



CARL T.C. GUTIERREZ  
GOVERNOR OF GUAM

APR 29 1996

The Honorable Speaker  
Twenty-Third Guam Legislature  
Guam Legislature Temporary Building  
155 Hesler Street  
Agana, Guam 96910

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received by	<u>Jalapa</u>
Time	<u>4:41</u>
Date	<u>4/29/96</u>

Dear Speaker:

Enclosed please find a copy of Substitute Bill No. 404 (LS), "AN ACT TO AMEND PROVISIONS OF TITLE 7, GUAM CODE ANNOTATED, RELATING TO THE COMPOSITION, DUTIES AND POWERS OF THE JUDICIAL COUNCIL", which I have signed into law today as **Public Law No. 23-86**.

This legislation is an improvement to the present composition of the Judicial Council of Guam because the functioning of the Third Branch of government, our courts, is placed more directly in the hands of the justices and judges themselves. The three full-time justices of the Supreme Court will now serve on the new Judicial Council, as well as three judges of the Superior Court of Guam.

In this legislation, the President of the Guam Bar Association has been removed from membership on the Judicial Council, however, I believe that a future legislative amendment should restore this valuable position to membership.

Very truly yours,

  
Carl T. C. Gutierrez  
Governor of Guam

Attachment  
**231102**

Office of VICE-SPEAKER TED C. NELSON	
1000 ...	
<u>bobb</u>	<u>bcc</u>
Print Name	Initial
Date: <u>4-29-96</u>	Time: <u>4:20pm</u>

TWENTY-THIRD GUAM LEGISLATURE  
1996 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 404 (LS), "AN ACT TO AMEND PROVISIONS OF TITLE 7, GUAM CODE ANNOTATED, RELATING TO THE COMPOSITION, DUTIES AND POWERS OF THE JUDICIAL COUNCIL," was on the 19th day of April, 1996, duly and regularly passed.



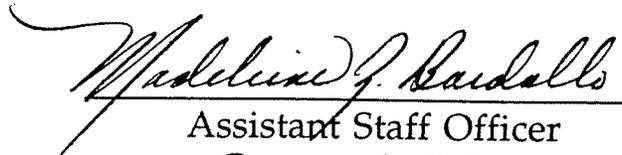
TED S. NELSON  
Acting Speaker

Attested:



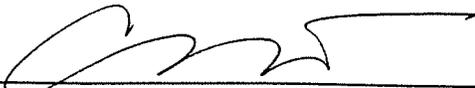
JUDITH WON PAT-BORJA  
Senator and Legislative Secretary

-----  
This Act was received by the Governor this 26 day of April  
1996, at 6:00 o'clock P.M.



Assistant Staff Officer  
Governor's Office

APPROVED:



CARL T. C. GUTIERREZ  
Governor of Guam

Date: 4-29-96

Public Law No. 23-86

TWENTY-THIRD GUAM LEGISLATURE  
1995 (FIRST) Regular Session

Bill No. 404 (LS)

As further substituted by the Committee on Judiciary,  
Criminal Justice, and Environmental Affairs and  
further substituted on the floor.

Introduced by:

M. C. Charfauros

A. L. G. Santos

T. S. Nelson

E. Barrett-Anderson

A. C. Blaz

J. M. S. Brown

F. P. Camacho

H. A. Cristobal

M. Forbes

A. C. Lamorena V

C. Leon Guerrero

L. Leon Guerrero

S. L. Orsini

AN ACT TO AMEND PROVISIONS OF TITLE 7, GUAM  
CODE ANNOTATED, RELATING TO THE  
COMPOSITION, DUTIES AND POWERS OF THE  
JUDICIAL COUNCIL.

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

2 Section 1. §5101 of Title 7, Guam Code Annotated, is hereby amended  
3 to read as follows:

4 "§5101. Judicial Council. (a) There shall be a Judicial Council (the  
5 "Council") that shall consist of eight (8) members: the Attorney General  
6 of Guam, the Chairman of the Judiciary and Criminal Justice  
7 Committee of the Legislature or its successor committee, or his or her  
8 designee, the Presiding Judge of the Superior Court, two (2) additional

1 judges of the Superior Court appointed by the Presiding Judge, which  
2 shall rotate among the judges of the Superior Court every three years,  
3 the Chief Justice of the Supreme Court, and the two full-time Associate  
4 Justices of the Supreme Court. The chairperson of the Council shall be  
5 selected from among the members of the Council on a three-year  
6 rotational basis, the chairperson shall not succeed himself or herself.

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

14 (c) The term of each member of the Council shall be for the term of  
15 such member's respective office.

16 (d) Each member of the Council shall be a resident of Guam and a  
17 citizen of the United States.

18 (e) No act of the Council shall be valid except with the  
19 concurrence of no less than the majority of all of its members.

20 (f) The Council shall promulgate its own rules for its conduct and  
21 operation. Said rules shall include provisions designed to comply with  
22 the spirit and intent of the Open Government Law of Guam (5 GCA  
23 Chapter 8).

24 (g) The council shall be attached to the judicial branch of the  
25 government of Guam for purposes of administration."

26 Section 2. §7103 and §7104 of Title 7, Guam Code Annotated, are  
27 hereby amended to read as follows:

1           **"§7103. (a) Superior Court Administrator.** The Presiding Judge  
2 shall appoint a Superior Court Administrator who shall be subject to  
3 removal by him or her. The Court Administrator shall be responsible  
4 for the general supervision of all personnel of the Superior Court other  
5 than Judges and their immediate staff, the buildings and grounds  
6 assigned to the Superior Court, property in the custody of the court  
7 used for the court's operation, and shall be responsible for other  
8 matters assigned to him or her by the Presiding Judge. The salary of the  
9 Court Administrator shall be fixed by the Presiding Judge pursuant to a  
10 general Personnel Rule covering compensation. The Court  
11 Administrator may appoint, with the approval of the Presiding Judge,  
12 necessary deputies and assistants in such number as may be approved  
13 by the Presiding Judge, whose salaries shall be fixed by the Judicial  
14 Council pursuant to a general Personnel Rule covering compensation.  
15 The appointment, removal and salaries of such deputies and assistants  
16 shall be governed by the applicable Personnel Rules and Regulations  
17 governing employment practices within the Judicial Branch.

18           **(b) Supreme Court Administrator.** The Chief Justice shall appoint  
19 a Supreme Court Administrator who shall be subject to removal by him  
20 or her. The Court Administrator shall be responsible for the general  
21 supervision of all personnel of the Supreme Court other than Justices  
22 and their immediate staff, any property in the custody of the court used  
23 for the court's operation, and shall be responsible for other matters  
24 assigned to him or her by the Chief Justice. The salary of the Court  
25 Administrator shall be fixed by the Chief Justice pursuant to a general  
26 Personnel Rule covering compensation. The Court Administrator may  
27 appoint, with the approval of the Chief Justice, necessary deputies and

1 assistants in such number as may be approved by the Chief Justice,  
2 whose salaries shall be fixed by the Judicial Council pursuant to a  
3 general Personnel Rule covering compensation. The appointment,  
4 removal and salaries of such deputies and assistants shall be governed  
5 by the applicable Personnel Rules and Regulations governing  
6 employment practices within the Judicial Branch.

7 **§7104. Clerks. (a) Superior Court Clerk.** The Presiding Judge  
8 shall appoint a Superior Court Clerk who shall be subject to removal by  
9 him or her. The salary of the Superior Court Clerk shall be fixed by the  
10 Judicial Council. The Superior Court Clerk may appoint, with the  
11 approval of the Presiding Judge, such deputies and assistants in such  
12 numbers as are necessary for the daily operations of the Superior  
13 Court. Such deputies and assistants shall be subject to removal by the  
14 Superior Court Clerk, with the approval of the Presiding Judge. The  
15 salaries of such deputies and assistants shall be fixed by the Judicial  
16 Council pursuant to a general Personnel Rule covering compensation.  
17 The appointment and removal of such deputies and assistants shall be  
18 subject to the applicable Personnel Rules and Regulations governing  
19 employment practices within the Judicial Branch.

