

STANDING COMMITTEE REPORT NO. 18-274

RE: C.R. NO. 18-233/J&GO

SUBJECT: NOMINATION OF MR. BENJAMIN N. WEBER TO SERVE
AS AN ASSOCIATE JUSTICE OF THE FSM SUPREME
COURT

JANUARY 31, 2015

The Honorable Dohsis Halbert
Speaker, Eighteenth Congress
Federated States of Micronesia
Sixth Regular Session, 2015

Dear Mr. Speaker:

Your Committee on Judiciary and Governmental Operations, to which was referred C.R. No. 18-233, entitled:

"A RESOLUTION GIVING ADVICE AND CONSENT, PURSUANT TO ARTICLE XI, SECTION 3, OF THE CONSTITUTION OF THE FEDERATED STATES OF MICRONESIA, TO THE APPOINTMENT OF MR. BENJAMIN N. WEBER, TO THE POSITION OF ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE FEDERATED STATES OF MICRONESIA.",

begs leave to report as follows:

The intent and purpose of the resolution is expressed in its title.

This resolution was transmitted to Congress on November 21, 2014 through Presidential Communication No. 18-409. Attached with P.C. No. 18-409 is the nominee's CV. The CV contains a comprehensive explanation of the nominee's educational background and work experience.

Education

The nominee received a Bachelor of Arts degree in English from the University of Arizona at Tempe, graduating Magna Cum Laude in 1981.

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The nominee attended the John Marshall School of Law in Chicago Illinois, receiving a Juris Doctor, with distinction, in 1986.

Work Experience

The nominee began his legal career in private practice, working for Braun & Rivkin, LTD in Chicago, Illinois, from November 1986 to July 1988. The nominee's duties in that position involved commercial litigation in state and federal courts of the United States, including motions, trials, and appeals, with a focus on winding up and termination of partnerships and closely held corporations. The nominee then returned to Arizona, and from February 1990 to May 1991, the nominee worked in Maricopa County Superior Court as a law clerk, researching and preparing memoranda and decisions. The nominee's final position in the United States was at the law firm Kenneth A. Winsberg, P.C. in Phoenix, Arizona from May 1991 to January 1995. In that position, the nominee practiced general litigation in state and federal courts of the United States in areas of commercial disputes, domestic relations, personal injury, probate, and bankruptcy. The nominee's work encompassed non-jury and jury trials, evidentiary hearings, motion and arbitration proceedings, hearings before state administrative agencies, negotiation, and commercial transactions.

The nominee began his long and distinguished career in the Federated States of Micronesia in Yap in February 1995. At that time, the nominee began work as a court attorney in Yap State Court. As a court attorney, the nominee provided counsel to both the trial and appellate divisions of the Court, and researched and prepared memoranda, orders, decisions and opinions.

From January 1997 to November 2005, the nominee worked as a staff attorney with the FSM Supreme Court in Yap, advising the late Justice Martin Yinug on matters pending before the Court. The nominee's duties included research and preparation of memoranda, orders, decisions, and opinions. The nominee also taught evidence, trial advocacy, and civil procedure as part of the trial counselor training

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program sponsored by the Yap Bar Association. The nominee also served on ad hoc committees of the Yap Bar Association, and assisted with court services and reestablishing a functioning court in Yap after typhoon destruction.

In February 2007, the nominee began working in the Pohnpei location of the FSM Supreme Court, initially as a Staff Attorney and then as General Counsel from August 2008 until July 2009. As General Counsel the nominee assigned cases to staff attorneys and assured case flow and calendar management. The nominee also advised the Chief Justice regarding administrative and disciplinary matters. Additionally, the nominee taught civil procedure as part of the court supported trial counselor training program at the College of Micronesia.

Since March 2010, the nominee has been employed as the Deputy Director at Micronesian Legal Services Corporation in Saipan, NMI. In this role the nominee develops, implements, and monitors policies and procedures governing MLSC's activities in providing civil legal assistance to the poor, and ensures compliance with Legal Service Corporation regulations, guidelines, and policies.

