

STANDING COMMITTEE REPORT NO. 19-25

RE: C.R. NO. 19-28/J&GO

SUBJECT: NOMINATION OF MR. DENNIS K. YAMASE TO SERVE
AS THE CHIEF JUSTICE OF THE FSM SUPREME
COURT

JULY 16, 2015

The Honorable Wesley W. Simina
Speaker, Nineteenth Congress
Federated States of Micronesia
First Special Session, 2015

Dear Mr. Speaker:

Your Committee on Judiciary and Governmental Operations, to which was referred C.R. No. 19-28, entitled:

"A RESOLUTION TO CONFIRM THE NOMINATION OF MR. DENNIS K.
YAMASE TO SERVE AS THE CHIEF JUSTICE OF THE FEDERATED
STATES OF MICRONESIA SUPREME COURT.",

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 May 26, 2015, through Presidential Communication No. 19-31. Attached with P.C. No. 19-31 is the nominee's CV. The CV contains a comprehensive explanation of the nominee's educational background and work experience.

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Education

The nominee received a Bachelor of Education degree in Secondary Education-Psychology from the University of Hawaii at Manoa, graduating in 1979. The nominee attended the William S. Richardson School of Law at the University of Hawaii, receiving a Juris Doctor in 1982.

Work Experience

The nominee began his long and distinguished legal career in the Pacific region in 1987. At that time, the nominee began work as Legislative Counsel to the Congress of the Federated States of Micronesia, a position he held until 1993. As Legislative Counsel, the nominee led the Office of Legislative Counsel and FSM Congress Library, under the supervision of Speaker Jack Fritz. In this role, the nominee supervised five attorneys and had ultimate responsibility for legal/research services to Congress including drafting bills, resolutions, committee reports, memorandum, rules, reports, contracts, and representing Congress in legal action. In addition, the nominee served as legal staff for the 1990 FSM Constitutional Convention.

From 1993 to 1996, the nominee worked in the Republic of Palau as the Special Legal Counsel to the Vice President/Minister of Administration. In this role, the nominee acted as legal counsel to the Vice President on tax and revenue, labor, customs, budget, procurement, contracts, and other administration matters as well as drafting proposed legislation, regulations, and memorandum. He also served as legal counsel to Palau's Transition Commission, which dealt with transition matters related to Palau's Compact of Free Association with the United States.

In May 1996, the nominee began working in the Commonwealth of the Northern Mariana Islands (CNMI) as the Executive Director of the Law

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Review Commission under the auspices of the Supreme Court of the CNMI. In this role, the nominee completed a comprehensive update and republication of the CNMI Code in both CD-ROM and paper formats as well as publishing the Code on the Internet.

In May 2001, the nominee took up a position as a Legal Information Systems (LIS) Consultant with the Asian Development Bank in the Philippines. With this position, the nominee returned to serving the Federated States of Micronesia by codifying the FSM Code and the Yap State Code and drafting the Chuuk State Code. In addition, the nominee designed, constructed, and implemented the FSM Legal Information System (FSMLIS) website, which provided citizens of the FSM with free access to FSM law from both the National and State Governments.

From 2002 to 2014, the nominee continued to serve the FSM as a Senior Associate Justice of the FSM Supreme Court. In this role with FSM's highest appellate national court, the nominee handled criminal, civil, bankruptcy, and admiralty and maritime trial division cases as well as all manner of appeals. In addition, the nominee taught numerous courses in the trial counselor certificate program in the State of Chuuk for the College of Micronesia – FSM and became an experienced judicial trainer for judiciaries throughout the North and South Pacific.

Since April 2014, the nominee has been employed as a Codification Consultant for the Eighteenth Congress of the Federated States of Micronesia. In this role, the nominee completed the 2014 FSM Code Annotated in hard copy and digital formats for posting on the Internet. This updated Code includes an index, public law cross-reference table, editor's notes, and case annotations.

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Public Hearings

Your Committee held a public hearing on the nomination of Mr. Dennis K. Yamase to be the Chief Justice of the FSM Supreme Court on July 15, 2015.

Statements from Nominee

After welcoming the nominee and the interested witnesses, your Committee provided the nominee with an opportunity to make an opening statement.

The nominee thanked your Committee for the opportunity to appear before it. He commented that most of the Committee was probably familiar with the terms of his departure from the FSM Supreme Court in 2014. Nonetheless, he explained that at the time of his departure his very elderly parents were in need of almost constant care. However, he related that, after assisting his family since his departure from the FSM, at the present time he is confident that his brother can shoulder the burden of caring for his parents. He stated that he was very happy to answer any questions the Committee might have regarding his nomination.

Senator Gouland offered his wholehearted support to the nominee given the nominee's past service to the State of Chuuk.

Senator Romolow stated that based upon a review of the nominee's resume, it is absolutely clear the nominee possesses the necessary skills to fill the position of Chief Justice. However, Senator Romolow asked the nominee to elaborate on whether there were any other reasons that might have motivated the nominee to leave the FSM Supreme Court in 2014. The nominee indicated that the need to care for his parents was basically the overriding reason given that his legal career had never allowed him to be near his parents in Hawaii.

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He indicated that he wished to return to Hawaii in 2014 at a time when his parents would still know and recognize him.

