

**NOTICE:
RULES AND REGULATIONS IMPLEMENTING
THE FOURTEENTH AMENDMENT**

Introduction

The Fourteenth Amendment to the Constitution, adopted on November 19, 2008, contains a provision to change the current structure of the Judiciary. The provision states that the change shall occur upon a specified event: “when the Olbiil Era Kelulau appropriates funds for additional justices to serve on the appellate division.” The provision also identifies the change that shall occur and the method by which the change shall be effectuated: “the Chief Justice shall implement the separation of the Justices of the appellate division and provide rules and regulations therefore.”

In Public Law No. 9-55, the Olbiil Era Kelulau, on February 5, 2016, appropriated funds “for the purpose of implementing the separation . . . pursuant to the Fourteenth Amendment.” Accordingly, the Chief Justice has commenced the process of fulfilling his duties under the Fourteenth Amendment to provide rules and regulations for implementing the separation.

Adoption Procedures

The people of Palau have expressed, through their representatives, a policy in favor of public participation in the government’s process of promulgating rules and regulations. *See* 6 PNC § 125. In keeping with this policy, the public is notified of the attached “Rules and Regulations Restructuring the Supreme Court,” which proposes rules and regulations for the implementation of the Fourteenth Amendment’s separation provision, along with the accompanying “Introductory Report.”

This notice and its attachments shall be posted for thirty (30) days at the Judiciary buildings in Medalaii and Ngerulmud. Copies of the proposed rules and regulations are available for reading or distribution upon request in person at the Office of the Clerk of Courts during business hours. An electronic copy may be obtained by emailing a request to palaujudiciary@palaunet.com. The Palau Bar Association will receive an electronic copy to distribute to its members. The notice will be read over the radio on five consecutive calendar days during the first 15 days of the the 30-day period

During the 30-day notice period described above, interested parties may present data, views, and arguments regarding the proposed rules and regulations in writing submitted to the Office of the Clerk of Courts during business hours or by email to palaujudiciary@palaunet.com. The Chief Justice will consider fully all written submissions concerning the proposed rules and regulations.

INTRODUCTORY REPORT

The Fourteenth Amendment states that “when the Olbiil Era Kelulau appropriates funds for additional justices to serve on the appellate division, the Chief Justice shall implement the separation of the Justices of the appellate division and provide rules and regulations therefore.” The Olbiil Era Kelulau has appropriated the requisite funds, and, pursuant to the Fourteenth Amendment, the Chief Justice has commenced the process of providing rules and regulations for implementing the separation.

Current Structure of the Supreme Court

Currently, the Supreme Court is composed of a Chief Justice and several Associate Justices. A striking feature of the current Supreme Court is that it consists of both a trial and an appellate division, and all justices serve in both divisions. As a result, justices sitting in the trial division decide appeals from each other’s cases. This structure is atypical: in most constitutional systems, justices of trial courts are separated from justices of appellate courts, so that justices serving in one court may not also serve in the other court, except by temporary designation.

Another striking feature is that, for both appellate and trial divisions of the current Supreme Court, the Chief Justice performs administrative duties traditionally done by a court’s presiding judge, such as assigning cases, monitoring case management, and responding to the public’s inquiries. Although the position of presiding judge is standard in most courts, the Palau Supreme Court is atypical in that the Chief Justice acts as the sole presiding judge over two divisions that would normally include a presiding judge for the trial court and a separate presiding judge for the appellate court.

The atypical features the Palau Supreme Court are the same features that bind the appellate and trial divisions together in one court. If justices did not serve in both divisions and the Chief Justice did not act as presiding judge over both divisions, the result would be a structure like most constitutional judiciaries, in which trial courts, or courts of first instance, are fully separated from appellate courts, or courts of last resort.

