

**TWENTY-THIRD NORTHERN MARIANAS COMMONWEALTH LEGISLATURE
HOUSE OF REPRESENTATIVES**

P.O. BOX 500586
SAIPAN, MP 96950
cnmileg.net

November 25, 2024

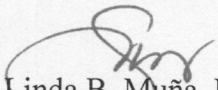
HOUSE
FILE
*

The Honorable Edith E. DeLeon Guerrero
President
The Senate
Twenty-Third Northern Marianas
Commonwealth Legislature
Capitol Hill
Saipan, MP 96950

Dear Senate President DeLeon Guerrero:

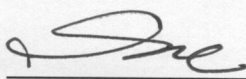
I have the honor of transmitting herewith for Senate *action* **H. B. No. 23-119, HS1**, entitled: **“To amend the statutes regarding the recusal of judges and justices and to provide penalties for non-compliance; and for other purposes.”**, which was passed by the House of Representatives on First and Final Reading, with the affirmative vote of three-fourths of the members voting, a quorum being present, during its Fifth Day, Fourth Regular Session on November 22, 2024.

Sincerely yours,


Linda B. Muña, MPA
House Clerk

Attachment

Transmittal to the SENATE

Received by: 

Date: 11/25/24

Time: 3:24 pm

TWENTY-THIRD NORTHERN MARIANAS COMMONWEALTH

LEGISLATURE

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 2024

Fourth Regular Session, 2024

H. B. 23-119, HS1

A BILL FOR AN ACT

To amend the statutes regarding the recusal of judges and justices and to provide penalties for non-compliance; and for other purposes.

**BE IT ENACTED BY THE 23RD NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:**

1 **Section 1. Findings and Purpose.** The Legislature finds that the CNMI
2 Judiciary must uphold the highest standards of impartiality and integrity. Judges
3 and justices are obligated to avoid any appearance of bias, ensuring their
4 impartiality cannot be reasonably questioned. However, unnecessary recusals
5 undermine these duties and erode public trust in the judicial system. Unwarranted
6 recusals impose financial burdens on the CNMI government due to the need for
7 judges pro tempore, diverting resources from essential services. Thus, the
8 legislation introduces oversight by the Presiding Judge and Chief Justice to assess
9 the justification for recusals, ensuring compliance with 1 CMC Sections 3308 and
10 3309 and reinforcing accountability within the judiciary.

11 This legislation amends terminology from "disqualification" to "recusal" to
12 provide clarity and consistency in legal proceedings. It defines specific

HOUSE BILL 23-119, HS1

1 circumstances requiring recusal, such as personal biases, prior involvement in
2 related matters, and financial interests, ensuring conflicts of interest are addressed
3 while preventing the transfer of responsibilities to external judges.

4 This legislation also provides courts with the authority to create their own
5 policies with respect to certain aspects of this legislation. It empowers courts to
6 impose penalties or suspend judges for non-compliance, serving as a deterrent
7 against unjustified recusals. Additionally, the CNMI Legislature is authorized to
8 initiate impeachment proceedings for neglect of duty, enhancing checks and
9 balances.

10 As set forth to the amendment to 1 CMC section 3309 with respect to the
11 Disqualification Procedure, this legislation requires that the courts shall promulgate
12 rules that clarify that a recusal order that lacks detail is reversible upon review. The
13 reviewing judge or justice must expressly examine the underlying factual basis for
14 the recusal order and find that there is a sufficient factual basis for upholding the
15 order. In addition, the court shall also require the recusing judge or justice to file a
16 detailed affidavit in support of the order of recusal. The need for details also applies
17 to an order granting or denying recusal.

18 Lastly, because the public would be better served if the judiciary identified
19 local qualified retired judges or attorneys to serve as pro tempore jurists, the courts
20 shall appoint local attorneys on a pro tempore basis and exhaust the local pool of
21 qualified attorneys before resorting to appointing a judge or justice from off-island.

1 In summary, this legislation strengthens judicial integrity, accountability,
2 and transparency by establishing clear recusal standards. It promotes economic
3 efficiency and upholds the rule of law within the CNMI, fostering public confidence
4 in the judicial system.

5 **Section 2. Amendment.** Title 1, Government, Division 3, Judicial Branch,
6 Chapter 3, The Judiciary, Section 3308, “Disqualification of Judges” of the
7 Commonwealth Code is hereby amended to read as follows:

8 “§ 3308. ~~Disqualification~~ Recusal of Judges.

