



Office of the Governor of Guam

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NOV 13 2003

RECEIVED: 1:38 (JAM)
REGISTRY: #

Felix Perez Camacho
Governor

Kaleo Scott Moylan
Lieutenant Governor

10 NOV 2003

The Honorable Vicente C. Pangelinan
Speaker Mina 'Bente Siete Na Liheslaturan Guåhan
Twenty-Seventh Guam Legislature
155 Hesler Street
Hagåtña, Guam 96910

Dear Speaker Pangelinan:

Transmitted herewith is Bill No. 48 (COR), "AN ACT TO REORGANIZE THE JUDICIARY AS THIRD CO-EQUAL AND INDEPENDENT BRANCH OF THE GOVERNMENT 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," now designated as Public Law 27-31.

Sincerely yours,

[Handwritten signature of Felix P. Camacho]

FELIX P. CAMACHO
I Maga'lahaen Guåhan
Governor of Guam

Attachment: a copy of the overridden bill is attached

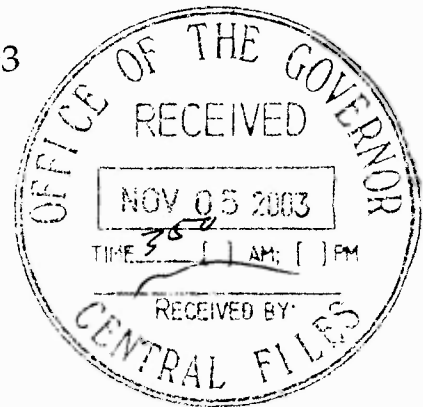
cc: The Honorable Tina Rose Muna-Barnes
Senator and Legislative Secretary



MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN
TWENTY-SEVENTH GUAM LEGISLATURE
155 Hessler Place, Hagåtña, Guam 96910

November 5, 2003

The Honorable Felix P. Camacho
I Maga'lahen Guåhan
Ufisinan I Maga'lahi
Hagåtña, Guam 96910



Dear *Maga'lahi* Camacho:

Transmitted herewith are Substitute Bill Nos. 48(COR), 53(COR), 56(COR), 83(COR), 91(COR), and the line-item vetoes of Sections 30, 31, 35, 36, 45(b) and 46, all of Chapter IV of Public Law 27-29, which were overridden by *I Mina'Bente Siete Na Liheslaturan Guåhan* on October 31, 2003, notwithstanding your veto.

Sincerely,

TINA ROSE MUÑA BARNES
Legislative Secretary

Enclosures (6)

CFI-1103-3663

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

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Substitute Bill No. 48 (COR), "AN ACT TO RE-ORGANIZE THE JUDICIARY AS THE THIRD CO-EQUAL AND INDEPENDENT BRANCH OF THE GOVERNMENT 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", returned without approval of *I Maga'lahaen Guåhan*, was reconsidered by *I Liheslaturan Guåhan* and after such consideration, did agree, on the 31st day of October, 2003, to pass said bill notwithstanding the veto of *I Maga'lahaen Guåhan* by a vote of ten (10) Members.

vicente (ben) c. pangelinan
Speaker

Attested:



Tina Rose Muña Barnes
Senator and Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 5th day of November, 2003, at 3:50
o'clock P.M.



Assistant Staff Officer
Maga'lahaen's Office

Public Law No. 27-31

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

Bill No. 48 (COR)

As substituted by the Committee on
Judiciary and Transportation;
as further substituted by the Committee
on Judiciary and Transportation on the Floor;
and as amended on the Floor.

Introduced by:

F. R. Cunliffe
J. M. Quinata
F. B. Aguon, Jr.
J. M.S. Brown
C. Fernandez
Mark Forbes
L. F. Kasperbauer
R. Klitzkie
L. A. Leon Guerrero
J. A. Lujan
T. R. Muña-Barnes
v. c. pangelinan
R. J. Respicio
Toni D. Sanford
Ray Tenorio

**AN ACT TO RE-ORGANIZE THE JUDICIARY AS THE
THIRD CO-EQUAL AND INDEPENDENT BRANCH OF
THE GOVERNMENT 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

1 amendments to Title 7 of the Guam Code Annotated relative to the Judicial
2 Council, the Supreme Court of Guam, the Superior Court of Guam and the
3 appointment and consolidation of the officers of the Court.

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

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

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

21 **"§1100.01. Legislative Intent.** *I Liheslaturan Guåhan* intends
22 herein to recognize and empower the Supreme Court of Guam as the
23 highest Court of Guam with oversight over the Judicial Branch."

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

26 "(a) The Courts of justice of Guam shall consist of the Supreme

1 Court of Guam and the Superior Court of Guam. The Supreme Court of
2 Guam shall be the highest Court of Guam and shall have supervisory,
3 but not administrative authority over the Superior Court of Guam and
4 all other local courts in Guam in accordance with rules and regulations
5 promulgated by the Supreme Court. The Supreme Court may, by rules
6 of court, create such divisions of the Supreme and Superior Courts as
7 may be desirable, and may designate which of the divisions of the
8 Superior Court are to be courts of record and which shall be courts not
9 of record; provided, however, that four (4) such divisions of the
10 Superior Court shall continue, one being the Traffic Division, not a court
11 of record; one being the Small Claims Division, not a court of record; a
12 third being the Family Division, a court of record, and the fourth, being
13 the Drug Court, a court of record. The Supreme Court of Guam and the
14 Superior Court of Guam, except for the Traffic and Small Claims
15 Divisions of the Superior Court, are courts of record.”

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

18 **“§2102. Administration of the Courts of Guam.** The Judicial
19 Council shall administer the operations of the Supreme Court and
20 Superior Court and shall promulgate rules, regulation and policy
21 governing personnel, procurement, finance and travel for the Judicial
22 Branch. The Judicial Council shall adopt a unified pay schedule for the
23 employees of the Judicial Branch consistent with the Hay Study and
24 Unified Pay Schedule adopted in 1991, as *amended*. The Judicial Council
25 shall recommend and submit, under the signature of its Chairperson,
26 the annual budget of the Judicial Branch to *I Liheslaturan Guåhan* by the

1 first day of May of each year.”

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

5 “(a) The Supreme Court of Guam is established pursuant to 22A of
6 the Organic Act of Guam and has such original and appellate
7 jurisdiction as is prescribed by the Organic Act of Guam and by this
8 Title. The Supreme Court shall consist of three (3) full-time Justices who
9 shall be appointed by *I Maga’lahen Guåhan*, the Governor of Guam,
10 subject to the advice and consent of *I Liheslatura*. Two (2) of the full-time
11 Justices shall be Associate Justices and one (1) shall be Chief Justice,
12 who shall be selected as provided herein.

13 (e) The term *designated justice* refers to a Judge or Justice who is
14 qualified by this Title to sit.

15 (f) A Superior Court Judge who is elevated to the Supreme Court of
16 Guam, may sit as a designated Judge of the Superior Court at the
17 direction of the Chief Justice as requested by the Presiding Judge
18 of the Superior Court for the purpose of hearing matters, which
19 were pending before the Justice, immediately prior to his or her
20 elevation from the Superior Court to the Supreme Court.

21 (l) In the event of the absence or disqualification of the Chief Justice,
22 the senior full-time Associate Justice, who is the Justice with the
23 longest years of service in the Supreme Court of Guam, shall act
24 as Chief Justice.

25 (m) In the event of a disqualification, conflict, or recusal, of the Chief
26 Justice in a given matter, the senior full-time Associate Justice shall

1 act as Chief Justice as to that matter in making assignments of
2 Justices and in other procedural matters. If no Justice is available,
3 then one (1) designated Justice shall act as Chief Justice, in order of
4 seniority."

5 **Section 6.** Subsections 3103(d) and (g), of Chapter 3, Division 1 of Title 7
6 of the Guam Code Annotated are hereby *repealed* and all existing subsections
7 shall be renumbered accordingly.

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

10 "(a) In hearings and determining the merits of cases before it, the
11 Supreme Court shall sit in a three-Justice panel."

12 **Section 8.** Section 3106 of Chapter 3, Division 1, Title 7 of the Guam
13 Code Annotated, is *amended* as follows:

14 "§3106. **Compensation.** Until a specific salary is set for the
15 Justices by another statute, the annual salary of the Chief Justice shall be
16 Three Thousand Dollars (\$3,000) higher than the annual salary of the
17 Presiding Judge of the Superior Court, and the annual salary of each of
18 the full-time Associate Justices shall be Two Thousand Dollars (\$2,000)
19 less than the annual salary of the Chief Justice.

20 (1) The hourly salary of a Justice *pro tempore* shall be the same as
21 the hourly salary of a full-time Associate Justice; provided,
22 that:

23 (i) The total annual amount of salary may not exceed the
24 annual salary of a full-time Justice;

25 (ii) No Justice *pro tempore* may be paid for more than forty (40)
26 hours per week; and

1 (iii) No Justice *pro tempore* may be paid for more than eight (8)
2 hours per day.”

