

COMMITTEE
ON GOVERNMENTAL STRUCTURES AND FUNCTIONS
3RD CHUUK STATE CONSTITUTIONAL CONVENTION
STATE OF CHUUK, FSM 96942
2004

CR No:3-04(a)
COMM:GS&F
DATE:6/30/04

The Honorable Camillo Noket
President
Third Chuuk State Constitutional Convention
Federated States of Micronesia 96942

Re: DP No. 3-4; 3-43; and 3-68;

Dear Mr. President:

Your Committee on Governmental Structures and Functions to which was assigned Delegate Proposal Nos. 3-4; 3-43; and 3-68; relating to amendment to section 9, 5 and 7 of Article VII of the Chuuk State Constitution, respectively entitled:

"Section 9. No person is eligible to serve as Chief Justice or an Associate Justice unless at least 35 years of age, ~~was born Chuukese, has been a resident of the State of Chuuk for at least 25 years, is a citizen of the Federated States of Micronesia,~~ and has never been convicted of a felony. Other qualifications may be prescribed by statute."

"Section 5.

- (a) Matters before the Trial Division of the State Supreme Court may be heard by on Justices.
- (b) At least 3 Justices shall hear all appeals in the Appellate Division. Only one Not less than 2 Justices of the State Supreme Court may sit to hear or decide an appeal in the Appellate Division. The If needed,

other members of the appellate panel shall be temporary justices appointed pursuant to section 7 for the limited purpose of hearing the appeal. Decisions shall be by concurrence of a majority of the Justices sitting on the appeal panel, but a single Justice may make necessary orders concerning any appeal for want of jurisdiction, concerning failure to take or prosecute the appeal in accordance with applicable law and procedure, or at the request of any party in the case No. Justice may hear or decide an appeal of matter heard by such Justice in the Trial Division, and any party in a case may disqualify one or more of the Justices of the State Supreme Court sitting in the Appellate Division. ~~To complete an appellate panel, the Chief Justice may appoint as temporary Justices, for the limited purpose of hearing the appeal, a Justice of the Supreme Court of the Federate States of Micronesia, a judge of a court of another state of the Federated States of Micronesia, or a qualified attorney in the State of Chuuk. If the Chief Justice is a member of the appellate panel, or is so removed or disqualified, the most senior Associate Justice who has not been removed or disqualified from the case shall appoint the temporary Justices."~~

"Section 7. The Governor shall nominate and appoint, with the advice and consent of the Senate, the Chief Justice and Associate Justices of the State Supreme Court, who shall hold their offices during good behavior. ~~The Governor shall appoint, with the advice and consent of the Legislature, a roster of qualified lawyers under section 9 who may be appointed by the Chief Justice to sit on the Trial or Appellate Divisions in case of conflict of interest or disqualification of all Justices. The Legislature shall prescribe by statute for the appointment and removal of the judges of inferior state courts and municipal courts."~~

begs leave to report as follows:

I. **RECOMMENDATIONS**

Your Committee wishes to recommend adoption of the report and the committee proposals.

II. **Analysis**

A. Purpose.

1. The intent of the DP No.3-4; is to open up the State Supreme Court to applicants for justice positions from other places other than Chuuk State and the FSM.

2. The intent of the DP No.3-43; is to reverse the set up Justices on an appeal, one from Chuuk State Supreme Court, and 2 from outside.

3. The intent of the DP No. 3-68; is to provide a roster of standby Justices who can sit on a case, either at the Trial or Appellate Division, when there is shortage of Justices due to conflict of interest or disqualification, so that trial or appeal cases do not stop just because the Chuuk State Supreme Court does not have Justices on hand.

B. History

Delegate Proposal No. 3-4; was introduced in plenary session of the Convention on February 3, 2004 by the Mortlocks Delegation to the Chuuk State Convention. Delegate Proposals 3-43 and 3-68 were introduced by Delegate Jack Fritz on February 6 and 10, 2004. Subsequent Committee hearings conducted on the following proposals enabled the Committee to deliberate relating to these delegate proposals, and came up with the following findings.