9 (a) A justice or judge of the Commonwealth shall ~~disqualify~~ recuse
10 himself or herself in any proceeding in which his or her impartiality might
11 reasonably be questioned.

12 (b) A justice or judge shall also ~~disqualify~~ recuse himself or herself in
13 the following circumstances:

14 (1) Where he or she has a personal bias or prejudice concerning a
15 party, or personal knowledge of disputed evidentiary facts concerning the
16 proceeding;

17 (2) Where in private practice he or she served as a lawyer in the matter
18 in controversy, or a lawyer with whom he or she previously practiced law
19 served during that association as lawyer concerning the matter, or the
20 judge or such lawyer was or is a material witness concerning that matter;

1 (3) Where he or she has served in governmental employment and in
2 that capacity participated as counsel, adviser or material witness
3 concerning the proceeding or expressed an opinion regarding the merits of
4 the particular case in controversy. This shall include but not be limited to
5 where a judge or justice, including those in a pro tempore capacity, has
6 previously presided over or served as a member of an appellate court in a
7 case that materially involves the same parties or the same matter in
8 controversy, regardless of whether that court issued a decision or opinion
9 on the merits;

10 (4) He or she, individually or as a fiduciary, or his or her spouse or
11 minor child residing in the household, has a financial interest in the subject
12 matter in controversy or in a party to the proceeding, or any other interest
13 that could be substantially affected by the outcome of the proceeding;

14 (5) He or she, or his or her spouse, or a person within the second degree
15 of relationship to either of them, or the spouse of such person:

16 (i) Is a party to the proceeding, or an officer, director, or trustee of
17 a party;

18 (ii) Is acting as a lawyer in the proceeding;

19 (iii) Is known by the judge or justice to have an interest that could
20 be substantially affected by the outcome of the proceeding; or

1 (iv) To the knowledge of the judge or justice is likely to be a
2 material witness in the proceeding.

3 (c) A judge or justice should inform himself or herself about his or her
4 personal and fiduciary financial interests, and make a reasonable effort to
5 inform himself or herself about the personal financial interests of his or her
6 spouse and minor children residing in the household.

7 (d) For the purposes of this section the following words or phrases
8 shall have the meaning indicated:

9 (1) “Fiduciary” includes such relationships as executor, administrator,
10 trustee, and guardian;

11 (2) The degree of relationship is calculated according to the civil law
12 system;

13 (3) “Financial interest” means ownership of a legal or equitable
14 interest, however small, or a relationship as director, advisor, or other
15 active participant in the affairs of a party, except that:

16 (i) Ownership in a mutual or common investment fund that holds
17 securities is not a “financial interest” in such securities unless the judge
18 or justice participates in the management of the fund;

19 (ii) An office in an educational, religious, charitable, fraternal, or
20 civic organization is not a “financial interest” in securities held by the
21 organization;

1 (iii) The proprietary interest of a policyholder in a mutual
2 insurance company, of a depositor in mutual savings association, or a
3 similar proprietary interest, is a financial interest in the organization
4 only if the outcome of the proceeding could substantially affect the
5 value of the interest; and

6 (iv) Ownership of government securities is a “financial interest” in
7 the issuer only if the outcome of the proceeding could substantially
8 affect the value of the securities.

9 (4) “Proceeding” includes pretrial, trial, appellate review, or other
10 stages of litigation.

11 (e) No justice or judge shall accept from the parties to the proceeding
12 a waiver of any ground for ~~disqualification~~ recusal, enumerated in subsection
13 (b) of this section. Where the ground for ~~disqualification~~ recusal arises only
14 under subsection (a) of this section, waiver may be accepted provided it is
15 preceded by a full disclosure on the record of the basis for ~~disqualification~~
16 recusal.

17 (f) In the Superior Court, the Presiding Judge shall make a
18 determination as to whether the recusal of the Associate Judge is justified and
19 in compliance with 1 CMC sections 3308 and 3309. In the event that the
20 Presiding Judge determines that there is no justification or the recusal order is

1 non-compliant, the Presiding Judge shall order the judge to fully comply with
2 the law.

3 (g) In the Supreme Court, the Chief Justice shall make a determination
4 as to whether the recusal of the Associate Justice is justified and in compliance
5 with 1 CMC sections 3308 and 3309. In the event that the Chief Justice
6 determines that there is no justification or the recusal order is non-compliant,
7 the Chief Justice shall order the justice to fully comply with the law.

