

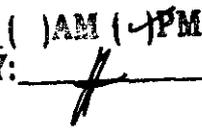


Office of the Governor of Guam

P.O. Box 2950 Hagåtña, Guam 96932
TEL: (671) 472-8931 • FAX: (671) 477-4826 • EMAIL: governor@mail.gov.gu

Honorable Vicente C. Pangelinan
Speaker

MAY 11 2004

TIME: 5:07 () AM () PM
RECEIVED BY: 

Felix Perez Camacho
Governor

Kaleo Scott Moylan
Lieutenant Governor

11 MAY 2004

Honorable Vicente C. Pangelinan
Speaker
I Mina Bente Siete na Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96932

Dear Mr. Speaker:

Transmitted herewith is Bill No. 115, "AN ACT TO AMEND §8404 OF CHAPTER 8, ARTICLE 1, OF TITLE 19 OF THE GUAM CODE ANNOTATED, RELATIVE TO MEDIATION IN ACTIONS FOR CUSTODY OR CHANGE OF CUSTODY, AND RELATIVE TO AUTHORIZING THE SUPREME COURT OF GUAM TO PROMULGATE RULES AND REGULATIONS AND THE JUDICIAL COUNCIL OF GUAM TO ENACT FEES TO IMPLEMENT PROVISIONS OF THIS ACT," which I have signed into law on May 6, 2004, as **Public Law 27-79**.

Bill No. 115, now Public Law 27-79, promotes mediation for child custody cases. Mediation can be a more appropriate setting than the formal proceedings of a court case. This may be helpful in most cases; however, the Guam Family Violence Act of 1998 prohibits the Superior Court of Guam from ordering parties into conciliation or mediation when either party asserts that family violence has occurred. Only by a petition to the court will mediation be permitted and only for special limited circumstances. Furthermore, the mediation will be provided in a specialized manner by a certified mediator trained in family violence. This is due to concerns about safety or ability of the victim to negotiate with the perpetrator. Many other jurisdictions recognize that mediation is inappropriate in domestic violence cases. Although this Act states that the Court may order the parties to be referred to mediation, we should be mindful that mediation might not be appropriate in all child custody cases.

Sinseru yan Magåhet,



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

Attachment: copy attached of signed bill

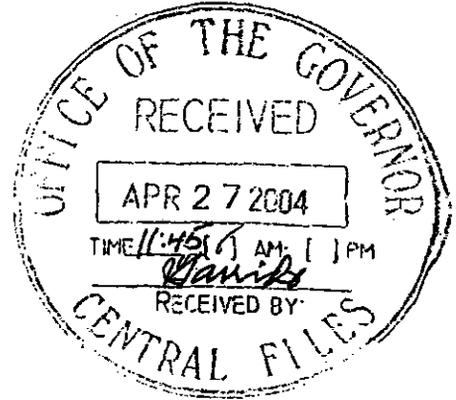
cc: The Honorable Tina Rose Muña-Barnes
Senator and Legislative Secretary



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

April 27, 2004

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



Dear *Maga'lahi* Camacho:

Transmitted herewith are Bill Nos. 178(LS), 193(COR), 256(LS), 261(LS) and 277(COR), and Substitute Bill Nos. 17(LS), 115(COR), 119(COR), 146(LS), 172(LS), 175(LS), 177(LS), 183(COR), 220(COR), 230(LS), 231(LS), 249(COR), 255(LS) and 258(LS) which were passed by *I Mina' Bente Siete Na Liheslaturan Guåhan* on April 23, 2004.

Sincerely,


TINA ROSE MUNA BARNES
Legislative Secretary

Enclosures (19)

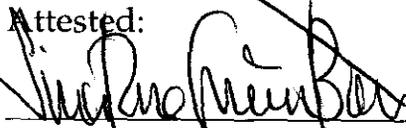
CFI- 0404- 2294

I MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN
2004 (SECOND) Regular Session

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

This is to certify that **Substitute Bill No. 115 (COR), "AN ACT TO AMEND §8404 OF CHAPTER 8, ARTICLE 1, OF TITLE 19 OF THE GUAM CODE ANNOTATED, RELATIVE TO MEDIATION IN ACTIONS FOR CUSTODY OR CHANGE OF CUSTODY, AND RELATIVE TO AUTHORIZING THE SUPREME COURT OF GUAM TO PROMULGATE RULES AND REGULATIONS AND THE JUDICIAL COUNCIL OF GUAM TO ENACT FEES TO IMPLEMENT PROVISIONS OF THIS ACT,"** was on the 23rd day of April, 2004, duly and regularly passed.

Attested:


Tina Rose Muña Barnes
Senator and Legislative Secretary


vicente (ben) c. pangelinan
Speaker

This Act was received by *I Maga'lahaen Guåhan* this 27 day of April, 2004,
at 11:45 o'clock A. .M.


Assistant Staff Officer
Maga'lahi's Office

APPROVED:


FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date: April 30, 2004

Public Law No. 27-79

**I MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN
2003 (FIRST) REGULAR SESSION**

Bill No. 115 (COR)

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

Introduced by:

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

**AN ACT TO AMEND §8404 OF CHAPTER 8, ARTICLE 1, OF
TITLE 19 OF THE GUAM CODE ANNOTATED, RELATIVE
TO MEDIATION IN ACTIONS FOR CUSTODY OR
CHANGE OF CUSTODY, AND RELATIVE TO
AUTHORIZING THE SUPREME COURT OF GUAM TO
PROMULGATE RULES AND REGULATIONS AND THE
JUDICIAL COUNCIL OF GUAM TO ENACT FEES TO
IMPLEMENT PROVISIONS OF THIS ACT.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 finds that the number of cases of divorce being filed within the Superior
4 Court of Guam have been increasing steadily over the past five (5) years. *I*

1 *Liheslatura* by statute has given the Court discretion to exercise Conciliation
2 Jurisdiction over divorce cases where it sees fit. *I Liheslaturan Guåhan*
3 recognizes that in a majority of the cases in where such jurisdiction is
4 exercised there is no conciliation of the parties, thus the case matures into a
5 divorce proceeding. One of the most sensitive issues before the Court is
6 the awarding of child custody. *I Liheslaturan Guåhan* finds that an effective
7 tool in settling disputes between parties is the use of Mediation. Since
8 emotions are often heightened during a custody proceeding, it is in the best
9 interest of the parties that a third party mediate the issues as they pertain to
10 awarding custody of the parties' minor children. The intervention of a
11 third party will resolve the many issues related to the placement of custody
12 of the parties' minor children, or narrow the issues to be placed before the
13 Court in its determination in awarding custody. Thus, *I Liheslaturan*
14 *Guåhan* finds that the ultimate effect of said mediation will be to minimize
15 the emotional injury to the parties and their children during the breakup of
16 a family unit.