C. Findings. (Re:DP No.3-4)

Cultural influence. It was brought to the attention of the Committee that there have been fears of having Chuukese Justices whose decisions, mostly regarding criminal offenders, could be easily influenced by the culture. It is also an intent of the proposal that criminal offenders must be punished to the maximum possible under the law. It was cited as a common knowledge that local justices are usually swayed or persuaded not to give maximum penalties to criminal offenders in the past. Some sentences were lenient, while others were of a surprising nature. It is the strong conviction of the introducers that foreigners who become justices of the Chuuk State Supreme Court would not be influenced and give out sentences in favor of defendants in criminal proceedings. There was

no indication that this problem is experienced in civil cases. In the recent past, there serious cases that defendants managed to get away fro receiving penalties as provided by law due to cultural interference or influence. The local justices, respecting the feelings associated with the ways our culture plays relating to forgiveness of defendants, yield to what were being sought culturally. Such results are not greatly accepted by the general public who have no art in the process except to watch on with mounting frustration.

Findings (Re DP No. 3-43)

This particular delegate proposal emphasized the same qualifications to be applied to all Justices of the State Supreme Court and also attempts to change the current set up of our Appellate Division: "Emon Re-Chuuk; ruemon reekis" changing to "Emon re-ekis; ruemon re-Chuuk" to sit on the Appellate Division. Only in Chuuk could we find such set up. This proposal respectfully wishes to convey that having two local Justices and one form outside sit on an appeal panel has more advantages than disadvantages. For one thing, the chuukese or local Justices know more about Chuuk, the people, their custom and tradition. They even know our tastes. Foreigners do not. They know the law they would apply in hearing cases and have a very tunnel vision of Chuuk State Supreme Court would bear all financial costs. For how long? We are not so sure only to say that it is an on going process today and in the future if no change takes place.

Findings (Re: DP No. 3-68)

It is very important to note the important roles temporary Justices play on our lives when they issue decisions of major significance from the bench. The Chief Justice and Associate Justices of Chuuk State Supreme Court are subject to constitutional requirements, that they be nominated by the Governor and consented by the Legislature before they play their judicial roles. Reality does not always go hand in hand with that constitutional guideline when, for instance, certain lawyers working for the State Supreme Court were appointed as temporary Justices because our own Jutices were banned from doing so

because of the inevitable problems one or some of them would face: CONFLICT OF INTEREST OR DISQUALIFICATION. There is no guarantee that this Committee finds that future Justices of the State Supreme Court are not going to be subjected to the same grounds for disqualification. Because temporary Justices are to hear cases instead, under such special circumstances, it is therefore proper that they be subject to the same process, nominated by the Governor and with consent by the Legislature.

It is the intent of this proposal that a solution be provided to solve, at least to a minimum, the problem confronting the Judiciary Branch of Chuuk State Government. A roster of Justices, preferably Chuukese, who shall be nominated by the Governor and consented by the Legislature to hear cases in the State Supreme Court. We can call them, for simplicity purposes, Standby Justices. Their qualifications shall be the same as provided in section 9 of Article 7. It is up to the Legislature to decide how many shall be nominated and for how long their term would be. At a time when the sitting Justices are confronting problems and that they could to hear a case, the Chief Justice may then refer to the Roster of Justices and picks out the number needed for such case or cases. In short, availability of Temporary Justices who were nominated by the Governor and consented by the Legislature greatly assures the people that their cases may not be delayed because of unavailability of Justices in Chuuk.

Because of financial consideration, Chuuk State Supreme Court would let them know though available means to communicate that they come on such a date to hear a case be it at the Trial Division or Appellate Division. If for instance, the Justice is living on Weno, then a phone call to his home would do. If on the other islands, written communications would do. However, if in Pohnpei, Yap, Guam or Papua New Guinea, a plane ticket would do. The farther a Justice lives, the grater the cost.

Finally, but not the least, the FSM Constitution, Chuuk State Constituion, and perhaps most of our Munciipal constitutions mandate and fully support that court decisions be made and give due consideration to