Implementing the Separation: Separate Courts

The Fourteenth Amendment calls for separation of the justices between the trial and appellate divisions of the Supreme Court. It clearly annuls the provision

requiring all justices to serve in both the appellate and trial divisions. The Fourteenth Amendment completes the separation of the appellate division from the trial division. Because it provides that justices must serve exclusively as either appellate or trial justices, the Fourteenth Amendment also implicitly discontinues the practice of having the Chief Justice serve as a presiding judge at both the trial and appellate levels. The result of this separation is a judicial system like those found in most constitutional judiciaries, in which there exists separate appellate courts and trial courts. The atypical features that bound the appellate and trial divisions into one court have been severed. The Fourteenth Amendment creates an appellate court, consisting of justices who serve only in that court, and a trial court, consisting of justices who serve only in that court, except when a justice of one court is duly appointed for temporary service in the other court. Because the Fourteenth Amendment separates the justices into two separate courts, the Chief Justice may not preside over both courts.

Pursuant to the Fourteenth Amendment's mandate, it remains for the Chief Justice to set forth "rules and regulations" to "implement the separation" envisioned by restructuring the current Supreme Court into two fully separated courts.

Following the structure of most constitutional judiciaries, the former appellate division shall be known as the Supreme Court and shall serve as the appellate court and the court of last resort. Because the Fourteenth Amendment specifies that the separation shall occur upon appropriation for "additional justices to serve on the appellate division," the current Associate Justices shall now serve only as justices of the Superior Court (see below), although any of them may apply for positions as justices of the newly separated Supreme Court. As a number of constitutional provisions, which remain unaltered by the Fourteenth Amendment, indicate, the current Chief Justice remains the Chief Justice of the newly separated Supreme Court and the administrative head of the unified judicial system.

The former trial division shall be known as the Superior Court and shall serve as the court of first instance, with the same original jurisdiction over "all matters in law and equity" that was exercised by the former trial division. In order to protect the integrity of the administration of justice, a new position of Presiding Judge of the Superior Court is required, in light of the Chief Justice's departure from the role of a presiding judge in the former trial division.

The relationship of the Superior Court to the Supreme Court is the same as the relationship of all trial courts to the Supreme Court. The justices of the Superior

Court serve only in the Superior Court, except when called for temporary service in another court. Appeals from the Superior Court are heard by the Supreme Court.

Rules and Regulations: the Separate Courts in the Context of Article X

Once promulgated by the Chief Justice, the “rules and regulations” mandated by the Fourteenth Amendment may be considered analogous to enabling legislation. Therefore, it is necessary that these rules and regulations be placed in the context of Article X of the Constitution to show the specific effect of the amendment and, more importantly, that most of the remaining sections of Article X remain effective.

The attached “Rules and Regulations Restructuring the Supreme Court” proposes to implement the separation required by the Fourteenth Amendment in the manner directed therein.

RULES AND REGULATIONS RESTRUCTURING THE SUPREME COURT

Section 1. The judicial power of Palau shall be vested in a unified judiciary, consisting of a Supreme Court, a Superior Court, a National Court, and such inferior courts of limited jurisdiction as may be established by law. All courts ~~except the Supreme Court~~ may be divided geographically and functionally as provided by law, or judicial rules not inconsistent with law.

Section 2. The Supreme Court is a Court of Record ~~consisting of an appellate division and a trial division.~~ and shall have appellate jurisdiction. The Supreme Court shall be composed of a Chief Justice and not less than ~~three (3)~~ two (2) ~~nor more than six (6)~~ Associate Justices, ~~all of whom shall be members of both divisions.~~ All appeals shall be heard by at least three justices. ~~Matters before the trial division may be heard by one justice.~~ No justice may hear or decide an appeal of a matter heard by him in the trial division. The Superior Court is a Court of Record and shall have original jurisdiction. The Superior Court shall be composed of a Presiding Justice and not less than two (2) Associate Justices. Matters before the Superior Court may be heard by one justice.