17 It is therefore the intent of *I Liheslaturan Guåhan* to encourage
18 mediation when there is a dispute before the Court over the custody of a
19 minor child, in accordance with rules and regulations established and
20 promulgated by the Supreme Court of Guam.

21 **Section 2. Amendment.** The current §8404 of Chapter 8, Article 1 of
22 Title 19 of the Guam Code Annotated, is renumbered as Part 1 of that
23 Section, and the following Part 2 is *added* to that Section to read as follows:

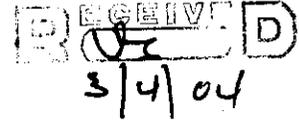
24 **"2. Mediation.**

- 1 (a) Unless otherwise provided by law, the Court, in
2 cases pursuant to this Section may order the parties
3 to be referred to Mediation with respect to custody
4 and visitation in accordance with the standards set
5 forth in Part 1 of this Section and rules and
6 regulations established and promulgated by the
7 Supreme Court of Guam.
- 8 (b) The Supreme Court of Guam shall establish and
9 promulgate any rules and regulations necessary to
10 carry out the provisions of this Section, and
11 mediators shall be selected and compensated in
12 accordance with rules and regulations established
13 by the Court. The rules and regulations
14 promulgated by the Supreme Court pursuant to this
15 Section shall be submitted to *I Liheslaturan Guåhan*
16 for approval. Said rules and regulations shall be
17 deemed approved unless otherwise acted upon by *I*
18 *Liheslaturan Guåhan* within ninety (90) days of
19 receipt.
- 20 (c) Mediation should be accessible to all parties
21 regardless of financial status, and the Judicial
22 Council of Guam is authorized to enact fees to
23 implement the provisions of this Section."



FILE COPY

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



March 4, 2004

(Date)

Memorandum

To: Senator Muna Barnes

From: Clerk of the Legislature

Subject: Committee Report on Bill No. 115(COR)

Pursuant to Section 7.04 of Rule VII of the 27th Standing Rules, transmitted herewith is a copy of the Committee Report on Bill No. 115(COR), for which you are the prime sponsor.

Should you have any questions or need further information, please contact the undersigned at 472-3464/5.


PATRICIA C. SANTOS

Attachment



Committee on Judiciary & Transportation

I Mina' Bente Siete Na Liheslaturan Guahan

March 3, 2004

*Twenty-Seventh
Guam Legislature*

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

CHAIRMAN:
Senator F Randall
Cunliffe

Vice Chairman:
Senator John M.
Quinata

Members:
Senator Robert
Klitzkie

Senator Lou A.
Leon Guerrero

Senator Jesse
Anderson Lujan

Senator Tina R.
Muña-Barnes

Senator Rory J.
Respicio

Senator Antoinette
(Toni) D. Sanford

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Ada's
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Professional Center

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

Mailing Address:
155 Hessler St.
Hagåtña, Guam 96910

Tel: 671.477.5310
Fax: 671.477.5300

Email: COJAT@email.com

Dear Speaker Pangelinan:

The Committee on Judiciary & Transportation, to which **BILL: 115(COR)** "AN ACT TO AMEND THE FIRST PARAGRAPH OF §8404, OF CHAPTER 8, ARTICLE 1, OF TITLE 19 OF THE GUAM CODE ANNOTATED, REQUIRING UPON FILING OF A PETITION FOR CUSTODY OR CHANGE OF CUSTODY, THE PARTIES TO THE ACTION SHALL BE AUTOMATICALLY REFERRED TO MEDIATION" was referred, wishes to report its findings TO PASS BILL 115(COR) AS SUBSTITUTED BY THE COMMITTEE ON JUDICIARY & TRANSPORTATION.

The voting record is as follows:

TO PASS	7
NOT TO PASS	0
TO ABSTAIN	0

Sincerely,

F. RANDALL CUNLIFFE
CHAIRMAN

Attachments

2004 MAR 03 10:03 AM
PANGELINAN



Committee on Judiciary & Transportation

I Mina' Bente Siete Na Liheslaturan Guåhan

February 23, 2004

*Twenty-Seventh
Guam Legislature*

MEMORANDUM

CHAIRMAN:
Senator F Randall
Cunliffe

TO: JUDICIARY & TRANSPORTATION COMMITTEE MEMBERS

Vice Chairman:
Senator John M.
Quinata

FROM: JUDICIARY & TRANSPORTATION COMMITTEE CHAIRMAN

SUBJECT: BILL 115(COR)

Members:
Senator Robert
Klitzkie

Senator Lou A.
Leon Guerrero

Senator Jesse
Anderson Lujan

Senator Tina R.
Muña-Barnes

Senator Rory J.
Respicio

Senator Antoinette
(Toni) D. Sanford

Transmitted for your information and action is the committee report on **Bill 115 (COR) – AN ACT TO AMEND THE FIRST PARAGRAPH OF §8404, OF CHAPTER 8, ARTICLE 1, OF TITLE 19 OF THE GUAM CODE ANNOTATED, REQUIRING UPON FILING OF A PETITION FOR CUSTODY OR CHANGE OF CUSTODY, THE PARTIES TO THE ACTION SHALL BE AUTOMATICALLY REFERRED TO MEDIATION** – As Substituted by the Committee on Judiciary & Transportation.