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

5 “(b) **Additional Authority.** Its authority also includes jurisdiction
6 of original proceedings for mandamus, prohibition, injunction, and
7 similar remedies to protect its appellate jurisdiction. The Supreme Court
8 shall have jurisdiction of all appeals arising from judgments, final
9 decrees, or final orders of the Superior Court in criminal cases and in
10 civil cases and proceedings. The Supreme Court has original and
11 appellate jurisdiction over attorney disciplinary matters including but
12 not limited to admissions, qualifications, and standards of practice; and
13 supervisory jurisdiction over all inferior courts in Guam and may make
14 and promulgate rules governing the practice and procedure in the
15 courts. This does not include administrative authority otherwise
16 specifically prescribed in §5102 of this Act.”

17 **Section 10.** Subsection 3109 (b) of Article 1, Chapter 3, Division 1 of
18 Title 7 of the Guam Code Annotated is hereby *repealed*.

19 **Section 11.** Subsections 4101(b) and (c) of Article 1, Chapter 4, Division
20 1 of Title 7 of the Guam Code Annotated are hereby *amended* as follows:

21 “(b) If the Judicial Council determines that additional Judges are
22 required for the proper dispatch of business, the Chief Justice shall so
23 notify *I Maga’lahi*, who, if he or she concurs, shall appoint a new Judge
24 as in the case of a vacancy.

25 (c) If, for any reason, a vacancy is created in the Superior Court and
26 the Judicial Council determines that the business of the Court is

1 such that no new Judge is required to fill the vacancy, the Chief
2 Justice shall so declare, and upon such declaration, no Judge shall
3 be appointed to fill the vacancy until the Judicial Council again
4 determines that a need exists and proceeds in the manner
5 prescribed by Subsection (b) of this §4101.”

6 **Section 12.** A new Subsection 4101(e) is hereby added to Article 1,
7 Chapter 4, Division 1 of Title 7 of the Guam Code Annotated as follows:

8 “(e) Effective November 1, 2003, for cases assigned after that date, a
9 Judge of a court of record may not receive the salary for the
10 judicial office held by the Judge while any cause before the Judge
11 remains pending and undetermined for one hundred eighty (180)
12 days after it has been submitted for decision.”

13 **Section 13.** Section 4103 of Article 1, Chapter 4, Division 1 of Title 7 of
14 the Guam Code Annotated is hereby *amended* as follows:

15 “§4103. **Powers of the Presiding Judge.** The Presiding Judge of
16 the Superior Court shall prescribe the order of business and randomly
17 assign the cases to the Judges, Referees, and Hearing Officers of the
18 Court in conformance with rules and regulations promulgated by the
19 Supreme Court. During the Presiding Judge’s temporary absence or
20 temporary disability, his or her duties shall be performed by his or her
21 designated appointee. Appointment shall be on a rotating basis among
22 all the Judges of the Superior Court. The Presiding Judge shall be
23 responsible for preparing the annual budget of the Superior Court and
24 its divisions for the review, recommendation and approval of the
25 Judicial Council.”

26 **Section 14.** Section 4205 of Article 2, Chapter 4, Division 1 of Title 7 of

1 the Guam Code Annotated is *amended* as follows:

2 “§4205. **Referees.** Small claims cases may be heard by any Judge
3 of the Superior Court of Guam. However, the Presiding Judge of the
4 Superior Court may nominate one (1) or more Small Claims Referees
5 from among the members of the Guam Bar Association, with the
6 approval of the Judicial Council. Referees shall hear small claims cases
7 pursuant to court rules, and shall have the power of a Superior Court
8 Judge in respect to such small claims matters. Such appointments for
9 Referees shall be for one (1) year or less. The Judicial Council may
10 reappoint incumbent Referees for additional terms of one (1) year or
11 less. Referees may be disqualified from hearing a matter in the same
12 manner as a Judge of the Superior Court may be disqualified.”

13 **Section 15.** Section 5101 of Chapter 5, Division 1 of Title 7 of the Guam
14 Code Annotated is hereby *amended* as follows:

15 “§5101. **Judicial Council.** (a) There shall be a Judicial Council
16 (the ‘Council’). All full-time Justices of the Supreme Court shall sit on
17 the Judicial Council. Two (2) Superior Court Judges shall also sit on the
18 Judicial Council, which shall include the Presiding Judge who shall
19 appoint the remaining Judge. Should a Supreme Court member leave
20 the bench, then the Presiding Judge shall remove one (1) Superior Court
21 member until such time as a new Supreme Court Justice is nominated,
22 confirmed and seated on the Supreme Court. The Chairperson of the
23 Council shall be the Chief Justice. In the event of absence of the Chief
24 Justice, the senior full-time Associate Justice shall act as Chairperson. At
25 no time shall a designated Justice or Judge or a Justice or Judge *pro*
26 *tempore* sit as a member of the Judicial Council.

- 1 (b) The Presiding Judge, in his or her absence, or the absence of the
2 other Superior Court Judge, may appoint from among the Judges
3 an alternate to sit on the Judicial Council to ensure an adequate
4 number of members from the Superior Court of Guam.
- 5 (c) The term of the member of the Council appointed by the Presiding
6 Judge shall be for three (3) years. If a member is replaced, the
7 replacement member shall only serve out the remaining term of the
8 member replaced.
- 9 (d) The quorum of the Council shall be a majority of the sitting
10 members, whether present or not. The vote of a not less than a
11 majority of the sitting members shall be required for any action by
12 the Council.
- 13 (e) The Council shall promulgate its own rules for its conduct and
14 operation. Said rules shall include provisions designed to comply
15 with the spirit and intent of 5 GCA Chapter 8, the Open
16 Government Law of Guam.
- 17 (f) The Council shall be attached to the Judicial Branch of the
18 government of Guam."

19 **Section 16.** Section 5102 of Chapter 5, Division 1 of Title 7 of the Guam
20 Code Annotated is hereby *amended* to read as follows:

21 "§5102. **Powers of the Judicial Council.** The Council shall have
22 the following powers:

- 23 (a) To initiate, receive and consider charges concerning alleged
24 misconduct or incapacity of any Justice or Judge of the Courts and
25 to form subcommittees that will determine and make
26 recommendations as to the removal of any Justice or Judge;

- 1 (b) To adopt policies for the Court and make recommendations to *I*
2 *Liheslatura* as may be deemed appropriate for the effective and
3 expeditious administration of the judicial system;
- 4 (c) To make other recommendations regarding the administration of
5 Justice to *I Maga'lahaen Guåhan*, or to *I Liheslatura* as it deems
6 proper;
- 7 (d) To adopt a unified pay schedule for the employees of the Judicial
8 Branch consistent with the Hay Study and Unified Pay Schedule
9 adopted in 1991, as *amended*;
- 10 (e) To adopt policy and rules for the operations of the Courts,
11 including but not limited to, personnel, procurement, facilities
12 and property, financial and travel (the provisions of §6302(c),
13 §6303 and §4105 of Title 4 of the Guam Code Annotated and
14 §23104(b) and §23109 of Title 5 of the Guam Code Annotated are
15 *reaffirmed*);
- 16 (f) To establish rules and regulations for appeals and grievances
17 brought upon by classified employees of the Courts, who have
18 exhausted administrative remedies. The Council is authorized to
19 designate and delegate a hearing officer, to hear and decide
20 personnel matters. The decision of the hearing officer shall be
21 final and may be appealed to the Superior Court of Guam;
- 22 (g) To review and approve the budget for the operation of the Courts
23 and its divisions, and submit its recommendations to *I Liheslaturan*
24 *Guåhan*, under the signature of its Chairperson, by the first day of
25 May of each year;
- 26 (h) To employ, retain or contract for the services of qualified

- 1 specialists or experts, as individuals or as organizations, to advise
2 and assist the Courts in the fulfillment of its duties;
- 3 (i) To adopt filing fees and other Court fees;
 - 4 (j) To promulgate the Judicial Council's own rules for its conduct
5 and operation;
 - 6 (k) To sue on behalf of the Courts, including on behalf of the Court's
7 employees, or itself to enforce any rights granted to the Courts;
 - 8 (l) To lease, evict, or sue on behalf of the Courts, relative to Court
9 properties, equipment, and facilities;
 - 10 (m) Nothing contained in this Section shall be construed directly or by
11 implication to be in any way in derogation or limitation of the
12 powers conferred upon the Judicial Council or existing in the
13 Supreme Court and the Superior Court or the Judiciary by virtue
14 of any provision of the Organic Act of Guam or any statutes of
15 Guam;
 - 16 (n) To have authority to act over all matters relating to the Judicial
17 Building Fund; and
 - 18 (o) To approve and/or appoint nominees to positions provided for
19 by this Act."