Section 3. If the Chief Justice is unable to perform his duties, he shall appoint an ~~Associate~~ Justice to act in his place. If the office of Chief Justice becomes vacant and the Chief Justice has failed to appoint an Acting Chief Justice to act in his place, the President shall appoint an ~~Associate~~ Justice to act as Chief Justice until the vacancy is filled or the Chief Justice resumes his duties.

Section 4. The National Court shall consist of a presiding judge and such other judges as may be provided by law.

Section 5. The judicial power shall extend to all matters in law and equity. ~~The trial division of the~~ The Superior Court shall have original and exclusive jurisdiction over all matters affecting Ambassadors, other Public Ministers and Consuls, admiralty and maritime cases, and those matters in which the national government or a state government is a party. In all other cases, the National Court shall have original and concurrent jurisdiction with ~~the trial division of the Supreme Court.~~ the Superior Court.

Section 6. ~~The appellate division of~~ The Supreme Court shall have jurisdiction to review all decisions of the ~~trial division~~ Superior Court, all decisions of the National Court and all decisions of lower courts.

Section 7. The Judicial Nominating Commission shall consist of seven (7) members, all of whom shall be citizens of the Republic of Palau, as defined by Article III of the Constitution of the Republic of Palau. The Chief Justice of the Supreme Court shall be one of the seven (7) members and shall act as Chairman. The Bar shall elect three (3) of its citizen-members to serve on the Judicial Nominating Commission and the President shall appoint three (3) citizens who are not members of the Bar. The Judicial Nominating Commission shall meet upon the call of the Chairman and prepare and submit to the President a list of seven (7) nominees for the positions of justice and judge. A new list shall be submitted every year.

Section 8. No person shall be eligible to hold judicial office in the Supreme Court, Superior Court or National Court unless he has been admitted to practice law before the highest court of a state or country in which he is admitted to practice for at least five (5) years preceding his appointment. Any justice of the Supreme Court, justice of the Superior Court or judge of the National Court who becomes a candidate for an elective office shall, upon filing for such office, forfeit his judicial office.

Section 9. All justices of the Supreme Court, justices of the Superior Court, and judges of the National Court shall hold their offices during good behavior. They shall be eligible for retirement upon attaining the age of sixty-five (65) years.

Section 10. A justice of the Supreme Court or a justice of the Superior Court may be impeached only for the commission of treason, bribery, other high crimes, or improper practices, or on the grounds of his inability to discharge the functions of his office upon a vote of not less than two-thirds (2/3) of the members of each house of the Olbiil Era Kelulau. The judges of the National Court and the inferior courts may be impeached by a majority vote of the members of each house of the Olbiil Era Kelulau. During his impeachment or removal proceedings, a justice or judge may not exercise the power of his office. A justice or judge shall forfeit his office upon conviction of a felony or any high crime.

Section 11. The justices and judges shall receive compensation as prescribed by law. Such compensation shall not be diminished during their term of office.

Section 12. The Chief Justice of the Supreme Court shall be the administrative head of the unified judicial system. He may assign judges from one geographical department or functional division of a court to another department or division of that court and he may assign judges for temporary service in another court. The

Chief Justice shall appoint with the approval of the ~~Associate~~ Justices, an administrative director to supervise the administrative operation of the judicial system.

Section 13. The Chief Justice shall prepare and submit through the President to the Olbiil Era Kelulau an annual consolidated budget for the entire unified judicial system. The national government shall bear the total cost of the system unless the Olbiil Era Kelulau requires reimbursement of appropriate portions of such cost by the state governments.

Section 14. The Supreme Court and Superior Court shall promulgate rules governing the administration of the courts, legal and judicial professions, and practice and procedure in civil and criminal matters.

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Section 14. The Supreme Court and Superior Court shall promulgate rules governing the administration of the courts, legal and judicial professions, and practice and procedure in civil and criminal matters.

Pursuant to the Fourteenth Amendment to the Constitution, the foregoing rules and regulations pertaining thereto are hereby promulgated. These rules and regulations shall take effect on this _____ day of _____ 2016.

Arthur Ngiraklsong
Chief Justice