This memorandum is accompanied by the following:

1. Committee Voting Sheet
2. Committee Report
3. Bill 115(COR)
4. Public Hearing Sign-in Sheet
5. Notice of Public Hearing

Please take the appropriate action on the attached voting sheet. 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 CUNLIFFE

Attachments

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Commercial &
Professional Center

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Hagatna, Guam
(USA) 96910

Mailing Address:
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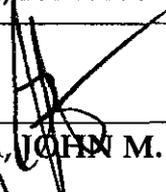
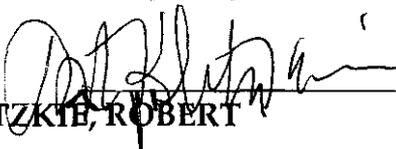
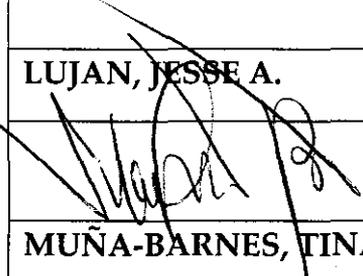
Tel: 671.477.5310
Fax: 671.477.5300

Email: COJAT@email.com

COMMITTEE ON JUDICIARY & TRANSPORTATION

VOTING RECORD SHEET

BILL 115(COR) - AN ACT TO AMEND THE FIRST PARAGRAPH OF §8404, OF CHAPTER 8, ARTICLE 1, OF TITLE 19 OF THE GUAM CODE ANNOTATED, REQUIRING UPON FILING OF A PETITION FOR CUSTODY OR CHANGE OF CUSTODY, THE PARTIES TO THE ACTION SHALL BE AUTOMATICALLY BE REFERRED TO MEDIATION - AS SUBSTITUTED BY THE COMMITTEE ON JUDICIARY & TRANSPORTATION

COMMITTEE MEMBERS	TO PASS	NOT TO PASS	TO ABSTAIN
 CUNLIFFE, F. RANDALL (CHAIRMAN)	✓		
 QUINATA, JOHN M. "J.Q." (VICE CHAIRMAN)	✓		
 KLITZKIE, ROBERT	✓		
 LEON GUERRERO, LOU A.	✓		
LUJAN, JESSE A.			
 MUÑA-BARNES, TINA R.	✓		
 RESPICIO, RORY J.	<i>rw</i>		
 SANFORD, ANTOINETTE "TONI" D.	✓		

MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN
COMMITTEE ON JUDICIARY & TRANSPORTATION
SENATOR F. RANDALL CUNLIFFE - CHAIRMAN



COMMITTEE REPORT

ON

Bill No. 115 (COR) - An Act To Amend The First Paragraph Of §8404, Of Chapter 8, Article 1, Of Title 19 Of The Guam Code Annotated, Requiring Upon Filing Of A Petition For Custody Or Change Of Custody, The Parties To The Action Shall Be Automatically Be Referred To Mediation.

Introduced by Senator Tina R. Muña Barnes

February 23, 2004

I. OVERVIEW

The Committee on Judiciary and Transportation held a public hearing at 9:00 a.m. on August 6, 2003 on the following measure:

Bill No. 115 - An Act To Amend The First Paragraph Of §8404, Of Chapter 8, Article 1, Of Title 19 Of The Guam Code Annotated, Requiring Upon Filing Of A Petition For Custody Or Change Of Custody, The Parties To The Action Shall Be Automatically Be Referred To Mediation.

SENATORS PRESENT AT THE PUBLIC HEARING WERE:

Judiciary Chairman F. Randall Cunliffe
Senator Rory J. Respicio
Senator Tina R. Muña Barnes
Senator Robert Klitzkie
Senator Antoinette (Toni) P. Sanford

II. SYNOPSIS OF BILL

Bill 115 (COR) was introduced by the Chairperson of the Committee on Community, Culture, Recreation, & Public Broadcasting, Senator Tina R. Muña Barnes. The ultimate effect of this bill and the said mediation will be to minimize the emotional injury to the parties and their children during the breakup of a family unit.

III. SUMMARY OF TESTIMONY

Individuals appearing before the Committee to present oral and/or written testimony on Bill 50(COR) were as follows:

- Patrick M. Wolff (*Inafa Maolek*) submitted oral and written testimony in favor of Bill 115 (COR).
- Peter John D. Camacho (DPHSS) submitted written testimony in favor of Bill 115 (COR).

Note: The Public Hearing Transcript is attached with this Committee Report.

IV. FINDINGS AND RECOMMENDATION

The Committee on Judiciary and Transportation has communicated with the Supreme Court of Guam to ensure that the language contained in Bill 115(COR) is sufficient. Concerns have been expressed about the lack of mediators on-island, as well as on-island mediation standards and its potential impact on the adjudication of custody cases. The Committee is primarily concerned that

the enactment of mandatory mediation for custody cases without a sound mediation infrastructure may result in the unforeseen and unintended backlog of cases within the Courts of Guam.

These issues were discussed with the Supreme Court, and Bill 115(COR) is hereby substituted by the Committee on Judiciary & Transportation. Substitute language contained in Bill 115(COR) was drafted by the Supreme Court of Guam and includes the following:

- Section 1 - Legislative Intent is amended by inserting a new paragraph as follows:

“It is therefore the intent of I Liheslaturan Guåhan to require that when there is a dispute before the court over the custody of a minor child, the parties in dispute shall be referred to mediation in accordance with rules and regulations established and promulgated by the Supreme Court of Guam.”

- Section 2 – is amended to recognize the statutory authority of the Supreme Court of Guam to promulgate the rules and regulations of the Court, including those rules and regulations relative to mediation for cases involving custody or visitation of minor children.
- Section 3 – This amendment has been inserted into Bill 115(COR) to authorize the Supreme Court of Guam to establish and promulgate rules and regulations for mediation activities. The amendment also authorizes the Judicial Council of Guam to determine appropriate mediation fees, as the entity responsible for determining fees within the Courts of Guam.
- Section 4 – This amendment will make the enactment of this bill contingent upon the adjudication of the rules and regulations by the Supreme Court of Guam.