20 **(b) Supreme Court Clerk.** The Chief Justice shall appoint a  
21 Supreme Court Clerk who shall be subject to removal by him or her.  
22 The salary of the Supreme Court Clerk shall be fixed by the Judicial  
23 Council. The Supreme Court Clerk may appoint, with the approval of  
24 the Chief Justice, such deputies and assistants in such numbers as are  
25 necessary for the daily operations of the Supreme Court. Such deputies  
26 and assistants shall be subject to removal by the Supreme Court Clerk,  
27 with the approval of the Chief Justice. The salaries of such deputies and

1 assistant shall be fixed by the Judicial Council pursuant to a general  
2 Personnel Rule covering compensation. The appointment and removal  
3 of such deputies and assistants shall be subject to the applicable  
4 Personnel Rules and Regulations governing employment practices  
5 within the Judicial Branch."

6 **Section 3. §7119 of Title 7, Guam Code Annotated, is hereby amended**  
7 **to read as follows:**

8 "§7119. Referees. The Presiding Judge shall appoint referees as  
9 provided in this Title, the Probate Code (Title 15), Title 19 (Family Court  
10 Law) and the applicable rules of procedure, and such referees are  
11 judicial officers pursuant to this Chapter."

12 **Section 4. §4103 of Title 7, Guam Code Annotated, is hereby amended**  
13 **to read as follows:**

14 "§4103. Powers of the Presiding Judge. The Presiding Judge of the  
15 Superior Court shall prescribe the order of business and assign the  
16 cases to the Judges of the Court in conformance with rules and  
17 regulations promulgated by the Supreme Court. The Presiding Judge  
18 may preside at any session of the Court which he or she attends.  
19 During his or her temporary absence or temporary disability his or her  
20 duties shall be performed by his or her designated appointee.  
21 Appointment shall be on a rotating basis among all the judges of the  
22 Superior Court."

23 **Section 5. §8105 of Title 7, Guam Code Annotated, is hereby amended**  
24 **to read as follows:**

25 "§8105. Chief Marshal of the court; appointment, salary. The  
26 Chief Justice and Presiding Judge may each appoint Chief marshals of  
27 their respective courts who shall be subject to removal by such courts in

1 compliance with the Personnel Rules and Regulation. The Chief  
2 Marshal, with the approval of the Chief Justice or Presiding Judge, for  
3 their respective court, may appoint deputies whose salaries shall be  
4 fixed by the General Rule on compensation."

5 Section 6. §8113 of Title 7, Guam Code Annotated, is hereby amended  
6 to read as follows:

7 "§8113. Other court personnel. The Presiding Judge for the  
8 Superior Court, and the Chief Justice for the Supreme Court, may  
9 appoint and may remove from their respective courts, pursuant to all  
10 applicable Personnel Rules and Regulations of the Supreme Court and  
11 the Superior Court, such other officers and personnel as are necessary  
12 to carry out the duties of the court. If such officers and personnel are  
13 appointed to fill new positions or to have duties not already specified in  
14 law or in a plan approved by the Chief Justice or Presiding Judge,  
15 respectively, no such appointments shall be made or new duties  
16 assigned until a plan therefor has been approved by the Chief Justice or  
17 Presiding Judge, respectively, and by the Judicial Council."

Date: 4/19/96

VOTING SHEET

Bill No. 404  
 Resolution No. \_\_\_\_\_  
 Question: \_\_\_\_\_

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	ABSENT/ OUT DURING ROLL CALL
ADA, Thomas C.		✓		
AGUON, John P.		✓		
BARRETT-ANDERSON, Elizabeth	✓			
BLAZ, Anthony C.	✓			
BROWN, Joanne S.	✓			
CAMACHO, Felix P.	✓			
CHARFAUROS, Mark C	✓			
CRISTOBAL, Hope A.	✓			
FORBES, -MARK	✓			
LAMORENA, Alberto C., V	✓			
LEON GUERRERO, Carlotta	✓			
LEON GUERRERO, Lou	✓			
NELSON, Ted S.	✓			
ORSINI, Sonny L.	✓			
PANGELINAN, Vicente C		✓		
PARKINSON, Don	<i>excused</i>		✓	
SAN AGUSTIN, Joe T.		✓		
SANTOS, Angel L. G.	✓			
SANTOS, Francis E.		✓		
UNPINGCO, Antonio R.		✓		
WONPAT-BORJA, Judith		✓		

TOTAL

13   7   1 excused   0

CERTIFIED TRUE AND CORRECT:

\_\_\_\_\_  
 Recording Secretary

# TWENTY-THIRD GUAM LEGISLATURE

1996 (SECOND) Regular Session

✓ Date: 4/19/96

## VOTING SHEET

Bill No. \_\_\_\_\_  
 Resolution No. \_\_\_\_\_  
 Question: \_\_\_\_\_

FES motion  
to pass B404 on file

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	ABSENT/ OUT DURING ROLL CALL
ADA, Thomas C.	✓			
AGUON, John P. †	✓			
BARRETT-ANDERSON, Elizabeth	✓			
BLAZ, Anthony C.				✓
BROWN, Joanne S.				✓
CAMACHO, Felix P.		✓		
CHARFAUROS, Mark C		✓		
CRISTOBAL, Hope A. ††	✓			
FORBES, MARK		✓		
LAMORENA, Alberto C., V		✓		
LEON GUERRERO, Carlotta		✓		
LEON GUERRERO, Lou	✓			
NELSON, Ted S.		✓		
ORSINI, Sonny L.				✓
PANGELINAN, Vicente C	✓			
PARKINSON, Don	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Angel L. G. †		✓		
SANTOS, Francis E.	✓			
UNPINGCO, Antonio R.		✓		
WONPAT-BORJA, Judith	✓			

TOTAL                      10    8                      6                      3

CERTIFIED TRUE AND CORRECT:

\_\_\_\_\_  
 Recording Secretary

P 23-86

**Senator Mark C. Charfauros**  
**Chairman**  
**Committee on Judiciary, Criminal Justice, and Environmental Affairs**  
**Twenty-Third Guam Legislature**

Ada's Commercial and Professional Center  
138 East Marine Drive, Suite 101C-Annex  
Agana, Guam 96910

Tel: (671) 472-3342/3/5  
Fax: (671) 472-3440  
E-Mail: markchar@uog9.uog.edu

January 10, 1996

SPEAKER DON PARKINSON  
Twenty-Third Guam Legislature  
155 Hesler St.  
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Judiciary, Criminal Justice and Environmental Affairs to which was referred **Bill No. 404**, wishes to report back to the Legislature with its recommendation to pass **Bill No. 404 As substituted by the Committee** "AN ACT TO AMEND §§5501 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO THE COMPOSITION, DUTIES AND POWERS OF THE JUDICIAL COUNCIL."

The voting record is as follows:

TO PASS	<u>12</u>
NOT TO PASS	<u>0</u>
ABSTAIN	<u>1</u>
TO PLACE IN INACTIVE FILE	<u>0</u>

Copies of the Committee Report and other pertinent documents are attached.

Your attention to this matter is greatly appreciated.

  
MARK C. CHARFAUROS

Attachments.

# Senator Mark C. Charfauros

Chairman

## Committee on Judiciary, Criminal Justice, and Environmental Affairs Twenty-Third Guam Legislature

Ada's Commercial and Professional Center  
138 East Marine Drive, Suite 101C-Annex  
Agana, Guam 96910

Tel: (671) 472-3342/3/5  
Fax: (671) 472-3440  
E-Mail: markchar@uog9.uog.edu

November 27, 1995

### MEMORANDUM

TO: Members

FROM: Chairman

SUBJECT: Committee Report - **Bill No. 404** As substituted by the Committee "AN ACT TO AMEND §§5501 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO THE COMPOSITION, DUTIES AND POWERS OF THE JUDICIAL COUNCIL."

Transmitted herewith for your information and action is the Committee on Judiciary, Criminal Justice and Environmental Affairs' Report on the subject Bill.

The narrative report is accompanied by the following:

1. Original Bill 404; Bill 404 As substituted by the Committee;
2. Committee Voting Sheet;
3. Testimony and Sign-in Sheet
4. Public Hearing Notice.

Should you have any questions on the narrative report or the accompanying documents, I would be most happy to answer any of them.

Please take the appropriate action on the attached voting sheet and return the documents to my office for transmittal to the other members.

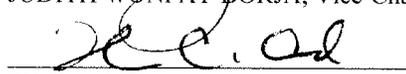
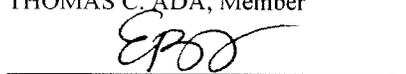
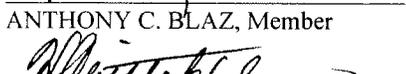
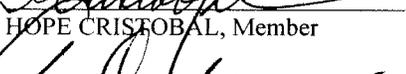
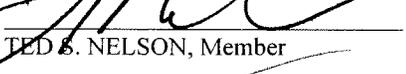
Your attention and cooperation in this matter is greatly appreciated.