20 **Section 17.** Section 5104 of Chapter 5, Division 1 of Title 7 of the Guam
21 Code Annotated is hereby *amended* as follows:

22 **"§5104. Removal of Justices or Judges.** A subcommittee of Judges
23 and Justices shall be formed composed of three (3) members appointed
24 by the Chairperson. The subcommittee shall have the following powers
25 and duties with respect to the removal of Justices or Judges from the
26 Courts of Guam:

1 (a) It shall initiate, receive and consider charges concerning alleged
2 misconduct or incapacity of any Chief Justice, Justice, Presiding
3 Judge or Judge of the Courts of Guam;

4 (b) It may subpoena witnesses, administer oaths and take testimony
5 relating to matters before it; and

6 (c) It shall report its findings and make recommendations to the Judicial
7 Council for action."

8 **Section 18.** Subsection 6108(a) of Chapter 6, Division 1 of Title 7 of the
9 Guam Code Annotated is hereby *amended* to read as follows:

10 "(a) When there is no Judge qualified or available to hear a cause,
11 action or hearing in the Superior Court, the Presiding Judge shall
12 request the Chief Justice to appoint a Judge *pro tempore* to hear the
13 matter. Such Judge *pro tempore* shall meet the same qualifications as a
14 regularly appointed Judge of the Superior Court or be appointed in
15 accordance with Guam law. When there is no Justice qualified or
16 available to hear a cause, action, or hearing in the Supreme Court, the
17 Chief Justice shall appoint a Justice *pro tempore* to participate in the
18 matter. Such Justice *pro tempore* shall meet the same qualifications as a
19 regularly appointed Justice of the Supreme Court or be appointed in
20 accordance with Guam law."

21 **Section 19.** Section 6109 of Chapter 6, Division 1 of Title 7 of the Guam
22 Code Annotated is hereby *repealed* in its entirety.

23 **Section 20.** Section 6115 of Chapter 6, Division 1 of Title 7 of the Guam
24 Code Annotated is hereby *amended* as follows:

25 "§6115. **Assignment of retired Judge or Justice to active duty.** (a)
26 Any retired Judge or Justice may be designated and assigned by the Chief

1 Justice to perform such judicial duties in the Courts of Guam as he or she is
2 willing to undertake, except that retired Judges shall only perform such duties
3 in the Superior Court of Guam.

4 (b) No retired Judge or Justice shall perform judicial duties except when
5 designated and assigned.

6 (c) All designations and assignments of Judges or Justices shall be filed
7 with the Clerk of the Court and entered on the minutes of the Court from and
8 to which made.

9 (d) A retired Judge designated and assigned by the Chief Justice to
10 perform judicial duties shall be referred to as a Judge *pro tempore*.

11 (e) A retired Justice designated and assigned by the Chief Justice to
12 perform judicial duties shall be referred to as a Justice *pro tempore*."

13 **Section 21.** Section 7102 of Chapter 7, Division 1 of Title 7 of the Guam
14 Code Annotated is hereby *amended* to read as follows:

15 "§7102. **Sessions of the Superior Court.** The Superior Court shall
16 always be open on court days. It shall hold its regular sessions in
17 *Hagåtña* at times determined by the Rules of the Court. Special sessions
18 may be held at such places as the nature of the business may require
19 and upon such notices as the Court orders, pursuant to Rules prescribed
20 by the Supreme Court."

21 **Section 22.** Section 7103 of Chapter 7, Division 1 of Title 7 of the Guam
22 Code Annotated is hereby *amended* to read as follows:

23 "§7103. (a) **Superior Court Administrator.** The Presiding Judge
24 shall appoint a Superior Court Administrator, who shall serve at his or
25 her pleasure. The Court Administrator shall be responsible for the
26 general supervision of all personnel of the Superior Court other than

1 Judges and their immediate staff; the buildings and grounds assigned to
2 the Superior Court, and any property in the custody of the Court used
3 for the Court's operation, and shall be responsible for other matters
4 assigned to him or her by the Presiding Judge. The salary of the Court
5 Administrator shall be fixed by the Judicial Council pursuant to general
6 Personnel Rules covering compensation. The Court Administrator may
7 appoint and assign duties to deputies and assistants in such number as
8 may be approved by the budget and necessary for operations. The
9 appointment, assignment, removal and salaries of such deputies and
10 assistants shall be governed by the applicable Personnel Rules and
11 Regulations governing employment practices within the Judicial Branch
12 as promulgated by the Judicial Council.

13 **(b) Supreme Court Administrator.** The Chief Justice shall appoint a
14 Supreme Court Administrator, who shall serve at his or her pleasure.
15 The Court Administrator shall be responsible for the general
16 supervision of all personnel of the Supreme Court other than Justices
17 and their immediate staff, and any property in the custody of the Court
18 used for the Court's operation, and shall be responsible for other
19 matters assigned to him or her by the Chief Justice. The salary of the
20 Court Administrator shall be fixed by the Judicial Council pursuant to
21 general Personnel Rules covering compensation. The Court
22 Administrator may appoint deputies and assistants in such number as
23 may be approved by the budget and necessary for operations. The
24 appointment, assignment, removal and salaries of such deputies and
25 assistants shall be governed by the applicable Personnel Rules and
26 Regulations governing employment practices within the Judicial Branch

1 as promulgated by the Judicial Council.

2 **(c) Administrator of the Courts.** The Judicial Council shall have the
3 authority to appoint an Administrator of the Courts, who shall be
4 responsible for the general supervision of all personnel of the Superior
5 Court of Guam and the Supreme Court of Guam and all its divisions
6 except for Judges, Justices, Referees, and their immediate staff. The
7 salary of the Administrator of the Courts shall be fixed by the Judicial
8 Council pursuant to general Personnel Rules covering compensation.
9 The Administrator shall have all other authorities assigned to the
10 Superior Court Administrator and the Supreme Court Administrator
11 described in Subsections (a) and (b) of this Section and may be assigned
12 other duties as necessary by the Judicial Council. Upon the
13 appointment of the Administrator of the Courts by the Judicial Council,
14 the legal authority creating the positions of the Superior Court
15 Administrator and the Supreme Court Administrator shall expire and
16 the position shall cease to exist. The Administrator of the Courts may
17 appoint deputies and assistants in such number as may be approved by
18 the budget and necessary for operations. The appointment, removal and
19 salaries of such deputies and assistants shall be governed by the
20 applicable Personnel Rules and Regulations governing employment
21 practices within the Judicial Branch as promulgated by the Judicial
22 Council.”

23 **Section 23.** Section 7104 of Chapter 7, Division 1, of Title 7 of the Guam
24 Code Annotated is hereby *amended* to read as follows:

25 “§7104. Clerks. **(a) Superior Court Clerk.** The Presiding Judge
26 shall appoint a Superior Court Clerk who shall be subject to removal by

1 him or her. The Superior Court Clerk may assign deputies and
2 assistants in such numbers as are approved by the budget and necessary
3 for the daily operations of the Superior Court. Such deputies and
4 assistants shall be subject to removal by the Superior Court
5 Administrator pursuant to the Personnel Rules and Regulations of the
6 Judicial Council governing employment practices within the Judicial
7 Branch promulgated by the Judicial Council. The salaries of the
8 Superior Court Clerk and his or her deputies and assistants shall be
9 fixed pursuant to a general Personnel Rule covering compensation.

10 **(b) Supreme Court Clerk.** The Chief Justice shall appoint a Supreme
11 Court Clerk who shall be subject to removal by him or her. The
12 Supreme Court Clerk may appoint, with the approval of the Judicial
13 Council, such deputies and assistants in such numbers as are necessary
14 for the daily operations of the Supreme Court. Such deputies and
15 assistants shall be subject to removal by the Supreme Court Clerk,
16 pursuant to a Personnel Rules covering compensation. The salaries of
17 such deputies and assistants shall be fixed pursuant to a general
18 Personnel Rules covering compensation. The appointment and removal
19 of the Supreme Court Clerk and of such deputies and assistants shall be
20 subject to the applicable Personnel Rules and Regulations governing
21 employment practices within the Judicial Branch promulgated by the
22 Judicial Council.”

23 **Section 24.** Section 7119 of Chapter 7, Division 1 of Title 7 of the Guam
24 Code Annotated is hereby *amended* as follows:

25 “§7119. **Referees.** The Presiding Judge shall nominate Referees
26 for approval by the Judicial Council as provided in this Title, the

1 Probate Code (Title 15), Title 19 (Family Court Law) and the applicable
2 rules of procedure, which Referees may hear cases in more than one
3 division or Court of the Superior Court of Guam and such Referees are
4 judicial officers pursuant to this Chapter.”