The Committee on Judiciary and Transportation does hereby recommend that Bill 115(COR), As substituted by the Committee on Judiciary & Transportation, be passed by I Mina Bente Siete Na Liheslaturan Guåhan.

Committee on Judiciary & Transportation
August 6, 2003
Testimony on Bill No. 115

Bill No. 115 (COR) – T. R. Muna-Barnes

AN ACT TO AMEND THE FIRST PARAGRAPH OF §8404, OF CHAPTER 8, ARTICLE 1, OF TITLE 19 OF THE GUAM CODE ANNOTATED, REQUIRING UPON FILING OF A PETITION FOR CUSTODY OR CHANGE OF CUSTODY, THE PARTIES TO THE ACTION SHALL BE AUTOMATICALLY BE REFERRED TO MEDIATION.

Chairman: The next matter before the Committee is Bill No. 115 (COR) introduced by Senator Tina Muna-Barnes, R. J. Respicio, J. M. Quinata, and F. B. Aguon, to amend the first paragraph of §8404 of Chapter 8, Article of Title 19, requiring matters be referred to mediation. We have Mr. Pat Wolff of Ina'fa Maolek, who has signed up to testify, Mr. Wolff please step forward. Senator did you want to say something about the bill before we have any testimony?

Barnes: Thank you, Mr. Chair. I really would like to ask my colleagues to share in the support of the legislation as it brings mediation to the parties during family break-ups and it brings in a third party to resolve and litigate family issues on hand. I know that, especially with respect to custody and visitations, a lot of times emotionally concerns and impacts within the children are very dire and very emotional, very critical in as far as family structure and bringing in mediation and bringing a third party here to hear both sides of the situation will be a positive move in dealing with family issues. I think this is a very positive bill and I ask my colleagues to support it. Thank you, Mr. Chair.

Chairman: Thank you, Senator Muna-Barnes, Pat, please

Wolff: Thank you, Senator Cunliffe. Senators my testimony will be brief. I think about a couple of weeks ago, I provided each of you with a written comment on this bill, and I will not insult your intelligence by reading any of that testimony. I know that you're familiar with it, I will just make a couple of other brief comments, and then be available for any questions that you may have. First of all, I just want to go on record saying I do support this bill, I think it's a positive thing for our community. A couple of weeks ago, four of my young mediator staff, Senator Respicio of very familiar with my youngs, went to a conference in San Francisco, and while they were there, they visited a couple of mediation centers, just to get some technical assistance. One of them was the PCRC, the Peninsula Conflict Resolution Center in San Mateo County, California, which is where one of our previous volunteers, Steve [last name inaudible], from Black Construction, is doing some volunteer work now. What was interesting about their visit was they found out that they do mediations there for the court for free, because it's subsidized by a surcharge on court filing fees. So that relates to the comment in my testimony, that didn't come out of thin air, as we looked around we found out that this is the way that a lot of court systems are handling it, that there is a small surcharge on filing fees to be able to cover the cost for mediation. So that was my one concern with the bill, I think the bill is

a good thing, but it doesn't provide for funding. Ina'fa Maolek's experience has been that the court has not been able to pay its vendors. Senator Cunliffe knows very well. Ina'fa Maolek is line up with many other vendors waiting their turn. A practical solution to this, rather than depending upon the General Fund or the Court's budget, would be if there was a small surcharge. One of my young peoples in California was able to pull out, I just got this a few minutes ago, but I could provide copies to this Committee, if you'll be interested, but actually pulled out from the internet a copy of the Dispute Resolution Act in California. It has a provision, I'm just going read this one sentence, it says, "A fee of not less than \$1 and not more than \$8 may be added to the total fees collected for the filing of the first paper in a civil action in a Superior Court." That's broader than just custody cases, we're talking about any civil action that filed. I know that Senator Klitzkie having been Clerk of Court before, is very familiar with court operations and how this might operate. So, I think I'll stop there, that will be just my one suggestion on a bill, which is a very positive step.

Chairman: Thank you, Pat. Senator Muna-Barnes, did you have any questions of Mr. Wolff?

Barnes: I just want to further comment, Mr. Chair, that when we received a copy from the Department of Public Health, Peter John Camacho had referred in, it was noted that the increases of cases into the court system of divorces had increased tremendously, and if mediation were to be put into play, that it would alleviate prolonged settlements. That's an important note, especially saying that they support the concept of mediation and that cases going through the court system on divorces and custody battles, should be referred directly to mediation with respect to the visitation of custody. I think that's an important note to mention, because it really takes time, helps and assists the government in cases that they're overwhelmed with at the present time. Thank you, Mr. Chair.

Chairman: Thank you, Senator. Senator Klitzkie.

Klitzkie: Thanks. I haven't had a chance to read your testimony, if I read it a couple of weeks ago, I probably would have forgotten, but could you give me the essence of what it is that you wrote?

Wolff: The essence is that this mandatory mediation of custody disputes is a good thing. That there's no provision in the bill for funding, and so the question that occurred to me is if we're requiring people to go to mediation, then we need to provide some mechanism for funding it. One might say, everybody pays for it, but there will be people who could not afford to do so. The way it works, Senator Klitzkie, in most of the cases that are referred to mediation by the judges, when it's done pursuant to court order, the court will pay \$75 for the mediation. With the fiscal problem that's begun to change, so now in domestic cases, the court no longer pays. The court will say if you're willing to pay for it, then I'll make the referral. Also, Ina'fa Maolek has been providing mediation services but there hasn't been any money to pay. So, looking for a way to solve that problem, the surcharge and filing fee is a good way to go. The other thing I mentioned in my testimony is that Ina'fa Maolek has the capability of doing mediation for such cases, as it would be referred pursuant to this bill. We would do two things, however to prepare ourselves for

this, if this bill is to be enacted into law, we have a pull of mediators available right now, what we would do, however, is for all those mediators, we would do a specialized training in mediating custody disputes, because there are some special areas that we would want to bone up on and using some experiences from other places. Put everybody through a specialized training. The second thing we would do is increase the number of lead mediators, we have a lot of mediators, but not that many lead mediators, and we would need to increase that number. That will be an internal problem, which we could resolve.