  
MARK C. CHARFAUROS

Attachments.

**COMMITTEE ON JUDICIARY, CRIMINAL JUSTICE AND  
ENVIRONMENTAL AFFAIRS  
23rd Guam Legislature  
VOTING RECORD**

**Bill No. 404 As substituted by the Committee** "AN ACT TO AMEND §§5501 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO THE COMPOSITION, DUTIES AND POWERS OF THE JUDICIAL COUNCIL."

	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>ABSTAIN</u>	<u>INACTIVE FILE</u>
 MARK C. CHARFAUROS, Chairman	✓	—	—	—
 JUDITH WONPAT-BORJA, Vice-Chairperson	✓	—	—	—
 THOMAS C. ADA, Member	✓	—	—	—
 ELIZABETH BARRETT-ANDERSON, Member	✓	—	—	—
 JOANNE BROWN, Member	✓	—	—	—
 ANTHONY C. BLAZ, Member	✓	—	—	—
 HOPE CRISTOBAL, Member	✓	—	—	—
 A. TONY LAMORENA, Member	✓	—	—	—
 LOU LEON GUERRERO, Member	✓	—	—	—
 TED S. NELSON, Member	✓	—	—	—
 VICENTE C. PANGELINAN, Member	—	—	X	—
 ANGEL L.G. SANTOS, Member	✓	—	—	—
 DON PARKINSON, Ex-Officio Member	✓	—	—	—

COMMITTEE ON JUDICIARY, CRIMINAL  
JUSTICE AND ENVIRONMENTAL  
AFFAIRS

*Twenty-Third Guam Legislature*

COMMITTEE REPORT

on

Bill No. 404

**As substituted by the Committee**

“AN ACT TO AMEND §§5501 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO THE  
COMPOSITION, DUTIES AND POWERS OF THE JUDICIAL COUNCIL.”

November 27, 1995

## I. OVERVIEW

The Committee on Judiciary, Criminal Justice and Environmental Affairs scheduled a public hearing on November 27, 1995 at 9:30 a.m. at the Legislative Public Hearing Room. Public notice was announced on the November 22, 1995 issue of the PDN. Members present were:

Senator Mark C. Charfauros, Chairman  
Senator Tom Ada

Appearing before the Committee to testify on the bill were:

Benjamin J.F. Cruz, Judge, Superior Court of Guam, **oral, written.**  
Anthony Sanchez, Administrator, Superior Court of Guam, **oral.**  
Lou Pangelinan, Public Information Officer, Superior Court of Guam, **oral.**  
Katherine A. Maraman, Judge, Superior Court of Guam, **written.**  
Alberto C. Lamorena III, Presiding Judge, Superior Court of Guam, **written.**  
Paul Sudo, former Human Resources Administrator, Superior Court of Guam,  
**written.**  
Calvin E. Holloway, Sr., Attorney General, **written.**  
Charles H. Troutman, Compiler of Laws, **written.**

## II. SUMMARY OF TESTIMONY

**Benjamin J.F. Cruz**, Judge, Superior Court of Guam, **written, attached.**

**Anthony Sanchez**, Administrator, Superior Court of Guam, testified in favor of Bill 404. However, he stated that Sections 3, 4, and 5, relative to giving the Judicial Council the power of hiring court personnel, may create problems. He stated that since the Judicial Council is the appealing board for court employees, a conflict of interest may occur if the Council is directly involved in the hiring of such employees. He stated that as the third branch of government, it is appropriate for the Presiding Judge to make the important decisions of hiring key court employees.

**Lou Pangelinan**, Public Information Officer, Superior Court of Guam, testified in favor of Bill 404. She also stated that Sections 3, 4, and 5 may create problems. She stated that the merit system would be difficult to follow if the Judicial Council is directly involved in the hiring of the various court personnel.

**Katherine A. Maraman**, Judge, Superior Court of Guam, **written, attached.**

**Alberto C. Lamorena III**, Presiding Judge, Superior Court of Guam, **written, attached.**

**Paul Sudo**, former Human Resources Administrator, Superior Court of Guam, **written, attached.**

**Calvin E. Holloway, Sr.**, Attorney General, **written, attached.**

**Charles H. Troutman**, Compiler of Laws, **written, attached.**

### III. FINDING AND RECOMMENDATION

The Committee finds that Bill 404 would increase the membership of the Judicial Council, and provide the opportunity for more judges and justices to participate in the Council's operations. The Committee finds through the testimony of various individuals that Sections 3, 4 and 5 of Bill 404 would create problems. The Committee finds that these sections would allow the Council, a policy-making entity, to become unnecessarily involved in the day-to-day operations of the Court, including hiring and firing decisions. The Committee further finds that the additional responsibilities over personnel decisions would interfere with the Council's ability and obligation to remain unbiased and impartial. The impartiality of the Council is especially important when the Council acts as the final appeals board for court employee grievances and adverse actions. The Committee finds that Sections 3, 4 and 5 of Bill 404 creates a conflict of interest by compromising the merit system. The Committee further finds that the additional responsibilities created by these sections would require a commitment from the judges and justices that would interfere with their primary judiciary obligations.

The Committee finds that by excluding sections 3, 4 and 5, Bill 404 would allow the Judicial Council to remain a policy-making entity. The Committee further finds that the Court Administrator should continue to carry out the administrative operations of the Superior Court, while the Judicial Council concentrates on its policy-making function. The Committee finds that Bill 404 would increase the composition of the Judicial Council by including more judges and justices, and provide for the judges' participation on a rotation basis. The Committee finds that Bill 404 would recompose the Judicial Council in an appropriate manner which would effectuate the accomplishment of its primary objectives.

Accordingly, the Committee on Judiciary, Criminal Justice and Environmental Affairs, to which was referred **Bill No. 404**, does hereby submit its findings and recommendation to the Twenty-Third Guam Legislature **TO DO PASS Bill No. 404 As substituted by the Committee** "AN ACT TO AMEND §§5501 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO THE COMPOSITION, DUTIES AND POWERS OF THE JUDICIAL COUNCIL."

MCI  
TC  
101



# COMMITTEE ON RULES

Twenty-Third Guam Legislature  
155 Hesler St., Agana, Guam 96910

October 18, 1995

## MEMORANDUM

**TO:** Chairman, Committee on Judiciary, Criminal Justice  
and Environmental Affairs

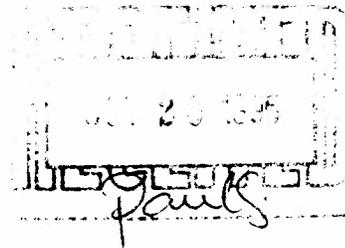
**FROM:** Acting Chairman, Committee on Rules

**SUBJECT:** Referral - Bill No. 404

The above Bill is referred to your Committee as the principal committee. Please note that the referral is subject to ratification by the Committee on Rules at its next meeting. It is recommended you schedule a public hearing at your earliest convenience.

  
JOE T. SAN AGUSTIN

Attachment:



100

TWENTY-THIRD GUAM LEGISLATURE  
1995 (FIRST) REGULAR SESSION

Bill No. 404

Introduced by:

M.C. CHARFAUROS   
A.L.G. SANTOS   
T.S. NELSON 

AN ACT TO AMEND §§5101, 7103, 7104, AND 8113 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO THE COMPOSITION, DUTIES AND POWERS OF THE JUDICIAL COUNCIL.

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

2 SECTION 1. **Legislative Intent.** The Legislature finds that the composition of  
3 the Judicial Council should encompass increased participation of judges and justices.

4 SECTION 2. §5101 of Chapter 5, Title 7 GCA is hereby amended to read as  
5 follows:

6 “§5101 **Judicial Council** (a) There shall be a Judicial Council (the “Council”) that  
7 shall consist of ~~five (5)~~ nine (9) members: The President of the Guam Bar Association or  
8 in his or her absence the Vice President of the Guam Bar Association, the Attorney  
9 General of Guam or his or her designee, the Chairman of the Judiciary and Criminal  
10 Justice Committee of the Legislature or its successor committee, or his or her designee,  
11 the Presiding Judge of the Superior Court, two (2) additional judges of the Superior Court  
12 appointed by the Presiding Judge, which shall be rotated amongst the judges of the  
13 Superior Court every year, and the Chief Justice of the Supreme Court, and the two full-  
14 time associate justices of the Supreme Court. The Chief Justice shall be **ex officio**  
15 chairperson of the Council.