5 **Section 25.** Section 8102 of Chapter 8, Division 1 of Title 7 of the Guam
6 Code Annotated is hereby *amended* as follows:

7 “§8102. **Official Reporters; Appointment; Qualifications.** The
8 Judicial Council may appoint Official Reporters for the Courts, or may
9 share Reporters, as the need is made known, in such number as the
10 Judicial Council may designate who shall be subject to removal as
11 provided in the Personnel Rules for the Judicial Branch. The
12 qualifications of the Reporters shall be determined by standards
13 formulated by the Judicial Council.”

14 **Section 26.** Section 8104 of Chapter 8, Division 1 of Title 7 of the Guam
15 Code Annotated is hereby *amended* as follows:

16 “§8104. **Official Reporters; Compensation and Fee.** Each Reporter
17 shall receive a salary pursuant to the Personnel Rules on compensation
18 of the Judicial Council, and may charge and collect fees, at rates fixed by
19 the Judicial Council, for transcripts requested by the parties, but not for
20 the certified copy filed with the Clerk for the records of the Court. No
21 fee shall be assessed for transcripts for use by the Court appointed
22 attorney in such case, and the Office of the Attorney General. Each
23 Reporter shall make such reports as the Judicial Council may require as
24 to the transcripts prepared and fees charged by him or her.”

25 **Section 27.** Section 8105 of Chapter 8, Division 1 of Title 7 of the Guam
26 Code Annotated is hereby *amended* as follows:

1 **"§8105. Marshal of the Court; Appointment; Salary.** The Judicial
2 Council shall appoint a Marshal of the Court who shall be subject to
3 removal in accordance with the Personnel Rules and Regulations of the
4 Judicial Branch as promulgated by the Judicial Council. The Marshal of
5 the Court shall receive a salary to be fixed by a general Personnel Rules
6 on compensation. The Judicial Council may assign other duties as
7 necessary to the Chief Probation Officer. The Marshal of the Court may
8 assign deputies and assistants in such number as may be approved by
9 the budget. The appointment, removal and salaries of such deputies and
10 assistants shall be governed by the applicable Personnel Rules and
11 Regulations governing employment practices within the Judicial Branch
12 as promulgated by the Judicial Council."

13 **Section 28.** Section 8106 of Chapter 8, Division 1 of Title 7 of the Guam
14 Code Annotated is hereby *amended* as follows:

15 **"§8106. Marshal; Duties.** The Marshal or his or her deputies shall
16 attend all sessions of the Supreme and Superior Courts, unless excused
17 by a Judge or Justice at whose session the Marshal or Deputy should
18 otherwise attend, and preserve order. He or she shall serve and execute
19 process, writs and orders issued under the laws of Guam by a Court of
20 record when so directed by the Court and for this purpose shall have all
21 the powers conferred by law on the Police Chief of the Guam Police
22 Department and on the Mayors of municipal districts. He or she shall
23 perform such other duties as may be directed by the Judicial Council, or
24 by the Rules and Procedures adopted by the Judicial Council."

25 **Section 29.** Section 8107 of Chapter 8, Division 1 of Title 7 of the Guam
26 Code Annotated is hereby *amended* as follows:

1 **“§8107. Marshal; Appointment of Special Deputies.** The Chief
2 Justice, at the request of the Marshal of the Court, may appoint
3 employees of the Department of Law and of the Department of Revenue
4 & Taxation of the government of Guam as Special Deputy Marshals of
5 the Guam Judiciary. Such appointments shall be for a term of one (1)
6 year, unless sooner revoked by the Chief Justice, or for as long as such
7 employees remain in their employment with their respective
8 departments, whichever is earlier.”

9 **Section 30.** Section 8108 of Chapter 8, Division 1 of Title 7 of the Guam
10 Code Annotated is hereby *amended* as follows:

11 **“§8108. Special Deputy Marshal; Duties; Compensation.** The
12 employees of the Department of Law who are appointed as Deputies
13 under §8107 of this Chapter shall exercise their office only in cases
14 wherein the government of Guam is a party. The employees of the
15 Department of Revenue & Taxation who are appointed as Deputies
16 under said §8107 shall exercise their office only in matters concerning
17 the income tax laws and other tax and revenue laws of Guam. No
18 Deputies under said §8107 shall be entitled to compensation in addition
19 to the compensation they are receiving as employees of the government
20 of Guam.”

21 **Section 31.** Section 8109 of Chapter 8, Division 1 of Title 7 of the Guam
22 Code Annotated is hereby *amended* as follows:

23 **“§8109. Chief Probation Officer; Appointment; Salary.** The
24 Presiding Judge shall nominate a Chief Probation Officer, subject to the
25 approval of the Judicial Council, who shall be subject to removal in
26 accordance with the Personnel Rules and Regulations of the Judicial

1 Branch promulgated by the Judicial Council. The duties of the Chief
2 Probation Officer shall be established in writing by the Superior Court
3 Administrator and approved by the Judicial Council. The Judicial
4 Council may assign other duties as necessary to the Chief Probation
5 Officer. The Chief Probation Officer may assign deputies and assistants
6 in such numbers as may be necessary. The appointment, removal and
7 salaries of such deputies and assistants shall be governed by the
8 applicable Personnel Rules and Regulations governing employment
9 practices within the Judicial Branch as promulgated by the Judicial
10 Council.”

11 **Section 32.** Section 8111(a) of Chapter 8, Division 1 of Title 7 of the
12 Guam Code Annotated is hereby *amended* as follows:

13 “(a) Each Clerk of the Supreme and Superior Courts, before
14 entering on the duties of his or her office, shall give a bond in the sum of
15 not less than Ten Thousand Dollars (\$10,000.00), for the faithful
16 performance of duty by himself or herself, his or her deputies and
17 assistant clerks during his or her continuance in office and by his or her
18 deputies and assistant clerks after his or her death until his or her
19 successor is appointed and qualified. The amount of the bond shall be
20 set and approved by the Judicial Council and filed and recorded in the
21 office of the Clerk of the Court.”

22 **Section 33.** Section 8112(a) of Chapter 8, Division 1 of Title 7 of the
23 Guam Code Annotated is hereby *amended* as follows:

24 “(a) The Marshal of the Court, before entering on the duties of his
25 or her office, shall give a bond in the sum of not less than Ten Thousand
26 Dollars (\$10,000.00) for the faithful performance of duty by himself or

1 herself and his or her deputies during his or her continuance in office
2 and by his or her deputies after his or her death until his or her
3 successor is appointed and qualified. The amount of the bond shall be
4 set and approved by the Judicial Council and filed and recorded in the
5 Office of the Clerk of the Supreme Court."

6 **Section 34.** Section 8113 of Chapter 8, Division 1 of Title 7 of the Guam
7 Code Annotated is hereby *amended* as follows:

8 "§8113. **Other Court Personnel.** The Presiding Judge for the
9 Superior Court and the Chief Justice for the Supreme Court may
10 appoint and may remove from their respective Courts, pursuant to all
11 applicable Personnel Rules and Regulations of the Judicial Branch as
12 promulgated by the Judicial Council such other officers and personnel
13 as are necessary to carry out the duties of the Courts. If such officers
14 and personnel are appointed to fill new positions or to have duties not
15 already specified in law or in a plan approved by the Judicial Council,
16 no such appointments shall be made or new duties assigned until
17 adoption of such plan by the Judicial Council."

18 **Section 35.** Section 9107 of Chapter 9, Article 1, Division 1, of Title 7 of
19 the Guam Code Annotated is hereby *amended* as follows:

20 "§9107. **Immunity from Liability for Official Action.** Justices of
21 the Supreme Court and those acting pursuant to orders or rules of Court
22 as their employees or agents, including but not limited to members of
23 the Guam Bar Association Ethics Committee, designated Ethics
24 Prosecutors, and their employees or agents, shall not be held liable for
25 any action performed in the course of their official duties undertaken
26 pursuant to this Article relative to the discipline of attorneys and to the

1 unauthorized practice of law.”