Public Comments and Hearings

Upon receiving P.C. No. 18-409, the nomination of Mr. Benjamin Weber to the FSM Supreme Court, your Committee solicited and encouraged public comments regarding the nominee from interested parties, including representative of each State Government and members of the FSM Bar Association. Your Committee received written comments from the FSM Supreme Court, Yap State Court, Kosrea State Court, the Governor of Pohnpei, the Attorney Generals of Pohnpei and Yap, the Directing Attorney of MLSC, and attorneys in private practice in the FSM. Your Committee feels confident that adequate time was allowed for interested parties to provide comments to the Committee, and appreciates those that took the time to send in their comments and thoughts. The great bulk of the letters received contained strong words of support and endorsement of the nominee. Those that have

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worked with the nominee in the FSM described him as "capable and knowledgeable," "having the "necessary judicial temperament, courage and integrity" for the position of Associate Justice, "and having "superior intellect, professional demeanor, and an open mind." Your Committee was impressed with the volume of letters expressing unwavering support for the nominee.

Your Committee also notes that not one negative comment was received regarding the nominee. One letter did express concern not about the nominee specifically, but only whether an appropriate FSM citizen could not be found to serve in the Associate Justice position. Your Committee did address this concern in the public hearings, and is addressed below.

Your Committee notes that Yap State Legislature endorsed the nomination of Mr. Weber to the position of Associate Justice in Yap State Resolution No. 8-109, adopted on November 29, 2014.

Your Committee held public hearings on the nomination of Mr. Benjamin Weber to the FSM Supreme Court on January 27 and 28, 2015.

Your Committee met first with the nominee himself on January 27, 2015. The nominee provided a brief summary of his background to the Committee. The nominee was born in Ohio and moved to Arizona for college. The nominee has lived and worked in the Pacific Islands since 1995.

Your Committee inquired as to how the nominee learned of the position and his nomination? Mr. Weber replied that he received a call from the President's Office in November 2014, that led to his being asked if he was interested in the Associate Justice position. Mr. Weber described being surprised by the call after initially thinking the call was regarding a PCD. The nominee was pleased to accept the nomination. Mr. Weber described part of his surprise being that he thought perhaps the "time for expatriates serving in the FSM Supreme

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Court was over."

Your Committee mentioned that this is a lifetime appointment and inquired as to how long the nominee could see serving in this position if he is confirmed? The nominee stated that he is a "very young" 61 years old and in great health. He would like to serve for as long as he is blessed with continued good health. In response to questions regarding being an expatriate justice, the nominee stated that if FSM citizens were prepared to take his place he believes it is in the best interests of the FSM to have its own citizens on the bench. In response to questions about whether the nominee has any concerns with the current salary levels, and whether he would decide to move on in a few years for a higher paying position, the nominee stated that he would not plan on applying for any other positions, and he can live on the current salary level.

When asked about living in the FSM, and where nominee would prefer to be based, the nominee explained that at the time he left the FSM for a brief period in 2005-2006, it was to return to the U.S. to care for his ailing mother. The nominee appeared appreciative of the opportunity to return to the FSM at this time. The nominee stated that he was initially told he would be based in Yap if confirmed, but then explained that he understands that has perhaps changed. The nominee stated that due to his many years of living in Yap, he of course looked forward to returning there, but that he was happy to live in any of the four States.

When asked about the applicability of U.S. law in the FSM Courts, the nominee stated that the goal is to establish a purely Micronesian jurisprudence, and that the Court only looks outside the FSM for guidance when there is an absence of FSM law that applies or the issue in question has not arisen in the FSM. In that case, the Court will determine whether it is reasonable to look outside the FSM for guidance, and whether there is any countervailing concerns in doing so.

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Your Committee inquired as to Mr. Weber's knowledge of the various customs and traditions in the FSM and their application in cases that may come before the Court. Mr. Weber explained that while he has been in Saipan these recent years, he lived in Yap for a number of years and based on that experience he is familiar with the process of applying customs and traditions in cases before the Court. While most of his experience is in Yap, and he therefore has greater familiarity with Yapese customs, he understands that when customs and traditions are involved, experts are called to testify to the Court who can assist the judges in that regard.

When asked about his judicial temperament, Mr. Weber stated he would strive to model the last Justice Yinug, who the nominee considered to have a great temperament, carried himself with great dignity, and was a great listener to all who came before the Court.