16 (b) The Council shall operate in a wholly nonpartisan manner. The Chief Justice of  
17 the Supreme Court, in his or her absence, may appoint from amongst the Justices an  
18 acting Chief Justice. The Presiding Judge, in his or her absence, may appoint from  
19 amongst the Judges an acting Presiding Judge.

1 (c) The term of each member of the Council shall be for the term of such member's  
2 respective office.

3 (d) Each member of the Council shall be a resident of Guam and a citizen of the  
4 United States.

5 (e) No act of the Council shall be valid **except** with the concurrence of no less than  
6 ~~three~~ (3) the majority of its members.

7 (f) The Council shall promulgate its own rules for its conduct and operation. Said  
8 rules shall include provisions designed to comply with the spirit and intent of the Open  
9 Government Law of Guam (5 GCA Chapter 8).

10 (g) The Council shall be attached to the judicial branch of the government of  
11 Guam for purposes of administration.

12 (h) No member of the Judiciary shall be eligible to receive a stipend for attending a  
13 Judicial Council meeting.”

14 **SECTION 3. §7103 of Chapter 7, Title 7 GCA is hereby amended to read as**  
15 **follows:**

16 “**§7103. Court Administrator.** The [~~Presiding Judge~~] Judicial Council shall  
17 appoint a Court Administrator who shall be subject to removal by [~~him or her~~] the  
18 Judicial Council. The Court Administrator shall be responsible for the general supervision  
19 of all personnel of the Superior Court other than Judges and their immediate staff, the  
20 buildings and grounds assigned to the Superior Court, property in the custody of the court  
21 used for the court's operation, and shall be responsible for other matters assigned to him  
22 or her by the [~~Presiding Judge~~] Judicial Council. The salary of the Court Administrator  
23 shall be fixed by the [~~Supreme Court~~] Judicial Council pursuant to a general Personnel  
24 Rule covering compensation. The Court Administrator may appoint, with the approval of  
25 the [~~Presiding Judge~~] Judicial Council, necessary deputies and assistants in such number  
26 as may be approved by the [~~Supreme Court~~] Judicial Council, whose salaries shall be  
27 fixed by the [~~Supreme Court~~] Judicial Council pursuant to a general Personnel Rule

1 covering compensation. The appointment, removal and salaries of such deputies and  
2 assistants shall be governed by the applicable Personnel Rules and Regulations governing  
3 employment practices within the Judicial Branch.”

4 **SECTION 4. §7104 of Chapter 7, Title 7 GCA is hereby amended to read as**  
5 **follows:**

6 “§7104. Clerks. (a) **Superior Court Clerk.** The [~~Presiding Judge~~] Judicial  
7 Council shall appoint a Superior Court Clerk who shall be subject to removal by [~~him or~~  
8 ~~her~~] the Judicial Council. The Superior Court Clerk may appoint, with the approval of the  
9 [~~Presiding Judge~~] Judicial Council, such deputies and assistants in such numbers as are  
10 necessary for the daily operations of the Superior Court. Such deputies and assistants  
11 shall be subject to removal by the Superior Court Clerk, with the approval of the [~~Presid-~~  
12 ~~ing Judge~~] Judicial Council. The salaries of the Superior Court Clerk and his or her  
13 deputies and assistants shall be fixed by the [~~Supreme Court~~] Judicial Council pursuant to  
14 a general Personnel Rule covering compensation. The appointment and removal of such  
15 deputies and assistants shall be subject to the applicable Personnel Rules and Regulations  
16 governing employment practices within the Judicial Branch.

17 (b) **Supreme Court Clerk.** The [~~Chief Justice~~] Judicial Council shall appoint a  
18 Supreme Court Clerk who shall be subject to removal by [~~him or her~~] the Judicial  
19 Council. The Supreme Court Clerk may appoint, with the approval of the [~~Chief Justice~~]  
20 Judicial Council, such deputies and assistants in such numbers as are necessary for the  
21 daily operations of the Supreme Court. Such deputies and assistants shall be subject to  
22 removal by the Supreme Court Clerk, with the approval of the [~~Chief Justice~~] Judicial  
23 Council. The salaries of the Supreme Court Clerk and his or her deputies and assistants  
24 shall be fixed by the [~~Supreme Court~~] Judicial Council pursuant to a general Personnel  
25 Rule covering compensation. The appointment and removal of such deputies and  
26 assistants shall be subject to the applicable Personnel Rules and Regulations governing  
27 employment practices within the Judicial Branch.”

1           **SECTION 5. §8113 of Chapter 8, Title 7 GCA is hereby amended to read as**  
2 **follows:**

3           **“§8113. Other court personnel.** The [~~Presiding Judge for the Superior Court, and~~  
4 ~~the Chief Justice for the Supreme Court,~~] Judicial Council may appoint and may remove  
5 from their respective courts, pursuant to all applicable Personnel Rules and Regulations  
6 of the [~~Supreme Court~~] Judicial Branch, such other officers and personnel as are  
7 necessary to carry out the duties of the court. If such officers and personnel are appointed  
8 to fill new positions or to have duties not already specified in law or in a plan approved  
9 by the [~~Supreme Court~~] Judicial Council, no such appointments shall be made or new  
10 duties assigned until a plan therefor has been approved by the [~~Supreme Court~~] Judicial  
11 Council.”

**TWENTY-THIRD GUAM LEGISLATURE**  
**1995 (FIRST) REGULAR SESSION**

Bill No. 404

As substituted by the Committee

Introduced by:

M.C. CHARFAUROS

A.L.G. SANTOS

T.S. NELSON

**AN ACT TO AMEND §5101 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO  
THE COMPOSITION, DUTIES AND POWERS OF THE JUDICIAL COUNCIL.**

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

2 SECTION 1. **Legislative Intent.** The Legislature finds that the composition of  
3 the Judicial Council should encompass increased participation of judges and justices.

4 SECTION 2. §5101 of Chapter 5, Title 7 GCA is hereby amended to read as  
5 follows:

6 “§5101 **Judicial Council** (a) There shall be a Judicial Council (the “Council”) that  
7 shall consist of ~~five (5)~~ nine (9) members: The President of the Guam Bar Association or  
8 in his or her absence the Vice President of the Guam Bar Association, the Attorney  
9 General of Guam or his or her designee, the Chairman of the Judiciary and Criminal  
10 Justice Committee of the Legislature or its successor committee, or his or her designee,  
11 the Presiding Judge of the Superior Court, two (2) additional judges of the Superior Court  
12 appointed by the Presiding Judge, which shall be rotated amongst the judges of the  
13 Superior Court every year, and the Chief Justice of the Supreme Court, and the two full-  
14 time associate justices of the Supreme Court. The Chief Justice shall be **ex officio**  
15 chairperson of the Council.

16 (b) The Council shall operate in a wholly nonpartisan manner. The Chief Justice of  
17 the Supreme Court, in his or her absence, may appoint from amongst the Justices an  
18 acting Chief Justice. The Presiding Judge, in his or her absence, may appoint from  
19 amongst the Judges an acting Presiding Judge.

1 (c) The term of each member of the Council shall be for the term of such member's  
2 respective office.

3 (d) Each member of the Council shall be a resident of Guam and a citizen of the  
4 United States.

5 (e) No act of the Council shall be valid **except** with the concurrence of no less than  
6 ~~three (3)~~ the majority of its members. The quorum of the Council shall consist of five (5)  
7 members.

8 (f) The Council shall promulgate its own rules for its conduct and operation. Said  
9 rules shall include provisions designed to comply with the spirit and intent of the Open  
10 Government Law of Guam (5 GCA Chapter 8).

11 (g) The Council shall be attached to the judicial branch of the government of  
12 Guam for purposes of administration.”



MR CHAIRMAN AND MEMBERS OF THE COMMITTEE ON JUDICIARY, CRIMINAL JUSTICE AND ENVIRONMENTAL AFFAIRS, I AM BENJAMIN J.F. CRUZ A JUDGE IN THE SUPERIOR COURT OF GUAM.

I WANT TO THANK THE CHAIRMAN FOR SCHEDULING AND CONDUCTING THIS HEARING.