2 **Section 36.** Section 9203 of Article 2, Chapter 9, Division 1 of Title 7 of
3 the Guam Code Annotated is hereby *repealed* and *reenacted* as follows:

4 **“§9203. Membership of Board: Number of Members; Manner of**
5 **Appointment; Term.** The Board of Law Library established in §9202 of
6 this Chapter shall consist of nine (9) members and shall be constituted
7 as follows:

8 (1) the Chief Justice of the Supreme Court of Guam may appoint
9 himself or herself, or one (1) Associate Justice of the Supreme
10 Court to serve *ex officio* as a trustee or, in the event a Justice
11 chooses not to so serve, he shall appoint a Law Clerk in the
12 employ of the Court or a member of the Guam Bar to serve as
13 trustee for a term of three (3) years;

14 (2) the Judge of the District Court may appoint himself or herself
15 to serve *ex officio* as a trustee or, in the event he chooses not to
16 serve, he may appoint a Law Clerk in the employ of the
17 District Court or a member of the Guam Bar to serve as
18 trustee; provided, that if there be more than one (1) Judge of
19 the District Court, such Judges may appoint one (1) of their
20 number to so serve, they may appoint a Law Clerk in the
21 employ of the District Court or a member of the Guam Bar to
22 serve as trustee to a term of four (4) years;

23 (3) the Presiding Judge of the Superior Court may appoint
24 himself or herself, or one (1) Judge of the Superior Court to
25 serve *ex officio* as a trustee or, in the event a Judge chooses not
26 to serve, the Presiding Judge shall appoint a Law Clerk in the

- 1 employ of the Superior Court or a member of the Guam Bar
2 to serve as trustee for a term of three (3) years;
- 3 (4) the Judicial Council shall appoint one (1) trustee who is a
4 member of the Guam Bar for a term of four (4) years;
- 5 (5) the Chairman of the committee that has oversight of the
6 judiciary of *I Liheslaturan Guåhan* shall appoint one (1) trustee
7 who is a member of the Guam Bar for a term of two (2) years
8 expiring no later than the last day of the legislative term in
9 which the appointment occurred;
- 10 (6) the Territorial Librarian shall be a trustee *ex officio*;
- 11 (7) *I Maga'lahi*, the Governor, shall appoint one (1) trustee who is
12 a member of the Guam Bar for a term of four (4) years
13 expiring no later than the last day of *I Maga'lahi*, the
14 Governor's term in which the appointment occurred; and
- 15 (8) the President of the Guam Bar Association shall appoint two
16 (2) trustees who are members of the Guam Bar for a term of
17 two (2) years."

18 **Section 37.** Section 9204 of Article 2, Chapter 9, Division 1 of Title 7 of
19 the Guam Code Annotated is hereby *repealed* and *reenacted* as follows:

20 "§9204. **Board Vacancies.** In the event that any member of the
21 Board of Law Library Trustees shall die, resign, or otherwise be
22 removed from the Board prior to the expiration of his term as set forth
23 in §9203 of this Chapter, the vacancy so created shall be filled for the
24 remainder of such member's term in the same manner in which the
25 member whose death, resignation or removal that created such vacancy
26 was appointed."

1 **Section 38.** Section 9203(e) of Article 2, Chapter 9, Appendix A,
2 Division 1 of Title 7 of the Guam Code Annotated is hereby *repealed* in its
3 entirety.

4 **Section 39.** Section 5502(b) of Chapter 5A, Division 1 of Title 19 of the
5 Guam Code Annotated is *amended* as follows:

6 “ (b) The Presiding Judge of the Superior Court may assign such
7 other pre-adjudication matters as he considers proper, and in
8 conformance with Rules and Regulations promulgated by the Supreme
9 Court, to the Courts established under the Superior Court, including,
10 the Family Division matters as provided in §5113 of Title 19 of the
11 Guam Code Annotated, provided such assignments do not impair the
12 principal purpose of the Division as set out in Subsection (a) of §5502.”

13 **Section 40.** Section 8121(a) of Chapter 8, Article 1, of Title 4 of the Guam
14 Code Annotated is hereby *amended* as follows:

15 “(a) A retired member who subsequently becomes an employee
16 eligible for membership under §8106 of this Title prior to January 1,
17 1999 shall, upon becoming so employed, have that member’s right to
18 receive payment of that member’s annuity suspended for the duration
19 of that member’s employment, but all other rights pertaining to that
20 member’s annuity provided by this Article, including automatic
21 increases therein, shall be retained by that member. The provisions of
22 this Section shall not be applicable to any retired Judge or Justice
23 designated and assigned by the Chief Justice to perform judicial duties
24 in the Courts of Guam as provided for in §6115 of 7 GCA, or any person
25 employed by the Department of Education in Guam schools, such as a
26 substitute teacher; classroom teacher; guidance counselor; health

1 counselor; or certified, registered and/or licensed health professional,
2 including, but not limited to, physical therapists, occupational
3 therapists, speech therapists, audiologists, speech pathologists, speech
4 clinicians, physicians, physician assistants, nurses or psychologists;
5 when such critical need arises; provided, that such person(s) occupies a
6 position for which no other qualified/certified applicant was available,
7 and that such employment shall be on a school-year basis, subject to the
8 provisions of Items (d) and (e) of this Section.

9 The provisions of this Section shall not be applicable to any
10 certified, registered or licensed health care professional, or ancillary
11 service personnel employed by the Guam Memorial Hospital Authority,
12 the Department of Mental Health and Substance Abuse and the
13 Department of Public Health and Social Services; provided, that such
14 person occupies a position for which no other qualified applicants were
15 available, and provided that such employment is procured on an annual
16 basis, subject to the provisions of Item (d) of this Section.”

17 **Section 41. Severability.** *If any provision of this Law or its application*
18 *to any person or circumstance is found to be invalid or contrary to law, such*
19 *invalidity shall not affect other provisions or applications of this Law which*
20 *can be given effect without the invalid provisions or application, and to this*
21 *end the provisions of this Law are severable.*

I MINA' BENTE SIETE NA LIHESLATURAN GUAHAN

2003 (FIRST) Regular Session

Date: 4/11/03

VOTING SHEET

Bill No. 48 (COR)

Resolution No. _____

Question: _____

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
AGUON, Frank B., Jr.	✓				
BROWN, Joanne M. S. 11	✓				
CUNLIFFE, F. Randall	✓				
FERNANDEZ, Dr. Carmen	✓				
FORBES, Mark 11	✓				
KASPERBAUER, Lawrence F. 11	✓				
KLITZKIE, Robert	✓				
LEON GUERRERO, Lourdes A.	✓				
LUJAN, Jesse A. 111		# ✓			
MUÑA-BARNES, Tina Rose	✓				
pangelinan, vicente "ben" C.	✓				
QUINATA, John "JQ" M.	✓				
RESPICIO, Rory J.	✓				
SANFORD, Antoinette "Toni" D.	✓				
TENORIO, Ray		✓			

TOTAL 13 2 0 0 0

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

* 3 Passes = No vote
EA = Excused Absence



Twenty-Seventh
Guam Legislature

Chairman,
Committee
on
Judiciary
&
Transportation

Ada's
Commercial &
Professional Center

138 E. Marine Dr.
Hagatna, Guam
(USA) 96910

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Fax: 671.477.5300

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senatorcunliffe@email.com

Website:
senatorcunliffe.netfirms.com

Office of Senator F. Randall Cunliffe

I Mina Benté Siete Na Liheslaturan Guåhan

March 25, 2003

The Honorable Vicente C. Pangelinan
Speaker
I Mina' Bente Siete Na Liheslaturan Guahan
155 Hessler Street
Hagatna, Guam 96910

2003 MAR 25 PM 4: 53

Dear Speaker Pangelinan:

The Committee on Judiciary & Transportation, to which **Bill# 48 (COR)**, was referred, wishes to report its findings and recommendations **TO DO PASS BILL NO. 48 (COR)**, as substituted by the Committee on Judiciary & Transportation, "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".

The voting record is as follows:

TO PASS	6
NOT TO PASS	0
ABSTAIN	0
TO PLACE INACTIVE FILE	0
TO REPORT OUT	0

Copies of the Committee Report and other pertinent documents are attached. Thank you for your consideration.

Sincerely,

F. RANDALL CUNLIFFE
CHAIRMAN



Office of Senator F. Randall Cunliffe

I Mina Benté Siete Na Liheslaturan Guåhan

*Twenty-Seventh
Guam Legislature*

March 21, 2003

MEMORANDUM

Chairman,
Committee
on
Judiciary
&
Transportation

TO: MEMBERS, COMMITTEE ON JUDICIARY & TRANSPORTATION
FROM: CHAIRMAN
SUBJECT: COMMITTEE REPORT – Bill No. 48 (COR)

Transmitted for your information and action is the committee report on **Bill No. 48 (COR), As Substituted by the Committee on Judiciary & Transportation**, "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".

This memorandum is accompanied by the following:

1. Committee Voting Sheet
2. Committee Report
3. Bill No. 48 (COR), As Substituted by the Committee on Judiciary & Transportation
4. Public Hearing Sign-in Sheet
5. Notice of Public Hearing.

Please review the attached Committee Report and take the appropriate action on the attached voting sheet. Your attention and cooperation in this matter is greatly appreciated.

Should you have any questions regarding the report or the accompanying documents, please do not hesitate to contact me or my Committee Director, Mr. Joshua Tenorio.

