 ~~the Chief Justice as requested by the Presiding Judge of the~~
7 ~~Superior Court. While so sitting, the Justice shall have all~~
8 ~~the powers of a judge of the Superior Court.~~

9 **Section 7.** Subsection 3104 (a) of Chapter 3, Division 1 of Title 7 of the
10 Guam Code Annotated, is hereby amended as follows:

11 **§3104. Internal organization of the Supreme Court. (a) Decisions**
12 **concerning substantive matters.** In hearings and determining the
13 merits of cases before it, the Supreme Court shall normally sit in a three-
14 Justice panel, ~~but as authorized by the Court's Rules, it may sit en banc,~~
15 ~~and all members of the panel or the en banc court, as the case may be,~~
16 ~~shall participate in the decision of each case heard by it.~~

17 **Section 8.** Section 3106(1)(i)(ii) and (iii) of Chapter 3, Division 1, Title 7
18 of the Guam Code Annotated, is amended as follows:

1 **§3106. Compensation.** Until a specific salary is set for the Justices by
2 another statute, the annual salary of the Chief Justice shall be Three
3 Thousand Dollars (\$3,000) higher than the annual salary of the
4 Presiding Judge of the Superior Court, and the annual salary of each of
5 the full-time Associate Justices shall be Two Thousand Dollars (\$2,000)
6 less than the annual salary of the Chief Justice.

7 (1) The hourly salary of a justice pro-tempore ~~part-time Justice~~
8 shall be the same as the hourly salary of a full-time Associate
9 Justice; provided, that:

10 (i) The total annual amount of salary may not exceed the
11 annual salary of a full-time Justice.

12 (ii) No justice pro-tempore ~~part-time Justice~~ may be paid for
13 more than (40) hours per week; and

14 (iii) No justice pro-tempore ~~part-time Justice~~ may be paid for
15 more than eight (8) hours per day.

16 **Section 9.** Subsection 3107(b) of Chapter 3, Division 1 of Title 7 of the
17 Guam Code Annotated is hereby amended as follows:

18 **§3107 (b) Additional Authority.** Its authority also includes jurisdiction

1 of original proceedings for mandamus, prohibition, injunction, and
2 similar remedies to protect its appellate jurisdiction ~~and to effectuate its~~
3 ~~supervisory authority over the courts below.~~ The Supreme Court shall
4 have jurisdiction of all appeals arising from judgments, final decrees, or
5 final orders of the Superior Court in criminal cases and in civil cases and
6 proceedings. The Supreme Court has original and appellate jurisdiction
7 over attorney disciplinary matters including but not limited to
8 admissions, qualifications, and standards of practice; and supervisory
9 jurisdiction over all inferior courts in Guam and may make and
10 promulgate rules governing the practice and procedure in the courts.

11 **Section 10.** Subsection 3109 (b) of Article 1, Chapter 3, Division 1 of
12 Title 7 of the Guam Code Annotated is hereby repealed as follows:

13 ~~§3109 (b) I Liheslaturan Guahan finds that it is critical that positions on~~
14 ~~the Supreme Court be filled promptly. Therefore, if I Maga'lahaen~~
15 ~~Guahan fails to make any appointment within ninety (90) days of any~~
16 ~~vacancy, or within ninety (90) days of I Liheslaturan Guahan's rejection~~
17 ~~of any previous appointment, the appointment shall be made by the~~
18 ~~speaker of I Liheslaturan Guahan of a nominee who would be qualified~~

1 for appointment by the Governor.

2 Section 11. Subsections 4101(b) and (c) of Article 1, Chapter 4, Division
3 1 of Title 7 of the Guam Code Annotated are hereby amended as follows:

4 **§4101. Superior Court: nature and composition.**

5 (b) If the Judicial Council ~~Chief Justice~~ determines that additional
6 Judges are required for the proper dispatch of business, the Chief
7 Justice ~~he or she~~ shall so notify the Governor, who, if he or she
8 concurs, shall ~~declare the existence of the new position and shall~~
9 ~~proceed to~~ appoint a new Judge as in the case of a vacancy;
10 ~~provided, that no such declaration nor appointment shall take~~
11 ~~effect until the Legislature has funded the position and the~~
12 ~~personnel required to assist the new Judge.~~

13 (c) If, for any reason, a vacancy is created in the Superior Court and
14 the Judicial Council ~~Chief Justice~~ determines that the business of
15 the court is such that no new judge is required to fill the vacancy,
16 the Chief Justice ~~he or she~~ shall so declare, and upon such
17 declaration, no Judge shall be appointed to fill the vacancy until
18 the Judicial Council ~~Chief Justice~~ again determines that a need

1 exists and proceeds in the manner prescribed by Subsection (b) of
2 this §4101.

3 **Section 12.** Section 4103 of Article 1, Chapter 4, Division 1 of Title 7 of
4 the Guam Code Annotated is hereby amended as follows:

5 **§4103. Powers of the Presiding Judge.** The Presiding Judge of the
6 Superior Court shall prescribe the order of business and assign the cases
7 to the Judges, Referees, and Hearing Officers of the Court in
8 conformance with rules and regulations promulgated by the Supreme
9 Court. ~~The Presiding Judge may preside at any session of the Court,~~
10 ~~which he or she attends.~~ During the Presiding Judge's ~~his or her~~
11 temporary absence or temporary disability, his or her duties shall be
12 performed by his or her designated appointee. Appointment shall be on
13 a rotating basis among all the judges of the Superior Court. The
14 Presiding Judge shall be responsible for preparing the annual budget of
15 the Superior Court and its divisions for the review, recommendation
16 and approval of the Judicial Council.