THE INCLUSION OF THE TRIAL JUDGES ON THE JUDICIAL COUNCIL IS NOT A REVOLUTIONARY IDEA.

ALL THE JUDGES OF THE SUPERIOR COURT WERE MEMBERS OF THE JUDICIAL COUNCIL UNTIL THE COURT REORGANIZATION ACT WAS PASSED IN 1973 CREATING THE SUPREME COURT AND THE SUPERIOR COURT OF GUAM. PURSUANT TO THAT ACT THE CHIEF JUSTICE AND THE PRESIDING JUDGE ALONG WITH THE CHAIRMAN, THE GUAM BAR ASSOCIATION, AND THE ATTORNEY GENERAL MADE UP THE JUDICIAL COUNCIL.

AFTER THE U.S. SUPREME COURT STRUCK DOWN THE GUAM SUPREME COURT-THE PRESIDING JUDGE WAS THE ONLY JUDGE ON THE JUDICIAL COUNCIL.

I CAME TO SUPERIOR COURT BENCH IN NOVEMBER OF 1984. WITHIN MONTHS I RECOGNIZED THE FACT THE COURT COULD BE MORE EFFECTIVELY AND EFFICIENTLY OPERATED IF THE COLLECTIVE INPUT AND INSIGHT OF ALL THE TRIAL JUDGES WAS CONSIDERED ON THE JUDICIAL COUNCIL.

IN 1985, SENATOR FRANK SANTOS INTRODUCED THE FIRST BILL TO PUT THE TRIAL JUDGES BACK ON THE JUDICIAL COUNCIL. THE PUBLIC HEARING ON THAT BILL IN THE FALL OF 1985 WAS THE FIRST AND LAST TIME ALL THE JUDGES OF THE SUPERIOR COURT APPEARED TOGETHER BEFORE A LEGISLATIVE COMMITTEE. WE ALL PERSONALLY PRESENTED OUR DESIRE TO HAVE OUR VOICES AND VOTES BE PART OF THE JUDICIAL COUNCIL.

UNFORTUNATELY THE OPPOSITION TO THE BILL BY THEN PRESIDING PAUL ABATTE CAUSED THE BILL TO DIE IN COMMITTEE.

A SIMILAR BILL WAS INTRODUCED IN THE 19TH GUAM LEGISLATURE IN 1987. THOUGH I WAS THE ONLY JUDGE TO APPEAR AT THE COMMITTEE HEARING THE OTHER JUDGES DID SUBMIT WRITTEN TESTIMONY SUPPORTING THE BILL. ACTION ON THE BILL WAS POSTPONED DUE TO THE RETIREMENT OF PRESIDING JUDGE ABATTE AND THE APPOINTMENT OF A MEMBER OF THE LEGISLATURE TO THE POSITION OF PRESIDING JUDGE.

AFTER HE ASSUMED OFFICE, PRESIDING JUDGE LAMORENA ADVISED THE CHAIRMAN OF HIS OPPOSITION TO THE INCLUSION, SO THE BILL EXPIRED WITH THE 19TH GUAM LEGISLATURE.

SIMILAR, VALIANT BUT FUTILE EFFORTS WERE MADE WITH THE 20TH, 21ST AND 22ND GUAM LEGISLATURES. LAST NOVEMBER A RIDER TO PUT THE JUDGES ON JUDICIAL COUNCIL WAS PASSED BY THE LEGISLATURE. UNFORTUNATELY IT WAS VETOED BY GOVERNOR ADA.

I CONTINUED MY CAMPAIGN TO CHANGE THE COMPOSITION OF THE COUNCIL. TWO BILLS HAVE BEEN INTRODUCED BY THE 23RD GUAM LEGISLATURE. THOUGH I WOULD HAVE LIKED TO BRING THIS QUEST TO A CLOSE, THE CAST OF CHARACTERS HAVE CHANGED CONSIDERABLY WITHIN THE LAST FEW DAYS.

I AM THEREFORE RESPECTFULLY REQUESTING THAT THIS COMMITTEE TABLE FURTHER DISCUSSION AND ACTION ON THIS BILL UNTIL AFTER THE JUSTICES HAVE BEEN INSTALLED AND THEIR OPINIONS AND SUGGESTIONS ARE HEARD.

THE COMPOSITION OF THE JUDICIAL COUNCIL WILL AFFECT THE OPERATION OF BOTH THE SUPREME AND SUPERIOR COURTS. MY DESIRE TO

HAVE ALL THE JUDGES ON THE COUNCIL IS BASED ON MY BELIEF THAT ALL THE JUDGES HAVE VARYING EXPERIENCES AND THEREFORE UNIQUE PERSPECTIVES AND SUGGESTIONS ON HOW BEST TO OPERATE THE COURTS.

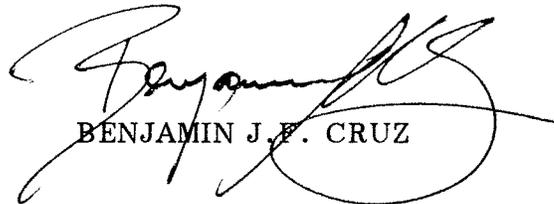
THE SUPREME COURT NOMINEES HAVE A WEALTH OF EXPERIENCE AND KNOWLEDGE. THEY UNDOUBTEDLY HAVE SOME IDEAS ON HOW THE COUNCIL SHOULD OPERATE AND WHO SHOULD BE ON IT. I SINCERELY BELIEVE THAT THEIR INPUT SHOULD BE SOUGHT BEFORE THIS COMMITTEE FINALIZES THE BILL.

I THANK THE COMMITTEE FOR RESPONDING TO MY BADGERING TO HAVE A BILL HEARD, BUT I HOPE THAT YOU WILL AGREE THAT UNLESS THE JUSTICES INPUT ARE CONSIDERED WE WILL ALL BE BACK FOR FURTHER AMENDMENTS.

NO ONE REGRETS THIS DELAY MORE THAN I BUT I BELIEVE IT'S THE BEST AND ONLY COURSE OF ACTION TO TAKE IN LIGHT OF RECENT DEVELOPMENTS.

THANK YOU FOR YOUR ATTENTION AND CONSIDERATION. SI YUUS MAASSE.

RESPECTIVELY SUBMITTED,



BENJAMIN J. F. CRUZ



Chambers of  
Hon. Katherine A. Maraman  
Judge

## Superior Court of Guam

Judicial Center  
120 West O'Brien Drive  
Agana, Guam 96910  
Telephone: (671) 475-3589 / 3581  
Fax: (671) 477-1500



November 27, 1995

The Honorable Mark C. Charfauros  
Chairman  
Committee on Judiciary, Criminal  
Justice and Environmental Affairs  
Twenty-Third Guam Legislature  
155 Hesler St.  
Agana, Guam 96910

Dear Mr. Chairman:

Thank you for inviting me to testify about Bill No. 404. I am unable to appear in person because I am involved in a criminal jury trial. I request that you and your colleagues consider my written comments.

Although Section 2 recognizes the changes coming to the Judicial Branch by providing that the entire Supreme Court sits on the Judicial Council, I believe that it is appropriate for me to restrict my testimony to the proposed inclusion of the two Superior Court Judges. Bill No. 404 acknowledges that the trial judges will make contributions to deliberations about policies governing the Judiciary.

You may recall that I do not favor having all of the Superior Court Judges sitting on the Judicial Council as I believe that we all have much work to do without all of us becoming deeply involved in policy making and some administrative decisions as these matters often become extremely time consuming. This measure is a good compromise. Two judges will sit for one year with rotating memberships giving each judge an opportunity every three years. The limited terms will not then require so great a commitment as to detract from our primary tasks. I support Sections 1 and 2 as presented and request their passage.

Sections 3, 4 and 5 concern me as I believe they could be construed to require Judicial Council to select classified employees of the Superior Court and the Supreme Court. First, I am concerned that these provisions have a detrimental effect on the merit system by compromising the appeal and grievance procedures. I request that the Committee include a provision clarifying that the Judicial Council only appoints, disciplines and removes the unclassified personnel of the Judicial Branch and that classified employees are

The Honorable Mark C. Charfauros  
Chairman  
Committee on Judiciary, Criminal Justice  
and Environmental Affairs  
November 27, 1995  
Page Two

hired through the merit system. This is particularly important because the Judicial Council sits as the final administrative body for classified employees' appeals of adverse actions and other grievances. If the Council hires the classified employees it may be difficult for the Council to sit later as neutral, unbiased hearing officers.