Senator Romolow followed up by asking what degree of assurance the nominee had that his brother would be able to continue to care for their parents. The nominee indicated that he hoped that the present situation would continue and that his brother is comfortable in the caregiver role. The nominee stated that he agrees that the Chief Justice should be an FSM citizen, which is the position of the FSM Supreme Court. He indicated that down the road, when an FSM citizen agreed upon by the nation's leadership was identified, he would offer his resignation and step aside should he ultimately be confirmed. He stated that he would like to see this happen and that this is part of local capacity building and this is how it should be.

The nominee indicated that another priority he would like to see the Court work on would be to fill more positions with FSM attorneys. He indicated that he had previously met with his alma mater law school to discuss establishing a pipeline for FSM students to attend law school in Hawaii. At the time the LSAT was a bit of an impediment to this pipeline; however, the law school recently announced a program that would allow FSM citizens to enroll without the need to take the LSAT. He would really like to promote local capacity building in this way and others.

Senator Romolow then inquired how the Committee could be assured that local customs would be observed and upheld given that the nominee is not an FSM native. The nominee said this was a good question, and he has always thought a lot about these issues. He alluded to the fact that there are provisions in the Supreme Court's procedures that permit it to appoint experts to get advice regarding applicable customs when the issue arises in a case. Also, he said he is married to an FSM citizen, so he has some familiarity with FSM customs. He

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indicated that in his previous time on the Court, he tried to utilize Pacific Island precedents. He also stated that, in his opinion, some past Justices did not go far enough in recognizing local customs.

Senator Welly then commented that the nominee's presence before your Committee indicates he is willing to take up the challenges of the position. However, he asked the nominee to elaborate on his feelings about the appointment for life. In response, the nominee indicated that he thinks that term limits for judges is not a bad idea and that this is perhaps the trend in the U.S. However, he was unsure whether six year terms are the appropriate intervals.

Senator Urusemal followed up on the suggestion that there is a trend in the U.S. for term limits. He asked the nominee whether he felt that term limits should apply to other public servants. The nominee politely declined to comment on term limits for others.

The Chairman closed the questions and offered the nominee the opportunity to offer any closing comments.

In closing, the nominee indicated that the FSM Supreme Court is facing some challenging times and situations especially given the declining health of one of the Associate Justices. He indicated that at this time the Court does not have a sufficient number of judges to take on the necessary cases. He indicated that from his previous experience he is confident that the Court can meet the challenges. He reiterated his extensive Pacific Region and FSM legal experience, which he believes gives him a sense of the importance of the Judiciary in all of these places. He indicated that sometimes the Judiciary is overlooked because it is small and perhaps weaker than other branches of government. However, he stated that the Judiciary plays a crucial role in many realms including economic development. He indicated that if ultimately confirmed, he would give it his best

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effort to help the Court meet the challenges it faces.

Statements from Interested Witnesses

Your Committee also heard from additional interested witnesses. Present were representatives from the Office of the President, the Department of Justice, and the FSM Supreme Court.

The representative from the Office of the President, Chief of Staff Falcam, Jr., was given an opportunity to provide a statement to the Committee. He thanked the Committee for the opportunity to support the nomination. He wished to emphasize to the Committee that, in the opinion of the President of the FSM, the nominee is the most qualified candidate to be Chief Justice in both the FSM and the greater Micronesia region. Mr. Falcam, Jr. stated that the President's confidence in the nominee is very high. He then summarized the nominee's relevant experience, education, and expertise. He also emphasized the nominee's extensive experience as a regional and national judicial trainer and his willingness to mentor others.

The representative from the Department of Justice indicated that he supports the views of the Office of the President and fully supports the nominee.

Representatives from the FSM Supreme Court were also given the opportunity to provide a statement. After thanking the Committee, a representative from the Court spoke in support of the nominee. The representative related that the nominee had been his teacher at the Chuuk campus of COM and had encouraged him to pursue a legal career. The representative also emphasized that the nominee's work in creating the Legal Information Systems (LIS) had provided greater access to the public to the FSM's legal precedents. He also commented positively on the nominee's legal analysis, judicial

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demeanor, and case disposition skills. In his opinion, the nominee had set the standard at the FSM Supreme Court.

Conclusion

Your Committee has reviewed the CV of Mr. Dennis K. Yamase and the testimony of the nominee and numerous witnesses. Based on the nominee's education, experience in the FSM and the region, and the support and endorsement from the interested witnesses, your Committee is confident that Mr. Dennis K. Yamase is a qualified and competent nominee to be the Chief Justice of the FSM Supreme Court.

Your Committee would like to offer the following amendment to C.R. No. 19-28 to read as follows:

1. Page 2, line 13, delete "Regular" and insert "Special" 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. 19-28, and recommends its adoption in the form attached hereto as amended.

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Respectfully submitted,

/s/ Tiwiter Aritos
Tiwiter Aritos, Chairman

/s/ Robson Romolow
Robson Romolow, Vice Chairman

/s/ Isaac V. Figir
Isaac V. Figir, Member

Berney Martin, Member

/s/ Wesley W. Simina
Wesley W. Simina, Member

/s/ Paliknoa K. Welly
Paliknoa K. Welly, Member