



Information about Palau For Incoming Court Counsel 2023-2024 Term

This overview is intended to give candidates for the Court Counsel (law clerks) position a realistic description of the Republic of Palau, the Palau Supreme Court, and living and working in Palau, so that each candidate can assess his or her interest in pursuing the challenges and rewards of working in Palau.

AN OVERVIEW OF THE REPUBLIC OF PALAU

Palau is an archipelago of over 300 islands in the Western Pacific, of which only ten are inhabited. The main islands lie seven degrees from the equator, approximately 500 miles southeast of the Philippines, 500 miles southwest of Guam, 500 miles north of New Guinea, and 1000 miles south of Japan. Because of its close proximity to the equator, Palau enjoys a year-round tropical climate with average daily highs of 87 and lows of 75. Humidity averages 80% and 147 inches of rain fall annually, often in short, intense bursts.

The population of Palau is approximately 20,000, including about 6,000 foreigners. The foreign resident population consists of several thousand Filipinos, several hundred Americans, several hundred Japanese, and some Australians, Taiwanese, and others. The dominant language is Palauan, a distinct language that shares little in common with other Micronesian languages. However, English is widely spoken and understood, and is the primary language in business and government. The official currency is the U.S. Dollar.

The Japanese occupied Palau from 1914 through World War II. After World War II, the United States administered Palau as part of the United Nations Trust Territory of the Pacific Islands. Palau adopted its first Constitution and elected its first constitutional government in 1980. A conflict arose between the Palau Constitution, which designates Palau as a nuclear-free zone, and the United States' position allowing U.S. nuclear submarines access to Palau's deep-sea ports. Palau eventually approved a 15-year Compact of Free Association that affords the United States military access to Palau in exchange for \$450 million in aid. Palau officially became independent on October 1, 1994, and was admitted to the United Nations on December 15, 1994.

The government structure reflects a strong American influence and a continuing regard for Palauan customary law. The Constitution establishes a three-branch democratic government similar to the U.S. model. The legislative branch, the *Olbiil Era Kelulau* (OEK), has two chambers: a House of Delegates with one representative from each of Palau's 16 states, and a Senate with 13 Senators elected at large. A democratically elected President and Vice-President head the Executive Branch. The Constitution also establishes a Council of Chiefs, consisting of a traditional Chief from each state to advise the President on traditional laws and customs as they relate to the Constitution and other laws. The Constitution includes a bill of individual rights, explicitly preserves traditional rights, and gives statutory law and traditional law equal weight. Palau's 16 states administer local governments pursuant to the various state constitutions. There is no state court system.

Palau has two official languages – Palauan and English. Most Palauans can speak and understand English, although many use Palauan at home. English is spoken in schools (and is therefore widespread, especially among the younger generations) and is used in most court proceedings (with the exception of the Land Court). There is a very large Filipino community in Palau, as well as smaller American, Japanese, Chinese, Taiwanese, and Bangladeshi communities. The American expat community is comprised mostly of lawyers and some medical professionals and research personnel (anthropologists and marine biologists). They tend to be very helpful and welcoming. While the expat community may be more familiar and accessible, we would strongly encourage you to take the time to get to know at least the Palauans you work with. Getting involved in community volunteer activities and sports teams is also encouraged. After you’ve been here for a few months you will know people and they will know you as well. Although most locals operate at a laid-back pace, the same cannot be said for the people who work for the Judiciary. Despite being a small island, Palau is a tourist destination, and you will find Koror, the center of commercial activities, full of people who are far less “local” than you.

Palau's Unified Judicial System

The Palau Unified Judiciary consists of the constitutional courts - Trial and Appellate Divisions of the Supreme Court - and the statutory-established courts - the Court of Common Pleas and the Land Court. The Unified Judiciary recently underwent a significant structural change following the triggering of a constitutional amendment. Historically, all of the Justices of the Supreme Court served in both the Appellate and Trial Divisions on a rotating basis. In cases of conflict where there were insufficient Justices to hear appeals, Judges of the Land Court or Court of Common Pleas were assigned to the Supreme Court on a temporary basis. Following the implementation of the amendment, the Justices of the Supreme Court are assigned to one of the two divisions. There are now three full-time Justices in the Appellate Division and three full-time Justices in the Trial Division. When one or more of the three Justices of the Appellate Division are conflicted in a case, replacements are assigned from a pool of nonresident “part-time” Associate Justices. These are generally judges serving in other regional jurisdictions. Currently, there are four non-resident Justices doing this work. Most recently, five part-time, nonresident Justices were appointed to the Trial Division to handle cases where all Trial Division Justices have irresolvable conflicts. The Land Court used to have four Judges but currently has only one. Senior Judge Midth Bells heads the Court of Common Pleas.