Second, I believe that the Judicial Council should remain primarily a policy-making institution. If the Council becomes deeply involved in personnel matters then it may find itself primarily an administrating institution running the day-to-day operations of the Courts. Since all members serve on the Council secondarily to other responsibilities it may be difficult for Council members to meet all demands that could arise from managing day-to-day operations.

Again, thank you, Mr. Chairman for the opportunity to present my views on this measure. If I may provide any further information or answer any questions, please contact me.

Sincerely,

  
KATHERINE A. MARAMAN



## Superior Court of Guam

Judicial Center  
120 West O'Brien Drive  
Agana, Guam 96910  
Telephone: (671) 475-3450/3410  
Fax: (671) 477-3184



Hon. Alberto C. Lamorena III  
Presiding Judge

November 27, 1995

Honorable Mark C. Charfauros  
Chairman  
Committee on Judiciary, Criminal Justice  
and Environmental Affairs  
138 East Marine Drive  
Suite 101 C-Annex  
Agana, Guam 96910

Dear Mr. Chairman:

I am pleased to submit the following testimony on Bill No. 404: An Act to Amend §§ 5101, 7103 and 8113 of Title 7, Guam Code Annotated, relative to the composition, duties and powers of the Judicial Council.

Allow me to begin by expressing my appreciation to you and Senators Angel Santos and Ted S. Nelson for authoring this proposed measure that will result in increased participation by judges and justices in the work of the Judicial Council.

This important issue is certainly timely as the Territory is moving closer towards the actual establishment of the Guam Supreme Court, following the appointments of the three justice nominees last week. Mr. Chairman, this proposed measure is also critical as it will directly impact on the operations of this separate and equal branch of government, by increasing powers of the Judicial Council, which was established as a policy-making body of the judiciary.

As I mentioned earlier, I wholeheartedly support increased participation by judges and justices in the Judicial Council and as such, it is without any hesitation that I register my support for sections 1 and 2 of this proposed measure.

However, Mr. Chairman, with respect to sections 3, 4, and 5 of the bill which empowers the Judicial Council to appoint and terminate all employees of the court, I must register my strong reservations regarding these provisions. I strongly believe that this enhanced power given to the council would compromise the merit system and would make it virtually impossible for



**Hon. Alberto C. Lamorena III**  
**Presiding Judge**

employees of the judicial branch to face an impartial panel whenever cases of grievances and adverse actions may arise. If the Judicial Council is empowered to appoint and remove all employees of the court, how can it be at the same time impartial whenever these employees have any employment grievances?

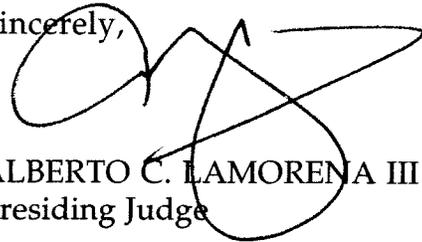
As you know, Mr. Chairman, in addition to its policy-making responsibilities, the Judicial Council currently also serves as the unbiased panel that hears employees' grievances and addresses adverse action cases similar to what the Civil Service Commission does for employees of the executive branch. The judiciary is a separate branch of government and the Judicial Council should be the final court of appeals for employee grievances. By rendering the Judicial Council unable to preside over employee grievance hearings impartially, Bill No 404 would leave court employees with no place to go.

Another concern I have is one that essentially would transform this policy-making entity into one that would have to dedicate an enormous amount of time each day to following the prescribed merit procedures of employment, which the court's administrators currently are designated to handle. With the recent increase in the number of cases coming before Guam's courts and anticipating the current trend to continue, there is no doubt that the daily workload of all judges and justices will indeed climb. Giving them unnecessary administrative responsibilities will impact greatly on their already increasing daily workload.

In closing, Mr. Chairman, I wish to re-iterate my support for the provisions of Bill No. 404 which will result in increased participation by judges and justices in the Judicial Council. I trust that you and your colleagues will take the concerns regarding the other provisions of the proposed measure into serious consideration before final passage of the bill into law.

Thank you in advance for the opportunity to provide testimony on this important measure. Si Yu'os Ma'ase.

Sincerely,

  
ALBERTO C. LAMORENA III  
Presiding Judge

To: Mr. Chairman and Members of the  
Committee on Judiciary, Criminal Justice  
and Environmental Affairs

I submit before you my written testimony on Bill 404.

As the former Human Resources Administrator of the Superior Court of Guam, I have reservations as to certain sections of the Bill. I am particularly concerned with Sections 3, 4 and 5 amending Subsection 7103 & 7104 of Chapter 7, Title 7 GCA, and Subsection 8113 of Chapter 8, Title 7 GCA.

The proposed legislation gives authority to the Judicial Council to appoint all Court personnel classified and unclassified. This creates a "conflict of interest" in that it removes the very essence of the Merit System, particularly the relationship between recruitment process and due process rights of all employees. In addition, the Judicial Council are the policy makers of the Court's operations and should be removed from administering the day to day activities. Such responsibilities should be designated to the Administrative Director through the guidance of the Presiding Judge.

#### Section 3 & 4 Subsection 7103 & 7104, Chapter 7 Title 7 GCA

The Court Administrator, has been given the authority to carry out the administrative operations of the Superior Court pursuant to applicable laws, policies and above all the Personnel Rules and Regulations. These areas include; to ensure the general supervision of personnel matters, ground/facilities and property management, and more importantly the Court's commitment to provide efficient public service.

As written, the proposed legislation would make the Judicial Council members become administrators and micromanage the Court rather than remain as policy makers who oversee the operations of the Superior Court, providing for a "check and balance" for the Courts and its Administration. Even in the Legislature the Senators have seen the wisdom of having the Executive Director oversee the general operations free of oversight and control other than general policy guidance from its leadership.

#### Section 5 Subsection 8113 of Chapter 8 Title 7 GCA

According to Subsection 4102, Chapter 4, Title 4 GCA, it defines government of Guam service under two categories, unclassified and classified. This section lists those positions in the unclassified status. All other positions under the government of Guam not listed are considered to be of classified service. This Bill would set precedence in allowing a Council to select

Division level personnel, removing oversight and control of day to day operation from the administration.

The proposed legislation includes the classified positions of the Superior Court of Guam, subjecting them to appointment by the Judicial Council. The proposed legislation would have the policy making board of the Superior Court of Guam take part in the Recruitment and Selection process which, in my opinion, should remain with the respective division manager who is not only familiar with but is the one most appropriate to carry out the recruitment process base on the Court's operational needs. The supervisor must also oversee and be responsible for the overall production of the Court's operations. The present system currently utilizes a panel to interview and select qualified individual competing for the vacancy. Included is an EEO officer to ensure the rights of the applicants are protected. The proposed legislation would remove this entire portion of the merit system. In addition, this legislation would virtually make the selected employee more answerable to the Council than to his/her immediate supervisor.

In order for the Judicial Council to appoint such personnel, the Judicial Council would have to take time to conduct interviews of each and every qualified applicant for each and every position being recruited. Something that is time consuming and would definitely affect the judges and the Judicial Council members ability to carry out their primary judicial responsibilities.

The proposed legislation, as written, would make the Judicial Council the first Board of Directors to involve themselves in such administrative matters such as hiring--something that creates conflict of interest, wherein the recruitment Board would be the same Board to hear appeal cases of grievances and adverse actions and any oversight hearings involving the employment issues that may arise--completely negating all general Personnel Rules and practices. This Bill does not allow for an impartial body that would provide any employee their right to due process at the highest level of appeal.

I ask that you delete Sections 3, 4, and 5 as proposed and leave the system in place that currently serves all branches of government here on Guam and across the nation. Thank you for your time.

  
Paul A. Sudo

Submitted this 27th day of November 1995.

Letter to Senator Mark C. Charfauros  
November 27, 1995  
Page 2

There remains a question whether the proposed statute would pass constitutional muster given the mandatory inclusion of key executive and legislative officials by title rather than on an individual bases.