Sincerely,

F. RANDALL A. CUNLIFFE

Attachments

Ada's
Commercial &
Professional Center

138 E. Marine Dr.
Hagatna, Guam
(USA) 96910

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I MINA' BENTE SIETE NA LIHESLATURAN GUAHAN
COMMITTEE ON JUDICIARY & TRANSPORTATION

VOTING RECORD SHEET

BILL 48 (COR): (AS SUBSTITUTED BY THE COMMITTEE ON JUDICIARY & TRANSPORTATION) "TO RE-ORGANIZE THE JUDICIARY AS THE THIRD CO-EQUAL AND INDEPENDENT BRANCH OF THE GOVERNMENT; TO DESIGNATE THE JUDICIAL COUNCIL AS HEAD OF A UNIFIED JUDICIARY; AND TO AMEND TITLE 7 AND 19 OF THE GCA RELATIVE TO THE JUDICIARY AND ITS OPERATIONS"

COMMITTEE MEMBERS:

TO PASS	NOT TO PASS	TO ABSTAIN	TO PLACE INACTIVE	REPORT OUT
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F. Randall Cunliffe
 CUNLIFFE, F. RANDALL
 CHAIRMAN

✓				
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John M. Quinata
 QUINATA, JOHN M.
 VICE CHAIRMAN

✓				
---	--	--	--	--

Lou A. Guerrero
 LEON GUERRERO, LOU A.

✓				
---	--	--	--	--

off-island

MUÑA-BARNES, TINA R.

--	--	--	--	--

Rory J. Respicio
 RESPICIO, RORY J.

<i>nr</i>				
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Antoinette D. Sanford
 SANFORD, ANTOINETTE D.

✓				
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_____*

Robert Klitzkie
 KLITZKIE, ROBERT

--	--	--	--	--

Jesse A. Lujan
 LUJAN, JESSE A.

✓				
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non-voting member

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PANGELINAN, VICENTE C.
 SPEAKER & EX-OFFICIO MEMBER

**I disagree w/ the Committee Report A 3-25-03*

I MINA' BENTE SIETE NA LIHESLATURAN GUAHAN

COMMITTEE ON JUDICIARY & TRANSPORTATION
F. RANDALL CUNLIFFE, CHAIRMAN

COMMITTEE REPORT

ON

**BILL: 48 (COR) as substituted by the Committee on Judiciary &
Transportation**

“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”

March 21, 2003

I. OVERVIEW

The Committee on Judiciary and Transportation held a public hearing at 9:00 a.m. on Wednesday, March 19, 2003 on the following measure:

BILL NUMBER & SHORT TITLE:

Bill 48(COR) – “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

Introduced by: F.R. Cunliffe and J.M. Quinata

Date of Introduction: March 7, 2003

Date of Referral by Committee on Rules & Health: March 12, 2003

COMMITTEE MEMBERS PRESENT AT THE PUBLIC HEARING WERE:

F. Randall Cunliffe, Chairman
John M. Quinata, Vice Chairman
Tina R. Muna-Barnes
John M. Quinata
Rory J. Respicio
Antoinette D. Sanford
Robert Klitzkie
Jesse A. Lujan
Speaker Vicente C. Pangelinan, ex-officio

OTHER SENATORS PRESENT AT THE PUBLIC HEARING WERE:

Frank B. Aguon, Jr.
Carmen Fernandez
Ray Tenorio
Lawrence Kasperbauer

The proceedings of the hearing were recorded by the Audio Department of the Guam Legislature. A copy of the proceedings is available upon written request to the Committee on Judiciary & Transportation.

II. SYNOPSIS OF BILL 48(COR):

Bill 48 (COR) seeks to reorganize and align the judiciary under the Judicial Council of Guam. The bill reconstitutes the membership of the Judicial Council and will no longer include the Chairman of the Legislative Committee on Judiciary or the Attorney General of Guam, making the Judicial Council a clear component of the Judicial Branch. The Powers of the Judicial Council are explicit with regard to court administration including, authority over employee matters, court operations, and the removal of judges and justices.

The Council shall be comprised of five (5) Judges and Justices of the Courts of Guam including the Chief Justice of the Supreme Court, who shall be the Chairperson of the Council; the two full-time Associate Justices of the Supreme Court; the Presiding Judge of the Superior Court of Guam and one other Judge of the Superior Court, to be appointed by the Presiding Judge. Bill 48 (COR) also revises the definition of the Courts of Justice in General for the Territory by adding the Drug Court to be fourth division of the Superior Court of Guam, a court of record.

The legislation also clarifies that the Supreme Court of Guam shall have supervisory authority over the Courts of Guam with the power to promulgate rules and regulations to govern the court. The Supreme Court shall be the highest court of Guam.

Bill 48 (COR) also revises the composition of the Supreme Court of Guam by eliminating the authorization for the four (4) part-time Associate Justices. According to the Bill Sponsor, Senator F. Randall Cunliffe, the Guam Bar Association has recommended elimination of the part-time Associate Justices due to inherent conflicts in practicing law while concurrently sitting as a justice. All four (4) part-time Associate Justices resigned citing the same. The bill also repeals the authority for Superior Court Judges and Supreme Court Justices to sit on cases between courts except for an allowance for lower court judges to finish hearing cases assigned to them prior to being appointed to the Supreme Court.

The alignment of administrative authorities over the courts to the Judicial Council includes the following:

- The appointment of Referees and Hearing Officers for Small Claims Court
- The appointment of Referees and Hearing Officers for Family Court
- The appointment of an Administrative Director for the Courts
- The appointment of the Chief Probation Officer
- The appointment of the Marshal of the Court
- The approval and submission of the Budget of the Courts
- The establishment and approval of Court Fees

Specifically, Bill 48 (COR) repeals the legal authority the Superior Court Marshal and the Supreme Court Marshal; and consolidates them into a singular Marshal of the Court position. The bill also provides the Judicial Council with the authority to have a singular Administrative Director of the Courts, and upon such exercise, for the legal authority of the Superior Court Administrative Director and the Supreme Court Administrative Director to expire.

The intent of the bill is for the Marshal Division and the Probation Office to be under the direct authority of the Judicial Council. The bill also provides relief from Court Reporter Fees to the Office of the Attorney General and to court appointed attorneys. Finally, Bill 48 (COR) seeks to revise the membership of the Board of Law Library Trustees.

III. SUMMARY OF TESTIMONIES

A. INDIVIDUALS APPEARING BEFORE THE COMMITTEE TO PRESENT ORAL AND WRITTEN TESTIMONY ON THE BILL WERE AS FOLLOWS:

JUSTICES OF THE SUPREME COURT:

- Chief Justice F. Philip Carbullido, who presented written and oral testimony, in favor of the bill
- Associate Justice Frances Tydingco-Gatewood, who presented oral testimony in favor of the bill

JUDGES OF THE SUPERIOR COURT:

- Acting Presiding Judge Katherine Maraman, who read her prepared written testimony in opposition of the bill
- Judge Michael J. Bordallo, who presented oral testimony in favor of the bill
- Mr. Anthony P. Sanchez of the Superior Court of Guam, notified the committee that written testimony would be submitted by the following judges of the Superior Court:
 - Judge Joaquin V.C. Manibusan
 - Judge Steven Unpingco
 - Judge Elizabeth Barrett-Anderson

OTHER COURT OFFICIALS:

- Mr. Anthony P. Sanchez, Administrative Director, Superior Court of Guam, read a prepared written testimony in favor of the bill, with recommendations for amendments to be made.

OTHER(S):

- Mr. Joaquin C. Arriola, President, Guam Bar Association, who presented oral testimony in favor of the bill
- Mr. Charles Troutman, Compiler of Laws, Department of Law in behalf of the Attorney General of Guam Douglas B. Moylan, who presented oral and written testimony in favor of the bill, with proposed amendments
- Retired Associate Justice Janet Healy Weeks, who submitted written testimony in favor of the bill.

B. THE SUMMARY OF WRITTEN TESTIMONY IS AS FOLLOWS:

Supreme Court of Guam Chief Justice F. Philip Carbullido submitted and presented his written testimony focused on two issues:

- A. The Current Economic Crisis
- B. The Development of the Local Judiciary

With regard to the current economic situation, Chief Justice Carbullido referenced the proposed cost reductions with the consolidation of the Marshals of the Superior and Supreme Court, and the merger of the Administrative Director positions for both courts. He also pointed to an attachment to his written testimony, a letter from Supreme Court Administrative Director Dan Tydingco to Senator Robert Klitzkie dated February 24, 2003. The letter, which is also attached with this Committee Report, lists the various administrative positions of the Courts of Guam and their costs to the General Fund.

Chief Justice Carbullido proceeded to discuss the development of the local judiciary and referred to the organization of the judiciary in the 50 states and Puerto Rico. An attachment to his testimony, also attached with this report, reflects that the overwhelming majority of states designate the Chief Justice of the highest appeals court as the head of the judiciary. Chief Justice Carbullido also cited the organization of Utah, which is led by a Judicial Council and explained the composition of that council.

Chief Justice Carbullido expressed his agreement with the following provisions and effects of the proposed legislation:

- (i) The chairman of the Judicial Council will now be the Chief Justice of the Supreme Court
- (ii) The Supreme Court will have the authority to promulgate rules governing the practice and procedure of the local courts.
- (iii) The change in the composition of the Judicial Council excluding the Executive and Legislative Branches ensures the separation of powers.
- (iv) The bill in its entirety advances judicial development.