8 (h) The CNMI Superior Court and Supreme Court shall promulgate
9 applicable court rules that authorize the Presiding Judge or the Chief Justice,
10 in their respective courts, to assess a personal penalty and/or officially suspend
11 the judge or justice “for neglect of duty” in the event of non-compliance with
12 1 CMC sections 3308 and 3309.

13 (i) The CNMI Legislature is expressly authorized to initiate and
14 conduct impeachment proceedings consistent with Article II, Section 7 of the
15 CNMI Constitution, for any judge or justice, including those appointed judge
16 or justice in a pro tempore capacity, in any case in the Commonwealth
17 Superior or Supreme Court, “for neglect of duty” for any reason for which
18 there is just cause, including but not limited to non-compliance with 1 CMC
19 sections 3308 and 3309.”

20 **Section 3. Amendment.** Title 1, Government, Division 3, Judicial Branch,
21 Chapter 3, The Judiciary, Section 3309, “Disqualification Procedure” of the

HOUSE BILL 23-119, HS1

1 Commonwealth Code is hereby amended by 1) only amending subsection (a) and
2 (keeping subsection (b) without changes), and a enacting new subsections (c) and
3 (d) to read as follows:

4 “(a) ~~“Disqualification~~ Recusal Procedure”. Whenever a justice or
5 judge of the Commonwealth believes that there are grounds for his or her
6 ~~disqualification, recusal,~~ he or she shall, on his or her own initiative, recuse
7 himself or herself and enter a written order of recusal in the record of the
8 proceeding. If the parties are not present in court when the order is entered,
9 the clerk shall immediately transmit a copy of the order to each party or
10 attorney who has appeared in the action or proceeding. The written order of
11 recusal shall make a full disclosure on the record of the factual and legal
12 basis for the recusal.

13 (b) [no changes]

14 (c) With respect to an order of recusal, the judge or justice who
15 reviews the order for reasonable and adequate factual or legal basis must
16 expressly examine the underlying factual basis for the recusal order and find
17 that there is a sufficient factual basis for upholding the order;

18 (1) A recusing judge or justice shall file a detailed affidavit in
19 support of the order of recusal;

1 (2) An order granting or denying a motion to disqualify or recuse a
2 judge or justice shall be supported by detailed factual basis. An order
3 lacking this detailed factual basis is reversible upon review;

4 (d) The Superior Court and Supreme Court shall establish a pool of
5 locally qualified retired judges or attorneys competent to serve on a pro
6 tempore basis and shall exhaust said local pool of qualified attorneys before
7 resorting to appointing a judge or justice from off-island.”

8 **Section 4. Severability.** If any provisions of this Act or the application of
9 any such provision to any person or circumstance should be held invalid by a
10 court of competent jurisdiction, the remainder of this Act or the application of
11 its provisions to persons or circumstances other than those to which it is held
12 invalid shall not be affected thereby.

13 **Section 5. Savings Clause.** This Act and any repealer contained herein
14 shall not be construed as affecting any existing right acquired under contract or
15 acquired under statutes repealed or under any rule, regulation, or order adopted
16 under the statutes. Repealers contained in this Act shall not affect any proceeding
17 instituted under or pursuant to prior law. The enactment of the Act shall not have
18 the effect of terminating, or in any way modifying, any liability, civil or criminal,
19 which shall already be in existence on the date this Act becomes effective.

20 **Section 6. Effective Date.** This Act shall take effect upon its approval by
21 the Governor, or it becoming law without such approval.

HOUSE BILL 23-119, HS1

Introduced: 9/24/2024

Date: _____

Introduced by: /s/ Rep. Marissa R. Flores

/s/ Rep. Vincent R. S. Aldan

/s/ Rep. Blas Jonathan "BJ" T. Attao

/s/ Rep. Roman C. Benavente

/s/ Rep. Angelo A. Camacho

/s/ Rep. Diego V. F. Camacho

/s/ Rep. Julie M. A. Ogo

/s/ Rep. Malcolm J. Omar

Reviewed for Legal Sufficiency by:

/s/ Joseph L.G. Taijeron, Jr.