Klitzkie: Thanks. After I finished my gig as Clerk of the Superior Court, I went to school with a Triple A, American Arbitration Association, and got certified as a American Arbitration Association Mediator, so I haven't forgotten all of it, I forgot some, but I have some familiarity with what it takes to be a competent mediator. Let's assume that the people at are trained by Ina'fa Maolek are competent outside of Ina'fa Maolek, are there other certified mediators on the island? Qualified or

Wolff: Until recently, Sister Mary John Cristobal, was the doing a lot of mediating in her job as the court mediator. However, she is retired now, and so she is no longer doing that. There are a few individuals around who have since leaving judgeships, specifically Justice Week and Justice B. J. Cruz, have gone and taken some mediation training, so there are some individuals around, but there is no other organization that's doing it.

Klitzkie: So, Ina'fa Maolek is a non-profit, right?

Wolff: That's correct, yes.

Klitzkie: One of things that I would be concerned about, if we lock ourselves to tightly into mediation requirement, is that if you decide to move [inaudible] and a couple of the other key players and Ina'fa Maolek will lose interest, and a year from now we really don't have a mediation capability, but we'll still have something like this on the books. That's kind of the nature of non-profits.

Wolff: I appreciate your concern, I think that Ina'fa Maolek has been, actually we're celebrating 20 years now, so we have a track record and it's not what it used to be in early years. It was heavily influenced by my personal involvement, but we have now a strong board of directors, and I think it will carry on even if I do stop doing it myself.

Klitzkie: Your mediators aren't paid though, are they?

Wolff: They are not. No.

Klitzkie: The bill makes reference to Chapter 43 of Title 7, I unfortunately haven't read that either, does that define what mediation is within the context of the domestic relations case, or does that refer only to custody and visitation?

Wolff: I have to refresh my recollection, I didn't bring a copy of the bill with me.

- Klitzkie: That brings me to my next question. What is the definition of mediation for the purposes of this Act, I think I know what it means, but I think others might have different ideas.
- Wolff: There are different models of mediation, but the definition of mediation that I will suggest is third party neutral facilitating the communication between the disputants and the resolution of empowering them to resolve their differences.
- Klitzkie: Do we have a general mediation statute on the books?
- Wolff: Yes, there was something passed a couple of years ago limited in its applications to the Superior Court, but it was called the Millennium Mediation Act, it was introduced by Senator John Salas. It sets some standards for the qualifications for persons who will mediate cases referred by Superior Court. There's also a provision in the law, separate provisions for confidentiality of mediation process, and another bill, which provides for immunity from prosecution, immunity from liability for mediators.
- Klitzkie: Are these bills or
- Wolff: They're laws. So there's 3 pieces of legislation, we don't have any overall structure for mediation, but just 3 separate bills that covered different things, and have become law.
- Klitzkie: I'd feel a whole lot better about going forward with this if there were a comprehensive mediation statute on the books, perhaps at least in part drafted by someone who's had 20 years experience in the field, and who happens to be a lawyer, and don't have anybody in particular in mind.
- Wolff: Actually there is
- Klitzkie: Maybe you could have Ina'fa Maolek submit a list of 3 names
- Wolff: Okay, I'll see what I can come up with. Actually, there's a couple ofthere's 3 major mediation organizations in the states, one of which is the one you mentioned, that have over the past 5 years been working on a uniform mediation act. That has completed its final stages, and is available for your review, I'll be happy to provide a copy of that.
- Klitzkie: [beginning of his sentence is inaudible]I think that our courts are very poorly equipped to handle domestic relations disputes in general, custody and visitation disputed in particular, and I think that anything that tends to lead us away from the standard judicial treatment of these things, is probably worth a little bit of our time. This wouldn't be my issue, however, I'm not really caught up with this area of the law, so if you've felt like putting something together like this, it could be a great assistance. Thank you, Mr. Chairman.
- Wolff: Thank you.

Chairman: Thank you, Senator Klitzkie. Senator Respicio.

Respicio: Thank you, Mr. Chairman. Good morning, Attorney Wolff. When Senator Klitzkie was looking for a candidate to draft that, and if you submit 3 names, it's going to read Pat Wolff, Pat Wolff, Pat Wolff. I appreciate your testimony this morning, and Mr. Chairman, I appreciate you hearing this Bill 115, which is very progressive and reflects what's happening in the American Justice system where mediation is playing a big role in how these court cases are being resolved. I'm extremely familiar with Ina'fa Maolek's work with Victim Offender Mediation in the areas of the juvenile justice system. We're wanting to move forward with restored justice issues, where you have the victim, the offender, and the families, and you do some sort of conflict resolution through mediation. That way the restored of justice to bring the community, the defender, and all these parties together would mean that restitution be provided directly to the victim. I also want to congratulate the author for doing this bill. Pat, you talked about a \$75 fee, who will bear the cost of that?

Wolff: In that past, the court has paid it out of the court's budget. There is one exception I didn't mention, this past year Judge Bordallo started referring civil cases for mediation, that had never happen before. He wanted to do it differently, and what he did is he in just his court order would instruct the parties on each side to pay in to the Clerk of Court, and that money was held in trust by the Clerk of Court and then paid to Ina'fa Maolek to cover the mediation fees. It was a client-funded program.

Respicio: That was more the process I envisioned, rather than the court having to pay this, that it all be factored as part of court fees. Would something like that have to be worked into this bill? Or is that an arrangement the court can do administratively?

Wolff: I guess the difficulty is then again, perhaps Senator Klitzkie would know better than me, and Senator Cunliffe as well, I don't know in domestic cases what would be the percentage of litigants who go in pro se, because they can't afford an attorney, but that's what worries me, about a system that requires people to pay for the services.

Respicio: If they're unable to pay for the services, then the courts will pay for that?

Wolff: Which is what the court does, in for example, juvenile delinquency cases and cases of beyond control youth, which are mediation between parents and teenager adolescent, the court pays out or court's budget.