Compiler of Laws, Attorney Charles Troutman, submitted and presented his written testimony, which expressed the Attorney General's position that he and the Chairman of the Legislative Committee on Judiciary retain their seats on the Judicial Council. According to the testimony "He believes that part of the duties to which he was elected was his participation on the Judicial Council and that this should remain". Attorney Troutman's testimony also included discussion of his participation on the Judicial Council as a former Attorney General and that the council has not undergone a test of "Organicity".

Attorney Troutman suggested two (2) amendments to be entertained:

- A. That the Committee assign the Supreme Court with “Original and Appellate” jurisdiction over attorney discipline matters; and
- B. For the Committee to consider placing a specific provision relative to the salaries of judges and justices.

Attorney Troutman urges the passage of the legislation.

Mr. Anthony Sanchez, Superior Court Administrative Director, submitted and presented his written testimony as the Administrator of the Superior Court of Guam. Mr. Sanchez’ testimony included a historical review of the development of Guam’s Judiciary and specifically, of the Judicial Council. The Judicial Council is the last element carried over from the beginning of the island’s local judiciary. Mr. Sanchez is in favor of the proposed legislation but urged the Committee to deliberate on the following matters:

- A. That the Probation and Client Services Division remain within the Superior Court of Guam
- B. Recommended an increase in the number of Supreme Court Justices from three (3) to five (5).
- C. Raised concern over the designation of Justices from the Commonwealth of the Northern Marianas Islands, the Republic of Belau, and the Federated States of Micronesia. (REFER TO COMMITTEE REPORT ON BILL 25 (COR).
- D. Suggested that the Trial Court Judges have equal say in the composition of the Judicial Council.
- E. Suggested that all other government boards and commissions elect their own Chairpersons.
- F. Proposed an amendment to Section 15 of the bill, to vest powers to lease, evict, and sue with the Judicial Council.
- G. Supported the provision to create the Administrator of the Courts
- H. Raised issues of concern relative to the consolidation of the Clerk of the Superior Court and the Clerk of the Supreme Court to avoid any potential violations of due process.
- I. Suggested that the Superior Court of Guam Marshals division could assume the personnel and the responsibilities of the Supreme Court Marshals division.
- J. Suggested that the Chief Probation Officer continue to be appointed by the Presiding Judge.
- K. Suggested that the Referees continue to be appointed by the Presiding Judge.

Mr. Sanchez assured the Committee that his raising of these issues does not suggest non-support of Bill 48(COR) in any way.

Judge Katherine Maraman submitted and presented her written testimony in opposition to the Bill 48(COR). She raised the following points:

- A. The creation of the Supreme Court of Guam was based on providing the people of Guam with meaningful access to the appellate process. Until the creation of the court, the appeals were heard at the 9th Circuit Court of Appeals in California.
- B. The passage of Bill48(COR) will jeopardize due process
- C. There will be excessive entanglements between Justices and Judges and between the higher and lower courts.
- D. There will be numerous opportunities for improprieties.
- E. Justices must be independent from the lower court.
- F. Judges and Justices should not be involved in the hiring or sanctioning of employees, nor should they directly supervise employees outside their own chambers.
- G. Recommended the separation of the administration of the Superior and Supreme Courts.
- H. That in her opinion, the Judicial Council most effective included community members, who addressed matters pertaining only to the Superior Court.
- I. That the Judicial Council did not involve itself in court operations.

C. PUBLIC HEARING TRANSCRIPT/ORAL TESTIMONIES

The Chairman commenced the public hearing at 9:00 am. Senators present were: Senators John M. Quinata, Ray Tenorio, Robert Klitzkie, Jesse Lujan, Carmen Fernandez, Tina Muna-Barnes, Toni Sanford, Rory Respicio, Frank B. Aguon, Jr., Larry F. Kasperbauer, and Speaker ben c. pangelinan.

Chairman: The Committee on Judiciary and Transportation to order for the public hearing. We have an agenda prepared, but I've spoken to the members who are present, including Senator Tenorio whose bill is actually the first bill to be heard, and he's willing to allow us to go a little ahead of the agenda to take care of Bill 48 as the first order of business.

With Bill 48, we'll also discuss Bill 25, because the two are actually related to each other, and will probably be dealt as a merging of them from this point on. We have received sign up sheets for both Bill 25 and 48, I have Justice Carbullido, Justice Tydingco-Gatewood, Judge Bordallo, and Jay Arriola from the Guam Bar Association, have signed up. So, if those four people will please step forward to the table.

For the purpose of the record, Bill 48 is a bill to reorganize the Judiciary as the third co-equal and independent branch of the government of Guam to designate Judicial Council as the head of the Unified Judiciary and to amend Title 7 and Title 19 of the Guam Code Annotated, relative to Judiciary and its operations. Bill 25 is a bill to authorize the payment of retired judges and justices who sit as designated or pro tem judges on the Supreme Court and it is identical and spirit of Bill 48, so we'll hear the two together. Justice Carbullido.

Chief Justice: **[Verbatim from written testimony. Attached.]**

Chairman: Thank you Mr. Chief Justice and while you're giving your testimony, do you wish to offer an oral testimony on Bill 25, or do you want to just submit your written testimony?

Chief Justice: We will submit for the record our written testimony on Bill 25, and likewise when you get to Bill 49 and Bill 50. However, if there's any questions we'll be more than happy to respond.

Chairman: Okay, I think that it might behoove us to, if you have no objections, to allow all the testimony to take place, so that my colleagues will have a broader spectrum of what issues may be needed to be address in their questioning.

Chief Justice: I will stay back in terms if there's any questions after allowing my colleagues and other interested people to testify on this bill.

Chairman: Thank you. I like to ask Justice Gatewood, if she has any comments she'll like to make.

Gatewood: Just a few comments, Mr. Chairman and members of the Committee and other Senators. As a the only sitting Justice who has served both in the Superior Court and the Supreme Court, I believe I bring to the table something quite important in terms of my testimony. First of all, I like to indicate on the record that as an Associate Justice, I whole-heartedly support the testimony of our Chief Justice of Guam. For many years of my capacity as a Superior Court Judge, which is almost seven and a half to eight years, and now as a Supreme Court Justice, which is now over a year, I have always advocated for a Unified Judiciary. This bill sponsored by the Honorable Chairman Cunliffe, and co-sponsored by Senator Quinata, is the first step in achieving a Unified Judiciary, it's long overdue. Our fellow brothers and sisters, the Honorable Retired Chief Justice Peter C. Siguenza, the Honorable Retired Chief Justice Benjamin Cruz, the Honorable Retired Associate Justice Janet Healy Weeks, and the late Monessa Lujan, have worked tirelessly towards this unification. So I asked each and everyone of you today to look at this measure, and support the concept of independent and co-equal branch of government, and also look at the economic reality facing Guam today, and I ask that you support this bill. Thank will be all, thank you, Your Honor.

Chairman: Thank you very much, Justice Gatewood. Judge Bordallo.

Bordallo: Thank you very much. Mr. Chairman, members of the Committee on Judiciary and Transportation, I thank you for the opportunity to testify briefly here today in support of Bill 48.

While the economic crisis is somewhat credited with being the spurring point for bringing this bill before the Legislature. I'm here basically in support of it on fundamental principles of the separation of powers. I find that the traditional organization of the branches dictate the judiciary, as Chief Justice Carbullido has pointed out, in every single state is lead by the Chief Justice of that particular jurisdiction. With that in mind, I wish to make comments on several sections of the bill.

First of all, beginning with Section 14 of the bill, with the make up of the Judicial Council, I would ask the Committee to reconsider whether in fact any judges should be members of the Judicial Council, and whether or not in line with the other states, the Judicial Council should just be made up of the three Justices of the Supreme Court. The reason I bring that forward is because under the make up of the Council as set forth in the bill, it's possible that one Justice and two Judges of the Superior Court will now have control of the Judiciary as oppose to the majority of the Supreme Court. With the intent of the bill being that the Supreme Court have the control of the Judiciary, I think that loophole may work against what seems to be and certainly what I'm in favor of with respect to the control of

the hope that they will take a look at that and decide whether in fact it is appropriate. I believe there was within California another possibility wherein the Chief Justice appointed the members to the Judicial Council, but all members having to be judges or justices of the respective courts. In that manner, because of the faith he exercised in the respective members to protect the integrity of the Judiciary, I think that insured that the Supreme Court again maintained control of the Judiciary.