House Legal Counsel



TWENTY-THIRD LEGISLATURE
COMMONWEALTH OF THE NORTHERN MARIANAS COMMONWEALTH
LEGISLATURE

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY AND GOVERNMENTAL
OPERATIONS

P.O. BOX 500586 SAIPAN, MP 96950

MARISSA R. FLORES
CHAIRWOMAN

Adopted - 11/22/2024
STANDING COMMITTEE REPORT NO. 23-89
DATE: OCTOBER 17, 2024
RE: HOUSE BILL 23-119

The Honorable Edmund S. Villagomez
Speaker of the House of Representatives
Twenty-Third Northern Marianas
Commonwealth Legislature
Capitol Hill
Saipan, MP 96950

Dear Mr. Speaker:

Your Committee on Judiciary and Governmental Operations to which House Bill No. 23-119 was referred, entitled:

“To amend the statutes regarding the recusal of judges and justices and to provide penalties for non-compliance; and for other purposes.”

begs leave to report as follows:

I. RECOMMENDATION:

After considerable discussion, your Committee recommends that HOUSE BILL No. 23-119 be passed by the House in the form of House Substitute 1.

HOUSE CLERK'S OFFICE
RECEIVED BY *[Signature]*
DATE *10/28/2024* TIME *1:20*

II. ANALYSIS:

A. Purpose:

The purpose of House Bill No. 23-119 is to amend the statutes regarding the recusal of judges and justices and to provide penalties for non-compliance; and for other purposes.

B. Committee Findings:

Your Committee finds that unwarranted recusals impose financial burdens on the CNMI government due to the need for judges pro tempore, diverting resources from essential services. Thus, the legislation introduces oversight by the Presiding Judge and Chief Justice to assess the justification for recusals, ensuring compliance with 1 CMC Sections 3308 and 3309 and reinforcing accountability within the judiciary. Your Committee further finds that this Act also provides courts with the authority to create their own policies concerning certain aspects of this legislation. It empowers courts to impose penalties or suspend judges for non-compliance, serving as a deterrent against unjustified recusals.

Your Committee finds that the proposed bill aims to address the issue of unnecessary recusals within the CNMI Judiciary, which can undermine the judiciary's duty to maintain the highest standards of impartiality and integrity. The key changes made to this bill include the replacement of the term "disqualification" with "recusal" to provide clarity and consistency in legal proceedings, the definition of specific circumstances requiring recusal, such as personal biases, prior involvement in related matters, and financial interests, to ensure conflicts of interest are addressed while preventing the transfer of responsibilities to external judges, and the empowerment of courts to create their policies concerning certain aspects of this legislation, including the authority to impose penalties or suspend judges for non-compliance, serving as a deterrent against unjustified recusals.

Additionally, Your Committee finds that the bill authorizes the CNMI Legislature to initiate impeachment proceedings for neglect of duty, further reinforcing accountability within the judiciary. The proposed changes emphasize the importance of upholding the impartiality of the judiciary, ensuring that public trust in the judicial system is not eroded by unnecessary recusals, and providing a framework for addressing conflicts of interest while maintaining the integrity of the judicial process.

C. Public Comments/Public Hearing:

The Committee received written comments from the following:

- Mr. John Bradley. Comments dated October 7, 2024.

“Thank you for the opportunity to comment on your bill. I strongly urge the Committee to support the bill and recommend its passage by the House following any amendments as needed.”

- Ms. Jane Mack, Micronesian Legal Services Corporation, Directing Attorney. Comments dated October 8, 2024.

“We respectfully decline to make any comments on this proposal.”

- Mr. Alexandro C. Castro, NMI Judiciary, Chief Justice, and Mr. Roberto C. Naraja, NMI Judiciary, Presiding Judge. Comments dated October 15, 2024.

“The Judiciary opposes the passage of H.B. No. 23-119 as it imposes an overly vague and broad requirement on judicial officers.”

D. Legislative History:

House Bill No. 23-119 was introduced by Representative Marissa R. Flores on September 24, 2024 to the full body of the House and was referred to the House Standing Committee on Judiciary and Governmental Operations for disposition.

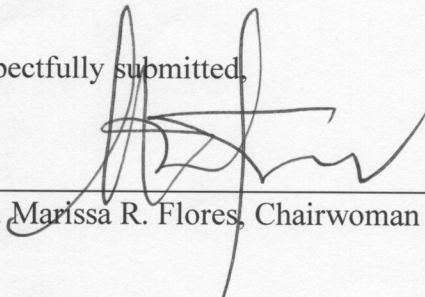
E. Cost Benefit:

The enactment of House Bill No. 23-119, HS1 will benefit the CNMI government by reducing the financial burden of unnecessary recusals and the need for judges pro tempore. The increased oversight and accountability measures may also help to restore public trust in the judicial system, which is essential for the effective functioning of the government.