Respicio: So, then we will have to differentiate those who are able to pay versus those who are not? Those who are able to pay it'll be factored in as part of their court fees and those who are not the court will pick up the tab?

Wolff: Right. What's happening now, on those cases on juvenile system, the court is suppose to pay. But on the cases like civil cases, where there's an attorney on each side that's retained by the clients, the parties are paying directly. My suggestion is because of the fact that the court no longer seems to be able to pay its bills from its own budget that we

collect in a small filing fee increase an amount that would provide a “kitty”, so that the mediation services could be covered for those who cannot afford to pay for it. I have no problems whatsoever with assessing people who can afford to pay for the mediation services, I think that’s a good thing, just coming up with the mechanics can be

Respicio: I know that the bulk of your funding comes from federal grants. Governor’s Safe and Drug-Free Schools, have you looked into the Stop Violence Grant or something that VARO does or any other service provider in this area, if there might be some funding for your work?

Wolff: There’s been a number of agencies that are interested in our services, the types of mediation services you’re talking about, Victim Offender Mediation Services, the difficulty has been with a lack of funding for those kinds of cases. I suggested to these agencies to take the route that you have mentioned, the Stop Violence Act, and to use that to be able to take care of their clients and make referrals, but up to this point that has not happened.

Respicio: I suspect that when you address conflict through mediation, you’re addressing the core of the problems and hopefully you have provided a long-term resolution to those issues that they’re going through. I support this bill, Mr. Chairman, Pat will just work on these issues in the Committee as we move forward to work this out. So, thank you very much, Mr. Chair.

Chairman: Thank you, Senator Respicio, and welcome to Toni Sanford, our good Senator, and do you have any questions, Senator?

Sanford: Thank you, Mr. Chair. Pat, and I know everybody has called you Dr. Wolff, and Attorney Wolff, to me Pat and Toni for many times during the SKIP trips, his son Matt and my son David would interchange my a lot of the guests, they’ll say is that your son, and very rarely I probably say “yes”, Matt’s my son, and I know that it’s in the reverse, too, is David your son, yes he is. Welcome, I really appreciated your coming this morning and also I’ll like to congratulate author and give her my full support on this bill. We all know and statistics have proven that it’s on the rise this break up of family units, it’s really critical that we try and settle this as amicably as possible. This third party mediation is the route to go. The only question is what Pat had mentioned is the funding issue. I was just curious if Ina’fa Maolek is right now the only alternative to mediation, since Sister Mary John is retired, Pat is there going to be a challenge for your organization to grow with the need that seems to be on the rise here to address the ... if this becomes a mandate, and all of the cases need to go to mediation, is this going to be a challenge for your organization?

Wolff: It will be a challenge, because custody cases are tough, they’re tough cases to mediate, but the research shows that mediation works in about half of custody cases, with other types of cases mediation’s success rates are around 70% and higher. With custody cases it’s about 50% or above, because those are real tough cases, but it’s worth it. If you can resolve half of these cases, it’s well worth it, but they’re tough, they’re more time

consuming than many other types of cases that we mediate. So it is going to be challenging, as far as the volume, to be honest with you, Senator Sanford, I don't have very good information from the Superior Court on what the volume is, I tried to get that information, but you can't go to the court and ask how many custody cases do you have, because there's no label of that way, they're domestic cases, and so you have to go through all and read the pleadings and see how many of them is there a claim of custodies. In my testimony, it's just estimates, so I don't think we have a very clear idea what the volume would be and exactly what the challenge will be, too. I think that we routinely every year offer 1 or 2 trainings for mediators, and there is a lot of interest in people being trained as mediators. We can grow our pool. Our biggest challenge will be that we're going to need more people to step up, people with the experience and the maturity, like a Bob Klitzkie to be lead mediators. We have about 10 people with the experience to be a lead mediator, if this bill becomes law we'll need more than that.

Sanford: That's my concern, is that the day this becomes a mandate, then it might rain on your organization, we want to do justice to whatever it is we're creating here, so that we deliver the end result we're seeking. That's probably the trend, is to try and get you your lead mediators and all the supporting mediators[end of Side A, Tape 1] to bring more funding. Well, that's good to know, we just have to find a grant writer and have him join Ina'fa Maolek, right?

Wolff: That will be great.

Klitzkie: Maybe you can have the bill drafter do it. [Background laughing]

Sanford: This is a step in the right direction. We just have to work out the kinks and figure out how to get the funding. Also the volunteerism that needs to come into this kind of non-profit organization that is so needed. I will solicit your patience and your love to continue. Ina'fa Maolek has come so far, because of your leadership. We hope that you won't consider retiring very soon. Thank you and thank you, Mr. Chair.

Chairman: Thank you, Senator Sanford. Pat, I stopped doing domestic cases, probably 10 to 15 years ago, because I got tired of the people in the domestic disputes, and what they did to their children. For Senator Klitzkie's information, the Governor is transmitting to the Legislature a arbitration bill, creating an arbitration center within the territory of Guam, which is probably 50 pages or 60 pages, and includes some mediation issues and the like. That may be something that you'll like to review, and hopefully that will be moving forward. I appreciate the bill from my good Senator Tina Muna-Barnes, in this case, I have over the years, been appointed by judges to represent children, and I still get appointed to represent children in contentious domestic cases. I guess it's because of my years of representing people and also working in the community with children, that they feel that my opinion on those regards is well worth it. As you said, mediation in domestic disputes and child custody can be very difficult. I'm not sure \$75 would assist you in mediation expenses for some of these cases. Initially, as Senator Klitzkie, when he was a Clerk of Courts, would see when you file a divorce case as a lawyer you often use custody as a hammer to try to work out other issues. If the parties don't come in from

the very beginning stipulating to the divorce, everybody's arguing over custody. Those cases don't necessarily need to go into mediation, because they're really aren't that contentious, they're not the real big problem cases. The lawyers are hired to extract as much as they can on behalf of their clients, which is not the case of mediation. In any mediation process, do you allow attorney's to be present?

Wolff: Yes, we do.