The Court’s docket is a mix of criminal and civil litigation that often involves disputes over land ownership. The legislature recently passed a law providing for jury trials for defendants accused of crimes punishable by a sentence of imprisonment of 12 years or more, so these are becoming more prevalent. Because Palau is such a young country, many of the cases raise matters of first impression. The Court applies the Palau Constitution, the Palau National Code, and Palauan case law, and then looks to the Restatements of Law and U.S. case law where there is no controlling Palauan law.

While the caseload is lower than in many U.S. courts, and involves fewer complex cases, there are unique challenges in applying traditional customary law to contemporary disputes and in contributing to the development of an emerging legal system. Many cases require thoughtful consideration of tensions between modern and customary law and the implications of adapting American legal doctrines to the Palauan context. The Supreme Court also promulgates revisions of the Rules of Civil Procedure, Criminal Procedure, Evidence, and Appellate Procedure, and supervises admissions to and disciplining of members of the Palau Bar.

An Administrative Director oversees matters of Court policy and administration. The Administrative Director handles policy and administrative matters under the supervision of the Chief Justice, who is the Administrative Head of the entire Judiciary. A Clerk of Courts, who handles the filing and scheduling of matters, recording and translation of court proceedings, is assisted by several Clerks and Chambers’ Clerks.

Office of Court Counsel: The Job

Your specific duties and what the Judiciary expects from you will be set forth in your one-year contract. But generally, as Court Counsel your primary responsibility is to assist the Justices in legal research and drafting of opinions and orders. You are also called upon periodically to advise the Judiciary in assorted legal and administrative matters (e.g., interpreting the Judiciary’s human resources or procurement contracts, drafting press releases, amending

rules and regulations) and are involved in attorney disciplinary matters when they occasionally arise. The Office of Court Counsel (OCC) also assists in administering the local bar exam.

Working hours are 7:30 a.m. to 4:30 p.m. Monday through Friday with an hour for lunch from 11:30 a.m. to 12:30 p.m. This schedule is fairly rigid, and you will want to try to be sure that at least one court counsel is in the office every day. Also, if you plan to take leave or be away from your office for any extended period of time, you must inform the Chief Justice, Presiding Justice of the Trial Division, and the Administrative Director via email and submit an application for leave. As noted, the workload is not as heavy as most United States federal clerkships, but you may occasionally need to stay late or come in on a day off -- but this is not common.

The primary sources of law in Palau are the Palauan Constitution, statutes and custom, and the decisions of the Appellate Division. In the absence of controlling authority, the rules of decision are drawn from the common law as expressed in the Restatements. U.S. case law is often treated as persuasive on open questions of law, but is not controlling. OCC has access to Westlaw as well as Palau-specific legal searches through the Court's website. It is not unusual to get cases of first impression, which provide an opportunity to analyze the state of U.S. law on an issue and to determine how that authority should be applied to our setting, if it should be applied at all.

The role of OCC following the separation of the Justices between divisions is still evolving and can vary from year to year. Generally, one court counsel will work primarily for the trial justices and the other one for the appellate justices. The third court counsel may serve both divisions but shall also perform general counsel/administrative duties and works closely with the Office of Chief Justice. Still, it is possible for the person who is working for the trial division to also dabble in appellate work, and the appellate court counsel can get some experience working for the trial division as well. Peer review plays an important part in opinion drafting and other substantive work, and two, three, or all court counsel will (and perhaps should) weigh in on significant legal events. Court Counsel also review each other's appellate opinion drafts before they go out as a final quality control step.

OCC's work is done at the Judiciary's courthouse complexes in Koror and at the nation's capitol building in Ngerulmud (in Melekeok on the large island of Babeldaob), about a 45-minute drive north of Koror. The Ngerulmud complex was opened in 2006 in a relatively unpopulated area of Palau. It is beautiful, impressive, and has largely gone unused. The appellate justices and their chambers staff, as well as the court counsel assigned to the appellate division, sit in the Ngerulmud complex. Court counsel assigned to the Appellate Division and the Office of Chief Justice can travel daily to the capitol with the rest of the staff in the Judiciary's employee van which departs the Koror courthouse complex at 6:30 a.m. You can, of course, drive your own car to the capitol if you prefer to drive alone.

You should visit the Palau Judiciary website at palausupremecourt.net. The website contains much information about the Judiciary, including information pertinent to your position that you must know, such as the relevant provisions of the Personnel Rules and Regulations and the Code of Conduct for Judicial Employees that apply to court counsel (law clerks).