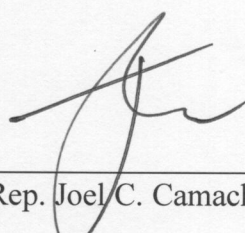
III. CONCLUSION:

The Committee is in accord with the amendments of H. B. NO. 23-119, and recommends its passage in in the form of House Substitute 1.

Respectfully submitted,

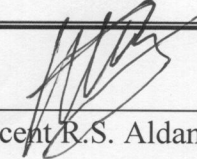


Rep. Marissa R. Flores, Chairwoman




Rep. Joel C. Camacho, Vice Chair





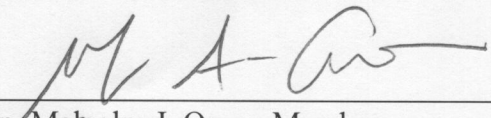
Rep. Vincent R.S. Aldan, Member



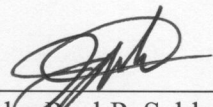
Rep. Blas Jonathan "BJ" T. Attao, Member

Rep. Vicente C. Camacho, Member


Rep. Manny G.T. Castro, Member



Rep. Malcolm J. Omar, Member

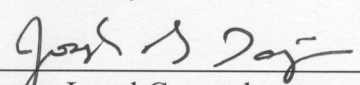


Rep. John Paul P. Sablan, Member



Rep. Ralph N. Yumul, Member

Reviewed by:



House Legal Counsel

- Attachment:
- Letter dated October 07, 2024 from Mr. John Bradley.
 - Letter dated October 08, 2024 from the Micronesian Legal Services Corporation.
 - Letter dated October 15, 2024 from the NMI Judiciary.



Jodie Cabrera <staff.floresm@gmail.com>

Seeking Comments on Proposed Legislation

John Bradley <dajbradley@gmail.com>

Mon, Oct 7, 2024 at 1:47 PM

To: Jodie Cabrera <staff.floresm@gmail.com>

Cc: Marissa Flores <Marissa.r.flores2024@gmail.com>, Joe Taijeron <cnmirish@gmail.com>

Rep. Flores:

Thank you for your request for comments on HB 23-119. The subject of judicial recusals is a timely problem for the Legislature to address. The current use of pro tem judges and justices, following a string of self-disqualifications by local judges and justices, has created a serious problem of delay and misapplication of the law in several significant cases.

HB 23-119 best addresses this issue by requiring the judiciary to spell out in detail any reason for recusal and providing for review of that decision. Currently, the judiciary just announces a vague explanation, leaving the reason unexamined by anyone but the judge or justice. In no other situation is a governmental officer shielded from review by the public or another governmental official.

I would recommend that the bill further clarify that a recusal order that lacks such detail is reversible upon review. And I would recommend that the reviewing judge or justice must expressly examine the underlying factual basis for the recusal order and find that there is a sufficient factual basis for upholding the order. You should also consider requiring the recusing judge to file a detailed affidavit in support of the order of recusal.

One additional note: the language of the bill focuses on orders of recusal. But it is just as important for judges and justices to provide details when declining to recuse. Perhaps the bill could be careful to make clear that the need for details applies to an order granting or denying recusal.

While the bill is limited to addressing the subject of recusal, I am also concerned about the frequent appointment of pro tem judges and justices from outside CNMI following recusal. Those appointed judges have shown a propensity for substantial delay and a bias against or a misunderstanding of local law. The public would be better served if the judiciary identified local qualified retired judges or attorneys to serve in that capacity. Perhaps a separate bill could clarify this area of the law.

Thank you for the opportunity to comment on your bill. I strongly urge the Committee to support the bill and recommend its passage by the House following any amendments as needed.

Sincerely,

John Bradley

[Quoted text hidden]

**HB23-119 To Amend Judicial Recusal Statutes and Establish Penalties for Non-Compliance.pdf**
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MLSC

www.micronesianlegal.org

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October 8, 2024

The Honorable Marissa R. Flores
Chair-CNMI House Standing Cte on Judiciary and Governmental Operations
23rd Northern Marianas Commonwealth Legislature
PO Box 500586
Saipan, MP 96950

Re: H.B. 23-119, a Bill to amend the statutes regarding the recusal of judges and justices and to provide penalties for non-compliance; and for other purposes.