Another Section I wish to briefly discuss or bring to the attention of the court is Section 10, wherein Section 3109(b) was repealed, that dealing with the 90-day appointment rule. I would ask the Committee to reconsider reinstating that provision, because if we agree that the Judiciary should be a co-equal branch and we agree that it should have three full-time justices, then we have to agree that those three full-time justices should be present and serving on the court and every single point and time. I think the rationale stated in that Section that the Legislature finds that it is extremely important. It is critical that positions in the Supreme Court be filled promptly, in light of the purpose of the Bill, still resonates in spite of the financial crisis that we find ourselves in. I believe that it is imperative that the Supreme Court be fully staffed and fully functional as a sign that we have reached judicial maturity, and that the money can be found to insure that the Supreme Court maximizes its operations.

The last Section that I wish to bring attention to, I don't know where the source of this Section is, it's language that's been in the Judiciary Code, is Section 12 which is Section 4103 of 7 GCA. The portion I'm referring to states that the Presiding Judge may preside at any session of the court that he or she attends. The only concern I have about that, Mr. Chairman, is what it basically allows an analogy will be, if the Speaker should walk in here and he could come over and just tap you on the back and say, "Mr. Chairman, move over, I'm going to now run this hearing." That portion of the code has been in the Judiciary Code, I think since the beginning, and no one's sure how it got there, but I think it needs to be removed for a couple of reasons. Primarily of which is, as you know the Judiciary and the legal principles, has always been not only to remove any impropriety that may exist or any conflicts that may exist, but also to remove the appearance of any impropriety. I think just to straighten out the code now, it's only happened to me once in the five years that I've been serving on the bench, but it has happened to me, where in the middle of a case, marshals have come into the courtroom, and said, "The Presiding Judge wants to take over this case." I can only say, from the looks of the parties before me, it certainly resonated that they're... you know it ... the appearance is that something's up. While there may not be anything behind it, the idea is to avoid the appearances of any improprieties or to avoid any appearances of conflicts. I don't believe this Section in the Code serves any purpose, especially in light of what I believe exist everywhere else, where the idea is that if a case is assigned to a judge, it's do so at random so it removes any appearance that there's any motive behind, and then as if proceeds in front of the

parties. But that's again a minor detail that I present to the Committee for their review. I do agree with the rest of the testimony presented by the Chief Justice and I am in favor of the Bill, again on the fundamental basis that the Supreme Court should have administrative control of the Judiciary as it does everywhere else. On that basis, I submit my oral testimony. Thank you for allowing me to come down here.

Chairman: Thank you, Judge Bordallo. We have two other people of have signed up, so perhaps Judge Bordallo if you could just....Chief Justice I think you could stay there...and Justice...please don't leave Judge Bordallo, I think we have some questions for you. Jay Arriola, President of the Guam Bar, and Tony Sanchez from the Superior Court have signed up to provide oral testimony. Mr. Troutman you indicated you're just submitted your written testimony.

Troutman: Actually both oral and written.

Chairman: Alright, we'll call you in just a moment. Justice Weeks did you also wish to present testimony?

Weeks: No, Senator, I'm here to hear what the Senators have to say.

Chairman: Thank you. Mr. Arriola, please proceed.

Arriola: Thank you, Mr. Chairman, members of the Committee. I am Jay Arriola, President of the Guam Bar Association. The Guam Bar Association does not as of yet, have an official position to take on any of the bills now pending before this Committee. Quite frankly, in light of the short time frame, from the time the bill was introduced provided to the bar and set for public hearing. There was not enough time to conduct a formal survey of our membership. If the Chairman would like such a survey to be conducted, we could perhaps do one say within ten days.

Chairman: Just for your information, we anticipate that the Legislature will go into session the first week of April to hear this bill, so if you can get something in before that time, I think would be very beneficial to my colleagues.

Arriola: Certainly, Mr. Chairman. However, I would note that the Guam Bar has officially taken a stance regarding the compensation of the Judicial Council, the authority of the Supreme Court and the administrative control of the judiciary on numerous occasions. In the past six and half-seven years that I've been the President of the Bar, we've done dozens of surveys on this particular issue, every time a new Legislature, every time a new Chairman of the Judiciary comes in, there arises a new amendment or modifications to the composition to the Judiciary, the composition of the Judicial Council, and legislation similar to that being proposed. I will state that the Bar has taken a firm position by nearly a margin of

administrative control of the entire judiciary. It should be the Supreme Court. Additionally the Bar has been asked specifically what should the composition of the Judicial Council be, and the Bar has consistently responded that a member of the Executive Branch, being the Attorney General, and the member of the Legislative Branch, the Chairman on the Committee on Judiciary, should not be a part of that particular council. The basic tenant of separation of powers, the basic tenant of government law, you don't have members of the other branches of government sitting in leadership of the other, of the Judiciary. I would venture to say that the Bar will submit their individual opinions on this particular bill. We have submitted the notice to all our Bar members, and anticipate they will provide the Committee with their own testimony. However, I believe historically, the Bar has set forth its position that the Judicial Council should be changed, the composition should be changed, it should be one body in charge of the administrative and appellate authority over the entire Judiciary, and that should be lead by the Supreme Court.

Chairman: Thank you, Mr. Arriola. Mr. Sanchez.

Sanchez: Thank you, Mr. Chairman. **[Verbatim from written testimony. Attached.]**

Chairman: Thank you, Mr. Sanchez. I'm asking that we can hold the questions till we get everybody done, so that the panel has a better understanding of everybody's ideas. Would you also provide us with a copy of your testimony? Now, I would like to ask Mr. Troutman to come forward.

Troutman: Good morning, Mr. Chairman and members of the Committee. I'm Charles Troutman, Compiler of Laws, and for Bill 48, my testimony at least the first part is specifically at the direction of the Attorney General. I wish to testify on behalf of Douglas Moylan, our Attorney General, whose off-island this week on federally-funded training in Washington, D.C. His position on Bill 48, relative to the court reorganization, is that the only matter that he has a direct concern is, of course, his position on the Judicial Council. He believes that he was elected, part of his duties that the people elected him to do, was to be on the Judicial Council, and he sees no immediate constitutional defect in this particular proposal. So therefore, he's asking the Committee to retain the Committee Chairman and the Attorney General as members, and I might add, the Judicial Council included the Bar Chairman as well.

This history by the way, whether or not it's organic, goes back a long ways. It was first raised by your many, many, long-time predecessor, Concepcion Barrett, who occupied the Chairman's position in 1975-76, in the Thirteenth Legislature. She showed up for most meetings, but whenever it was a supervisory matter over employees, she simply made it a habit of staying away, and announced her reasons, that she thought it wasn't up to a legislator to sit in judgment over an employee, a classified employee grievance or appeal as was the duty, in those

administrative office of the courts held hearings out on Guam in preparation for what later became the Organic Act amendment allowing the present Guam Supreme Court.

In discussions with the panel in my testimony, I brought up this question of the non-judicial members, I was [briefly?] cut off by the late Judge Ely, whose comment that he thought it was a very good way to run the courts. In light of such formidable comments I basically kept quiet. I never had an occasion to bring the issue as a case of controversy, so in my mind, the issue is basically unresolved, particularly in the light of the rather vague Organic Act provisions regarding the establishment of the court system, plus a very [enigmatic?] reference to separation of powers in the original legislative history to the 1950 Organic Act, which says that establishing the usual separation of powers in the government, except when it comes to administration. Now, what that means, nobody's yet said, but that's what it says in the legislative history. So, at least they were thinking of maybe if you [anomalies?] themselves back then. On the

.... [audio did not pick up this portion] ... some of his remarks, but specifically you need to reenact or refind or relocate the current on a judge's salaries. I have received several calls, presumably in preparation for this hearing, from various people saying, "Where can we find reference to how much the judges make?" and I've done a number of searches and so have other people, and the answer is it disappeared. Sometime when the court was actually established in 1995, there's a lot of [end of Side A, Tape 1]

... salve portion disappeared, so whenever you see so and so's salary is 90%, or whatever percent of the Chief Justice's salary, you can't in law what the base dollars are. I think, all I can say is, I think the current salary is based on the Hay Study, and somebody put it at Level L, that's what I've been told. But for such a position in a co-equal branch of government, it might be better to put it some place a little less puzzling to find out. In fact, when we're budgeting for the Attorney General's salary, after his election, we had to call out Tony Sanchez to find the base, because we couldn't find it in law. Consequently, I think that definitely needs, it's probably there, but it needs to be a little less buried.

Another thing, there's a section, I believe Section 13, it's in my testimony, it should be, about the jurisdiction of the Supreme Court or only appellate jurisdiction is mentioned. In that particular point, it should be appellate and original jurisdiction, because elsewhere, in 4106 for instance, there is original jurisdiction involving the Governor and Legislature, which has been used frequently in the past, not frequently but often enough, so that it should be no current dispute as to whether that is being eliminated by accident or not. Reading your amendments, at least the version, Mr. Chairman, you sent me by email, I found it a bit difficult to dissert what is happening to Designated Justices and what the status of pro tem is. I definitely share Tony Sanchez' concern about having