However, it is very clear that the proposed Bill No. 404, by removing exclusive control over judicial administration from the Supreme Court allows impermissible inter-branch entanglement (allowing the Judicial Council -- to wit, an executive and a legislative official -- to hire and fire court personnel). See Mistretta v. U.S., 109 S.Ct. 647 (1989); Morrison v. Olson, 108 S.Ct. 2597 (1988); Youngstown Sheet & Tube Co. v. Sawyer, 72 S.Ct. 863, 870 (1952); Matter of the President's Com'n on Organized Crime In Re Scarfo, 783 F.2d 370 (3rd Cir. 1986); Gubiensio-Ortiz v. Kanahale, 857 F.2d 1245 (9th Cir. 1988), *on remand* 871 F.2d 104 (1989).

The courts in the separation of powers cases have generally held that officers of one branch of government may serve on commissions or boards in other branches without transgressing the constitution (although the courts acknowledge that issues of ethics and propriety are still a concern), but only if the separateness and autonomy of the branch remains intact. Youngstown Sheet, 72 S.Ct. at 870.

It has been said that the separation of powers principle refers to "the performance of official acts for a department other than the one to which the concerned individual belongs". Scarfo, 783 F.2d at 375-6, fn. 2. Applied to our situation, two seats on the governing body of the Judiciary are to be filled by non-judicial officers, named by title and position from the other two branches of government, who are performing official acts for the judiciary.

There are three options which might be considered to eliminate the constitutional problems. First, return exclusive control of judicial administration to the Supreme Court and allow the Judicial Council to be strictly an advisory council -- to wit, do not pass Section 3 of Bill No. 404. A second option would keep the non-judicial officers on the Judicial Council but only as non-voting members. Finally, the third option is to remove the non-judicial officers from the Judicial Council altogether and allow the Judicial Council, in lieu of the Supreme Court, to run the judicial administration.

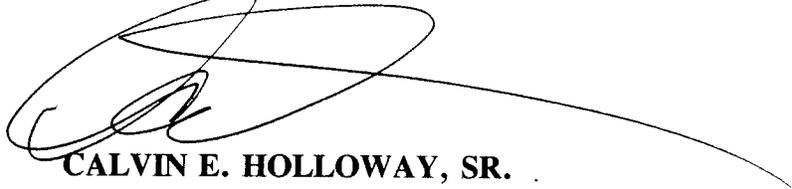
If there are any questions, please call me.

Letter to Senator Mark C. Charfauros  
November 27, 1995  
Page 3

With thanks in anticipation of your consideration.

Dangkolò Na Agradesimento - Thank You Very Much!

With best regards,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

**CALVIN E. HOLLOWAY, SR.**  
Attorney General

cc: Deputy, Solicitors Division  
Legal Counsel, Governor's Office

1127404  
CEH/bd



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Legal Counsel  
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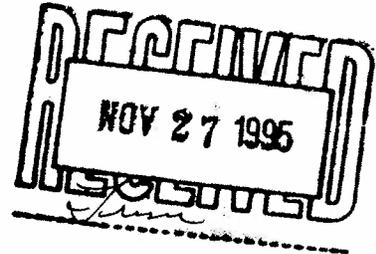
Calvin E. Holloway, Sr.  
*Attorney General*

**Office of the Attorney General  
Territory of Guam**

Phone: (671) 475-3324  
Telefax: (671) 472-2493

Gus F. Diaz  
*Chief Deputy Attorney General*

November 27, 1995



**HAND-DELIVER**

The Honorable Mark C. Charfauros  
Chairman, Committee on Judiciary,  
Criminal Justice and Environmental Affairs  
Twenty-Third Guam Legislature  
Ada's Commercial & Professional Center  
138 East Marine Drive, Suite 101C-Annex  
Agana, Guam 96910

Re: Bill No. 404: An Act to Alter Composition  
and Duties of Judicial Council

Dear Senator Charfauros:

**Hafa Adai!**

Thank you for your recent letter concerning subject matter.

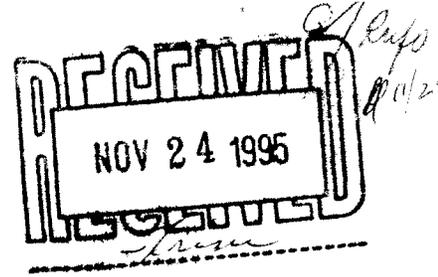
The following are our comments regarding the proposed legislation, Bill No. 404 to amend 7 Guam Code Ann. §§5101 et seq. regarding the composition and duties of the Judicial Council of Guam.

The proposed 7 Guam Code Ann. §§5101 et seq. appears to provide that the Judicial Council shall no longer take an active role in the administration of the courts, hence eliminating the separation of powers issue inherent in having key executive and legislative officers serve on the governing body of the judiciary. The Judicial Council de facto does have an active voice in court administration. The proposed statute appears to correct the long-standing constitutional violation by returning to the judiciary exclusive control of its branch of our tripartite government, while retaining the Judicial Council as a strictly advisory board.



Commonwealth Now!

Charles H. Troutman  
P.O. Box 455  
Agana, Guam 96910-0455



Phone: 671-475-3309

Fax: 671-472-6992

November 24, 1995

Honorable Mark C. Charfauros  
Chairman  
Committee on Judiciary, Criminal Justice & Environmental Affairs  
23rd Guam Legislature  
Agana, Guam

Re: Bill 404

Dear Senator Charfauros,

While I will not be able to attend the hearing on this Bill, I do wish to present some views on it for your consideration.

Now that the Governor has nominated the justices for the Supreme Court, I suggest that you hold off on this Bill until the justices have had time to be confirmed and comment upon it. Nevertheless, I do have some specific comments.

You do not need to amend the law on succession of judges and justices. Already Title 7, in the respective chapter, provides basically the same provisions already. For the Presiding Judge, that succession is already found in §4103. Temporary or permanent replacement of the Chief Justice is covered comprehensively in §3103(l) and (m). Any mention here would be duplication and raise problems of amendment by implication. There is no need to change the present law, which is good as is. Present law provides for appointment by seniority when the Chief Justice is not able to serve. I believe that this is a certain way of doing it, and will avoid charges of favoritism. Since the law also provides for rotating Chief Justices, the next one in line will vary depending upon who is Chief at any given time, and who has been Chief. This part of Bill 404 should be deleted.

Likewise, there is no need to have a residency requirement for Judicial Council members, since the membership is fixed by law (the same section).

I have trouble with the Council appointing the Clerks and, indeed all personnel of the Judiciary not otherwise covered. I have no difficulty with the Council making the personnel rules and even as acting as the court's "civil service commission" -- without the Legislative

member voting. From an organizational standpoint, appointment of personnel by a committee is unrealistic (unless the employees are the direct staff of the committee), will cause serious problems with the ability to direct employees and to discipline them when appropriate, and will guarantee more "political interference" than has been alleged heretofore. When I was counsel for DOE, one of the many controversies arose when staff felt that they could bypass the director and go directly to the Board for their authority. I have experienced similar, but lesser problems with other Boards.

I am further troubled about the separation of powers -- having a individual member of the Legislature having a role in appointing members of another branch. The Supreme Court has said that a judicial council may do more than just make court rules, and having an executive official as a member does not cause constitutional difficulties, but it has also said that legislators may not act outside of the legislative process, that of making law. I suggest that, if you want the Council to get into the business of appointments, then have only the judges and justices vote on the appointment of the Clerks and Court Administrator. Then the Court Administrator will be the Chief Executive Officer of the non-judicial aspects of the court, having control over those areas just as a general manager has in the autonomous agencies. However, I urge that you get the opinion of the new justices first, as I would defer to them as to the organization of the Court.

I fully expect that the new justices will have requests for amendments to Title 7, once they start work. The drafting of this law, creating a type of judiciary Guam has never had before, was difficult and one cannot predict the full organization and its operation before such a thing is created. But, I urge you to await the views of the new justices.

By the way, the original draft of the Supreme Court bill did include all of the judges and justices on the Judicial Council. I think that this is a good idea still, at least as it concerns full-time judges and justices. But this Bill is a good expansion, and I would support it.

The views I have expressed here are my own personal views and you should not take them to be the views of the Department of law or the Attorney General.