17 **Section 13.** Section 4205 of Article 2, Chapter 4, Division 1 of Title 7 of
18 the Guam Code Annotated is amended as follows:

1 § 4205. Referees. Small claims cases may be heard by any Judge of the
2 Superior Court of Guam, ~~or the Presiding Judge of the Superior Court~~
3 ~~may appoint one or more small claims referees from among member of~~
4 ~~the Guam Bar Association, with the concurrence of the Judicial Council,~~
5 ~~to hear small claims cases pursuant to court rules, who shall have the~~
6 ~~power of a Superior Court Judge in respect to such small claims matters.~~

7 However, the Presiding Judge of the Superior Court may nominate one
8 or more small claims referees from among the members of the Guam
9 Bar Association, with the approval of the Judicial Council. Referees shall
10 hear small claims cases pursuant to court rules, and shall have the
11 power of a Superior Court Judge in respect to such small claims matters.

12 Such appointments for referees shall be for ~~six months~~ one year or less.

13 ~~Incumbent referees may be reappointed by the Judicial Council for~~
14 ~~additional terms of six months or less. The Judicial Council may~~
15 reappoint incumbent referees for additional terms of one year or less.

16 Referees may be disqualified from hearing a matter in the same manner
17 as a Judge of the Superior Court may be disqualified.

18 Section 14. Section 5101 of Chapter 5, Division 1 of Title 7 of the Guam

1 Code Annotated is hereby amended as follows:

2 **§5101. Judicial Council.** (a) There shall be a Judicial Council (the
3 “Council”). ~~that shall consist of eight (8) members: the Attorney General~~
4 ~~of Guam, the Chairman of the Judiciary and Criminal Justice Committee~~
5 ~~of the Legislature or its successor committee, or his or her designee, the~~
6 ~~Presiding Judge of the Superior Court, two (2) additional judges of the~~
7 ~~Superior Court appointed by the Presiding Judge, which shall rotate~~
8 ~~among the judges of the Superior Court every three years, the Chief~~
9 ~~Justice of the Supreme Court, and the two full-time Associate Justices of~~
10 ~~the Supreme Court. The chairperson of the Council shall be selected~~
11 ~~from among the members of the Council on a three-year rotational~~
12 ~~basis, the chairperson shall not succeed himself or herself~~ All full-time
13 Justices of the Supreme Court shall sit on the Judicial Council. Two (2)
14 Superior Court Judges shall also sit on the Judicial Council, which shall
15 include the Presiding Judge who shall appoint the remaining judge.
16 Should a Supreme Court member leave the bench, then the Presiding
17 Judge shall remove one Superior Court member until such time as a
18 new Supreme Court justice is nominated, confirmed and seated on the

1 Supreme Court. The Chairperson of the Council shall be the Chief
2 Justice. In the event of absence of the Chief Justice, the senior full-time
3 Associate Justice shall act as Chairperson.

4 ~~(b) The Council shall operate in a wholly nonpartisan manner. The~~
5 ~~Chief Justice of the Supreme Court, in the event of his or her absence,~~
6 ~~or absence of other justice, may appoint from among the Justices an~~
7 ~~alternate to sit on the Judicial Council. The Presiding Judge, in his or~~
8 ~~her absence, or absence of any other Superior Court Judge, may~~
9 ~~appoint from among the Judges an alternate to sit on the Judicial~~
10 ~~Council. The Presiding Judge, in his or her absence, or the absence of~~
11 ~~the other Superior Court Judge, may appoint from among the Judges~~
12 ~~an alternate to sit on the Judicial Council to ensure an adequate~~
13 ~~number of members from the Superior Court of Guam.~~

14 (c) The term of each the member of the Council ~~shall be for the term of~~
15 ~~such member's respective office. appointed by the Presiding Judge~~
16 ~~shall be for three (3) years. If a member is replaced, the replacement~~
17 ~~member shall only serve out the remaining term of the member~~
18 ~~replaced.~~

1 ~~(d) Each member of the Council shall be a resident of Guam and a~~
2 ~~citizen of the United States. The quorum of the Council shall be a~~
3 ~~majority of the sitting members, whether present or not. The vote of a~~
4 ~~majority of the sitting members shall be required for any action by~~
5 ~~the Council.~~

6 ~~(e) No act of the Council shall be valid except with the concurrence of no~~
7 ~~less than the majority of all of its members. The Council shall~~
8 ~~promulgate its own rules for its conduct and operation. Said rules~~
9 ~~shall include provisions designed to comply with the spirit and~~
10 ~~intent of 5 GCA Chapter 8, the Open Government Law of Guam.~~

11 ~~(f) The Council shall promulgate its own rules for its conduct and~~
12 ~~operation. Said rules shall include provisions designed to comply~~
13 ~~with the spirit and intent of the Open Government Law of Guam (5~~
14 ~~GCA Chapter 8). The Council shall be attached to the judicial branch~~
15 ~~of the government of Guam.~~

16 ~~(g) The council shall be attached to the judicial branch of the~~
17 ~~government of Guam for purposes of administration.~~

18 **Section 15.** Section 5102 of Chapter 5, Division 1 of Title 7 of the Guam