Chairman: In domestic disputes, it would probably be much better if you could get just the parties, and not the lawyers there, with an agreement that nothing is said in mediation. I think you have that, can be used, because it's really an issue of, I found over the years, most of the parties are trying to use the children to hurt the other parties. They need to get beyond their hurt and their pain in the divorce, and realize that what they're doing is hurting the children even more. If the lawyers are there, they're going to be sticking their noses in and fighting for their clients when when I was appointed by the judge, I'm fighting for the children. The "mediation" as used in this statute probably needs to be defined, so that we put some parameters around it, and when the judge determines that this is really a domestic dispute, that is not simply resolved by sitting the parties down and working out that property settlement agreement and the visitation. Your services and the services of other mediators could be called into play. The courts do appoint attorneys to represent children in contentious domestic disputes, that might be funding source instead of appointing the attorney to represent the children, that they refer it first to mediation, you might be able to save a significant amount of money, because you wouldn't need the \$75 or \$80 an hour that's being paid to the attorneys, but that money could be potentially be used first there, and if you could resolve 50% of the cases, then the court will be saving money in the long run. I'd appreciate any thoughts you have in this regard and you can share them with Senator Muna-Barnes or myself, and try to get this moving, because it will help the community as a whole if we could stop the people who destroy their own lives by having to separate from destroying their children's lives and causing years of distrust and problems down the future.

Wolff: Senator Cunliffe, I really appreciate the comment you made about the attorneys in mediation. I've thought a lot about that, and being an attorney myself, it's a delicate thing. Because we have no rule, we have no statute to guide us, we have taken the view that attorney's are welcomed, because there is no authority otherwise. I concur with your view, most of us as attorneys are trained to defend our clients, to speak for our clients, to not let our clients speak, we're afraid of if their going to spill their guts and whatever. Mediation is a process which is a disputant centered process, we want to empower people to talk, to really open up to understand each other. They're really running in opposite directions. I really appreciate your comments, I just don't know what the wording is to address that. If there would have been a way of addressing that, so that the attorneys are not going to get bent out of shape, I think it will be helpful. To have a mediation process, which is a client center process.

Chairman: If you define mediation, I think you can, you can define it as excluding the presence of attorneys during the actual meetings. [background talking] ... I mean it is, that's what's

we're paid to do, we're paid to be mean and represent our clients not to often time settle disputes as amicable as possible. Thank you very much, Pat, I appreciate your time this morning, you've been very helpful.

Wolff: Thank you for all your comments.

Inafa Maolek Mediation Center
P.O Box CE
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Tel/Fax: 475-1977
Email: guampeace@email.com

received
4:10 pm 7/08/03

Senators Muna Barnes, Respicio, Quinata, Aguon
Guam Legislature
Hagatña, Guam 96932

July 19, 2003

Re: Testimony on Bill 115

Dear Senators:

Hafa Adai and thank you for a Bill that views Mediation as an option to litigation for addressing conflicted custody cases.

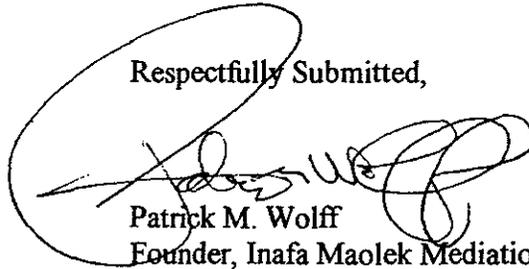
Historically, this idea is not a new one. On March 27, 1980 the California Governor Edmund G. Brown Jr. signed into law making mediation mandatory in all contested custody and visitation cases before the party has any entitlement to a court hearing. Part of the rationale in California was "the inadequacy of the adversary system in resolving (custody) conflicts. Further, "litigants were using the court as a means of getting back at each other and were raising pseudo-legal issues, often motivated more by need for revenge than out of a true concern about the custodial arrangements.

Because Bill 1115 does not address funding for mediation services I refer again to the 1980 California enactment, which made its mediation referrals self-supporting through increases in the divorce filing and marriage license laws. Note: Since 1984 when Superior Court judges first began court-ordering cases to mediation by Inafa Maolek, the mediation fee of \$75.00 charged to the Court for each mediation session had remained the same. However, fiscal woes have resulted in non-payment to Inafa Maolek for the mediations done and invoiced for more than a year. I had written to Presiding Judge Alberto Lamorena earlier this year about including in the Superior Court's planned filing fee increases a surcharge (set-aside) for subsidizing ADR services (including mediation).

volume of cases, but if Bill 115 becomes law Inafa Maolek would need to do two things immediately:

1. Provide specialized mini-trainings for all mediators in the unique aspects of custody disputes.
2. Increase the number of mediators qualified to be mediator Chair/lead. This can best be done by making Bill 115 effective several months after enactment

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Patrick M. Wolff', is written over a large, hand-drawn oval. The signature is fluid and cursive.

Patrick M. Wolff
Founder, Inafa Maolek Mediation Center



GOVERNMENT OF GUAM

received
7/14/03 2:58pm

03-074

DEPARTMENT OF PUBLIC HEALTH & SOCIAL SERVICES
(DIPATTAMENTON SALUT PUPBLEKO YAN SETBISION SUSIAT)



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JUL 11 2003

Senator F. Randall Cunliffe
I Mina Bente' Siete na Liheslaturan Guahan
Ada's Commercial & Professional Center
138 E. Marine Dr.
Hagatna, Guam 96932

Dear Senator Cunliffe:

Submitted are comments from the Department of Public Health & Social Services on Bill No. 115 (COR), "AN ACT TO AMEND THE FIRST PARAGRAPH OF SUBSECTION 8404, OF CHAPTER 8, ARTICLE 1, OF TITLE 19 OF THE GUAM CODE ANNOTATED, REQUIRING UPON FILING OF A PETITION FOR CUSTODY OR CHANGE OF CUSTODY, THE PARTIES TO THE ACTION SHALL AUTOMATICALLY BE REFERRED TO MEDIATION," which has been referred to your Committee on Judiciary and Transportation.

Thank you for notification of the bill and the opportunity to submit comments.