Sincerely yours,



CHARLES H. TROUTMAN



**BUREAU OF BUDGET & MANAGEMENT RESEARCH**

OFFICE OF THE GOVERNOR, Post Office Box 2950, Agaña, Guam 96910

**CARL T.C. GUTIERREZ**  
GOVERNOR

NOV 07 1995

**JOSEPH E. RIVERA**  
DIRECTOR

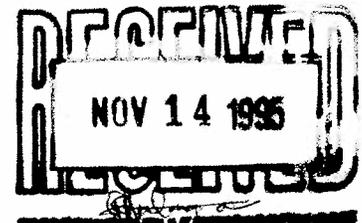
**MADELEINE Z. BORDALLO**  
1<sup>ST</sup> GOVERNOR

**FRANCES J. BALAJADIA**  
DEPUTY DIRECTOR

The Bureau requests that Bill No(s). 404 be granted a waiver pursuant to Public Law 12-229 for the following reasons:

Bill #404 is administrative in nature and poses no fiscal impact on the General Fund of the Government of Guam.

  
JOSEPH E. RIVERA  
Acting Director



**Notice of Public/Confirmation Hearing**



**Senator  
Mark C. Charfauros**

**Chairman, Committee on Judiciary,  
Criminal Justice and Environmental Affairs  
23rd Guam Legislature**

**Agenda**

**9:30 a.m.**

**Bill No. 404, AN ACT TO AMEND SUBSEC-  
TIONS 5101, 7103, 7104, AND 8113 OF TITLE  
7, GCA, RELATIVE TO THE COMPOSITION,  
DUTIES AND POWERS OF THE JUDICIAL  
COUNCIL.**

**1:00 p.m.**

**Confirmation**

**Nominees to The Criminal Injuries**

**Compensation Commission**

**Mr. Robert R.C. Hofmann**

**Mr. Richard Arens**

**Date: Monday, November 27, 1995**

**Time: 9:30 a.m.**

**Place: Public Hearing Room**

**Guam Legislature**

**155 Hesler St., Agana**

**The Public is invited to attend**

Introduced

OCT 25 1995

TWENTY-THIRD GUAM LEGISLATURE  
1995 (FIRST) REGULAR SESSION

Bill No. 404 (LS)

Introduced by:

M.C. CHARFAUROS  
A.L.G. SANTOS  
T.S. NELSON

AN ACT TO AMEND §§5101, 7103, 7104, AND 8113 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO THE COMPOSITION, DUTIES AND POWERS OF THE JUDICIAL COUNCIL.

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

2 SECTION 1. **Legislative Intent.** The Legislature finds that the composition of  
3 the Judicial Council should encompass increased participation of judges and justices.

4 SECTION 2. §5101 of Chapter 5, Title 7 GCA is hereby amended to read as  
5 follows:

6 “§5101 Judicial Council (a) There shall be a Judicial Council (the “Council”) that  
7 shall consist of ~~five (5)~~ nine (9) members: The President of the Guam Bar Association or  
8 in his or her absence the Vice President of the Guam Bar Association, the Attorney  
9 General of Guam or his or her designee, the Chairman of the Judiciary and Criminal  
10 Justice Committee of the Legislature or its successor committee, or his or her designee,  
11 the Presiding Judge of the Superior Court, two (2) additional judges of the Superior Court  
12 appointed by the Presiding Judge, which shall be rotated amongst the judges of the  
13 Superior Court every year, and the Chief Justice of the Supreme Court, and the two full-  
14 time associate justices of the Supreme Court. The Chief Justice shall be **ex officio**  
15 chairperson of the Council.

16 (b) The Council shall operate in a wholly nonpartisan manner. The Chief Justice of  
17 the Supreme Court, in his or her absence, may appoint from amongst the Justices an  
18 acting Chief Justice. The Presiding Judge, in his or her absence, may appoint from  
19 amongst the Judges an acting Presiding Judge.

1 (c) The term of each member of the Council shall be for the term of such member's  
2 respective office.

3 (d) Each member of the Council shall be a resident of Guam and a citizen of the  
4 United States.

5 (e) No act of the Council shall be valid **except** with the concurrence of no less than  
6 ~~three (3)~~ the majority of its members.

7 (f) The Council shall promulgate its own rules for its conduct and operation. Said  
8 rules shall include provisions designed to comply with the spirit and intent of the Open  
9 Government Law of Guam (5 GCA Chapter 8).

10 (g) The Council shall be attached to the judicial branch of the government of  
11 Guam for purposes of administration.

12 (h) No member of the Judiciary shall be eligible to receive a stipend for attending a  
13 Judicial Council meeting.”

14 **SECTION 3. §7103 of Chapter 7, Title 7 GCA is hereby amended to read as**  
15 **follows:**

16 “**§7103. Court Administrator.** The [~~Presiding Judge~~] Judicial Council shall  
17 appoint a Court Administrator who shall be subject to removal by [~~him or her~~] the  
18 Judicial Council. The Court Administrator shall be responsible for the general supervision  
19 of all personnel of the Superior Court other than Judges and their immediate staff, the  
20 buildings and grounds assigned to the Superior Court, property in the custody of the court  
21 used for the court's operation, and shall be responsible for other matters assigned to him  
22 or her by the [~~Presiding Judge~~] Judicial Council. The salary of the Court Administrator  
23 shall be fixed by the [~~Supreme Court~~] Judicial Council pursuant to a general Personnel  
24 Rule covering compensation. The Court Administrator may appoint, with the approval of  
25 the [~~Presiding Judge~~] Judicial Council, necessary deputies and assistants in such number  
26 as may be approved by the [~~Supreme Court~~] Judicial Council, whose salaries shall be  
27 fixed by the [~~Supreme Court~~] Judicial Council pursuant to a general Personnel Rule

1 covering compensation. The appointment, removal and salaries of such deputies and  
2 assistants shall be governed by the applicable Personnel Rules and Regulations governing  
3 employment practices within the Judicial Branch.”

4 **SECTION 4. §7104 of Chapter 7, Title 7 GCA is hereby amended to read as**  
5 **follows:**

6 “§7104. Clerks. (a) **Superior Court Clerk.** The [~~Presiding Judge~~] Judicial  
7 Council shall appoint a Superior Court Clerk who shall be subject to removal by [~~him or~~  
8 ~~her~~] the Judicial Council. The Superior Court Clerk may appoint, with the approval of the  
9 [~~Presiding Judge~~] Judicial Council, such deputies and assistants in such numbers as are  
10 necessary for the daily operations of the Superior Court. Such deputies and assistants  
11 shall be subject to removal by the Superior Court Clerk, with the approval of the [~~Presid-~~  
12 ~~ing Judge~~] Judicial Council. The salaries of the Superior Court Clerk and his or her  
13 deputies and assistants shall be fixed by the [~~Supreme Court~~] Judicial Council pursuant to  
14 a general Personnel Rule covering compensation. The appointment and removal of such  
15 deputies and assistants shall be subject to the applicable Personnel Rules and Regulations  
16 governing employment practices within the Judicial Branch.

17 (b) **Supreme Court Clerk.** The [~~Chief Justice~~] Judicial Council shall appoint a  
18 Supreme Court Clerk who shall be subject to removal by [~~him or her~~] the Judicial  
19 Council. The Supreme Court Clerk may appoint, with the approval of the [~~Chief Justice~~]  
20 Judicial Council, such deputies and assistants in such numbers as are necessary for the  
21 daily operations of the Supreme Court. Such deputies and assistants shall be subject to  
22 removal by the Supreme Court Clerk, with the approval of the [~~Chief Justice~~] Judicial  
23 Council. The salaries of the Supreme Court Clerk and his or her deputies and assistants  
24 shall be fixed by the [~~Supreme Court~~] Judicial Council pursuant to a general Personnel  
25 Rule covering compensation. The appointment and removal of such deputies and  
26 assistants shall be subject to the applicable Personnel Rules and Regulations governing  
27 employment practices within the Judicial Branch.”

1           **SECTION 5. §8113 of Chapter 8, Title 7 GCA is hereby amended to read as**  
2 **follows:**

3           “**§8113. Other court personnel.** The [~~Presiding Judge for the Superior Court, and~~  
4 ~~the Chief Justice for the Supreme Court,~~] Judicial Council may appoint and may remove  
5 from their respective courts, pursuant to all applicable Personnel Rules and Regulations  
6 of the [~~Supreme Court~~] Judicial Branch, such other officers and personnel as are  
7 necessary to carry out the duties of the court. If such officers and personnel are appointed  
8 to fill new positions or to have duties not already specified in law or in a plan approved  
9 by the [~~Supreme Court~~] Judicial Council, no such appointments shall be made or new  
10 duties assigned until a plan therefor has been approved by the [~~Supreme Court~~] Judicial  
11 Council.”