Dear Representative Flores,

Thank you for the invitation to comment on the above-reference legislation.

We discussed this at the Marianas Office at our regular Friday staff meeting. We respectfully decline to make any comments on this proposal.

Thank you for the opportunity.

Sincerely,

Jane Mack
Directing Attorney





The
JUDICIARY
NORTHERN MARIANA ISLANDS

SUPREME COURT

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Tel: (670) 236-9709 • Fax: (670) 236-9702
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ALEXANDRO C. CASTRO
Chief Justice
ACCastro@NMIJudiciary.gov

October 15, 2024

Representative Marissa R. Flores
Chairwoman
Committee on Judiciary and Governmental Operations
Twenty-Third Northern Marianas Commonwealth Legislature
P.O. Box 500586
Saipan, MP 96950
rep.floresm@cnmileg.net

Re: Judiciary Comments on House Bill No. 23-119

Dear Chairwoman Flores:

We write in response to your October 1, 2024 letter soliciting comments from the Judiciary on House Bill No. 23-119, which would amend the statutes regarding the recusal of judge and justices and to provide penalties for non-compliance. The Judiciary opposes the passage of H.B. No. 23-119 as it imposes an overly vague and broad requirement on judicial officers.

Keeping with past practice, the Judiciary will submit comments or recommendations on proposed legislation that directly affects the functions and operations of the third branch of government. We respectfully wish to raise certain considerations based on our experience overseeing judicial proceedings and the administration of justice.

With regard to the provision requiring judges and justices to issue written orders with full disclosure of the factual and legal basis for recusal, this requirement may lead to unintended consequences. The disclosure of certain factual bases for a recusal, especially those that touch on sensitive or private matters, could inadvertently harm the parties involved, create unnecessary publicity, or encourage forum-shopping by litigants seeking to manipulate the judicial assignment process.

For example, other jurisdictions require a reason for the recusal in writing, except when the reason may result in embarrassment, or is of a personal nature, affecting the judge or someone closely related to them. In the Commonwealth, when our judges and justices recuse, they provide the statutory grounds for their recusal pursuant to 1 CMC § 3308. However, there are instances when such reasons may not fall under the enumerated circumstances, but the judge or justice must recuse. As such, HB 23-119's proposed disclosure requirement in any and all instances of recusal is overly vague and broad.

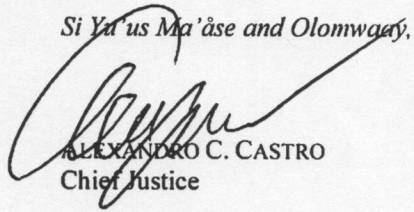
Additionally, judges are currently entrusted with the responsibility of ensuring that they conduct proceedings impartially, and they routinely make recusal decisions in good faith, in accordance with ethical standards. Imposing a system where these decisions are reviewed by a higher judicial officer may unintentionally undermine the trust placed in judges' ability to self-regulate. It could create an appearance

that recusal decisions are subject to external influence, potentially eroding the public's confidence in the independence of the judiciary as a whole.

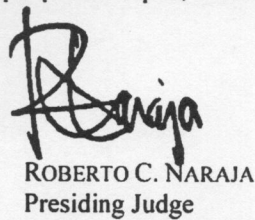
Furthermore, judicial independence is paramount. Judges are already tasked with exercising their discretion to ensure impartiality in every case. In fact, it is required by the Canons of Judicial Conduct. Requiring an external review of these decisions may, in certain situations, be seen as undermining their autonomy or as second-guessing their judgment.

For all these reasons we oppose House Bill No. 23-119. We look forward to continuing to work with your office on matters affecting the Judiciary and the law in this 23rd Commonwealth Legislature that will assist the Courts in delivering quality judicial services to our people in Saipan, Tinian, and Rota.

Si Yu'us Ma'ase and Olomwaay,



ALEXANDRO C. CASTRO
Chief Justice



ROBERTO C. NARAÑA
Presiding Judge

cc: Associate Justice John A. Manglona
Associate Justice Perry B. Inos
Associate Judge Kenneth L. Govendo
Associate Judge Joseph N. Camacho
Associate Judge Teresa K. Kim-Tenorio
Associate Judge Lilian A. Tenorio