For any questions, you may contact Lydia D. Tenorio, Administrator of the Bureau of Social Services Administration at 475-2653/2672.

Sincerely,

PETERJOHN D. CAMACHO, MPH
Acting Director



COMMENTS FROM THE
DEPARTMENT OF PUBLIC HEALTH & SOCIAL SERVICES

The Bureau of Social Services Administration (BOSSA), Division of Public Welfare of the Department of Public Health & Social Services is one component that provides assistance to the court in making decisions when there are issues of custodial disputes. This responsibility has been mandated in Subsection 8404 (d), of Chapter 8, Article 1, of Title 19 GCA.

The department agrees that divorce cases with custodial disputes have greatly increased which is indicative through the number of referrals via Court orders that have been served upon BOSSA to conduct custody studies. While the number of cases have increased, the issues and conflicts that exist in these cases have made it very challenging and difficult for social workers to conduct and complete home studies expediently when parties are in constant disagreement. These social workers are often placed between parties and are expected to mediate conflicts.

It is often confusing to the parties in conflict about the role that the BOSSA social worker represents. Parties are constantly badgering about issues and accusations about each other and expect that social workers are to validate their differences. Social Workers are often struggling to keep the parties focused in the interest of their children, rather than what they want as the adult parent.

It is already a reality that BOSSA is unable to provide reports in a timely manner due to manpower shortages, other court ordered studies for adoption cases, among other request for home studies from other sources. In addition, many issues are being made by parties that the social worker must be able to address. There are many other obstacles presented by the parties in conflicts that also contribute and delay a social worker from gathering information cooperatively in order to produce a sound and comprehensive report for the court.

Custodial disputes have also raised child abuse allegations that parties make between each other. Subsequently, parties file reports to Child Protective Services (a program in BOSSA) expecting that the agency will give custody to the other parent. These reports, due to custodial disputes, also inundate the program with issues that the adult parent has against each other, so the child's best interest is once again overlooked. These children eventually end up being subjected to investigations and multi-interviews. In addition, these social workers have to spend time investigating these matters and appearing in court for these domestic cases that take tremendous time from their other cases.

It can be anticipated that parties in divorce cases may no longer have to prolong settlements especially where it concerns custody. If anything, court dockets will be shortened and court orders to BOSSA for custody studies may no longer be in demand. Child Protective Services

may also have reduced referrals from parents in conflicts making allegations against each other and not be caught up in these domestic matters.

Mediation can be an alternative to litigation rather than battling out between attorneys and having to use children in testifying against the other parent. It would offer and encourage parents to communicate and consider reaching mutual decisions relating to their children. While mediation may be advantageous in these cases, it is also crucial that the court appoint and order effective mediators for this process. The role of the mediator must be skillful, committed, neutral, and be able to offer the parties mutual grounds to reach agreements in the best interest of their children.

Therefore, the department supports the concept of mediation and the proposed amendment that the court shall order the parties to be referred to Mediation with respect to custody and visitation.

COMMITTEE ON JUDICIARY & TRANSPORTATION

SENATOR F RANDALL CUNLIFFE, CHAIRMAN

Public Hearing

9:00 a.m, August 6, 2003

Public Hearing Room, Guam Legislature

Bill No. 115 (COR) – AN ACT TO AMEND THE FIRST PARAGRAPH OF §8404, OF CHAPTER 8, ARTICLE 1, OF TITLE 19 OF THE GUAM CODE ANNOTATED, REQUIRING UPON FILING OF A PETITION FOR CUSTODY OR CHANGE OF CUSTODY, THE PARTIES TO THE ACTION SHALL BE AUTOMATICALLY BE REFERRED TO MEDIATION.

NAME (PLEASE PRINT)	AGENCY/ORGANIZATION	CONTACT #	Oral Testimony	Written Testimony	In Favor	Not In Favor
1. Pat Wolf	Inafa Maolek					
2.						
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I MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN
COMMITTEE ON JUDICIARY & TRANSPORTATION
SENATOR F. RANDALL CUNLIFFE, CHAIRMAN

NOTICE OF PUBLIC HEARING

9:00am, Thursday, September 4, 2003
Guam Legislature, Public Hearing Room

AGENDA

Bill 126 (COR): -- TO AMEND §6505 OF 4GCA ALLOWING EMPLOYEES TO KEEP JURY STIPENDS FOR JURY SERVICE ON DAYS OFF, WHEN THE EMPLOYEE'S JURY IS SEQUESTERED OR FOR HOURS REQUIRED TO BE MADE-UP BY THE EMPLOYER (Kasperbauer)

Bill 127 (COR): - AN ACT TO ADD A NEW CHAPTER 170 TO 8GCA RELATIVE TO PREVENTING CRIMINALS FROM SUING THEIR VICTIMS (Kasperbauer)

Bill 129 (COR): - AN ACT TO REPEAL AND REENACT §10.10 OF CHAPTER 10 OF 8GCA, TO REMOVE THE STATUTE OF LIMITATION ON FELONY CRIMINAL SEXUAL CONDUCT AND TO REPEAL §10.15 AND §10.20 OF SAID TITLE (Tenorio)

Bill 137 (COR): - AN ACT TO ADD A NEW ARTICLE III TO CHAPTER 10 OF 12GCA TO AUTHORIZE THE BOARD OF DIRECTORS OF PORT AUTHORITY OF GUAM TO ENTER INTO A PUBLIC-PRIVATE PARTNERSHIP LEASE AGREEMENT FOR TERMINAL OPERATIONS OF THE PORT AUTHORITY OF GUAM (Cunliffe)

CONFIRMATION HEARING: JOAQUIN P. PANGELINAN TO SERVE AS A MEMBER OF THE JOSE D. LEON GUERRERO PORT AUTHORITY OF GUAM BOARD OF DIRECTORS

Written testimonies may be submitted prior to the hearing date via facsimile (477.5300) or e-mail (francunliffe@netpdc.com). Individuals requiring special accommodations or services should contact the Office of Senator F. Randall Cunliffe at 477.5310. This ad paid for by government funds.

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**DATES PUBLISHED:
In the Pacific Daily News**

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