Your Committee inquired as to whether the nominee was familiar with the recent separation of powers cases, Udot Municipality v. FSM or the PFS case in 2012. The nominee stated that due to the timing he would have been a law clerk during the Udot appeal, but the PFS case was three years after the nominee left the FSM and he is not familiar with it. The nominee stated he could not speak to Udot in particular, but his general view is to avoid judicial legislating. When asked his judicial philosophy and how broadly cases should be applied, the nominee stated that there is a spectrum of appropriateness depending on the facts of a given case, but he is always more comfortable applying the law narrowly.

When asked specifically about political affiliations, the nominee stated that he is not affiliated with any party in the U.S., and pertaining to Court decisions, all cases should be decided applying the facts and the law, and should not be associated with any political party. Mr. Weber stated he is not comfortable labeling/aligning himself with any one political party, that there are parts and ideas of more than one political party that he relates to. When asked for

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his views on religious freedom, the nominee stated that the personal practice of religion would be guaranteed by the Constitution, however it is a different issue if a business is acting under the guise of religion.

Regarding same-sex marriage, the nominee stated that family law has traditionally been a local matter. The nominee is opposed to discrimination on any basis, but can not say that same-sex marriage is a Constitutional right. Mr. Weber concluded that "no right is ever exercised in isolation," meaning that local customs should be considered.

When asked about areas of the Court that need improvement, the nominee admitted it has been a few years since he worked at the Court, so he may not have the most current knowledge of areas for improvement, but he does know that there is a need to dispose of cases in a timely manner, and that there is always room for improved efficiency. Mr. Weber stated he is fully in support of time standards. Mr. Weber also advocated getting opinion published and accessible to the public and practitioners.

Mr. Weber stated that he is honored by the nomination, it is an opportunity he would like to take, and he would be committed to serve for a number of years. He further described the position as one that would provide great personal satisfaction.

Your Committee held additional hearings on January 27 and 28, 2015. Present were representatives from the President's Office, the Department of Justice, and the FSM Judiciary.

The President's Office offered strong support for the nominee based on his education and extensive work experience in the FSM, the nominee served with distinguished jurists during his time in the FSM, and has himself been described as impartial, objective, fair and passionate. The President's Office assured your Committee that an effort was made

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to find FSM citizens and FSM citizens were considered; at the end of the day Mr. Weber's qualifications and references led to his nomination.

The Department of Justice confirmed that a background check was completed on the nominee, both in the United States and the FSM. There is no criminal record and no charges against him. The Department of Justice concluded there is nothing to prevent their support of the nominee.

Representatives from the FSM Judiciary offered their full support of the nominee. He is a member in good standing of the FSM Bar, and has had no disciplinary actions brought before the bar; all of the senior staff offer their support of Mr. Weber. Mr. Weber seems at home in the islands, and enjoys working in the FSM. Mr. Weber has worked in Yap and Pohnpei, fit in well in both places, and it is believed he will do well in any of the four States. His experience as a staff attorney has prepared him well for this position, and it is thought he is fully aware and knowledgeable about applying customs and traditions in cases before the Court. Additionally, it may be of particular use that he is an expatriate, as there are still a large number of conflict of interest cases.

Conclusion

Your Committee has reviewed the CV of Mr. Weber, the commentary received via letters to the Committee, and the extensive testimony of the nominee and numerous witnesses. Based on the nominee's education, experience in the FSM, and substantial support and endorsement from many people in the community who have known him personally and professionally for a significant number of years, your Committee is confident that Mr. Benjamin Weber is a qualified and competent nominee to the FSM Supreme Court.

Your Committee would like to offer the following amendment to C.R. No. 18-233 to read as follows:

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- 1. Page 1, line 10, delete "Fifth Special Session, 2014", and insert "Sixth Regular Session, 2015 in lieu thereof.

Your Committee on Judiciary and Governmental Operations, having reviewed the proposed resolution, is in accord with the intent and purpose of C.R. No. 18-233, and recommends its adoption in the form attached hereto as C.R. No. 18-233, C.D.1.

Respectfully submitted,

/s/ Wesley W. Simina
Wesley W. Simina, chairman

Berney Martin, vice chairman

/s/ Dohsis Halbert
Dohsis Halbert, member

/s/ Tiwiter Aritos
Tiwiter Aritos, member

/s/ Yosiwo P. George
Yosiwo P. George, member

/s/ Isaac V. Figir
Isaac V. Figir, member

Bonsiano F. Nethon, member

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