

STANDING COMMITTEE REPORT NO. 15-61

RE: C.R. NO. 15-57/J&GO

SUBJECT: CONFIRMING THE NOMINATION OF MAKETO ROBERT TO BE
THE SECRETARY OF THE DEPARTMENT OF JUSTICE OF THE
FEDERATED STATES OF MICRONESIA

NOVEMBER 22, 2007

The Honorable Isaac V. Figir
Speaker, Fifteenth Congress
Federated States of Micronesia
Second Regular Session, 2007

Dear Mr. Speaker:

Your Committee on Judiciary and Governmental Operations ("J&GO"), to which was referred C.R. No. 15-57 entitled:

"A RESOLUTION CONFIRMING THE NOMINATION OF MAKETO ROBERT
TO BE THE SECRETARY OF THE DEPARTMENT OF JUSTICE OF THE
FEDERATED STATES OF MICRONESIA.",

begs leave to report as follows:

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

Mr. Maketo Robert has been nominated by the President of the Federated States of Micronesia to be the Secretary of the Department of Justice. Title 2, section 207(1) of the Code of the Federated States of Micronesia sets out that this nomination is subject to the advice and consent of Congress. Before its own consideration of the nominee, your committee assumes that, as this nomination has been submitted by the President, the President has made a thorough review and screening of the nominee's abilities and qualifications for the position.

Mr. Robert's curriculum vitae is included in Presidential Communication 15-99. Some points are summarized here. Mr. Robert is a lawyer; in fact, he is the second most senior Micronesian lawyer, preceded only by Mr. Jack Fritz, Legislative Counsel to the Chuuk State Legislature. Mr. Robert is from the State of Chuuk and is currently in private practice there. He received a Bachelor of Arts degree from the College of Guam, now the University of Guam, and later graduated from California Western School of Law with a *juris doctor* degree. He has worked as a Public Defender in Pohnpei State, Staff Attorney for the Congress of the FSM's Committees on Resources and Development, Judiciary and Governmental Operations, and External Affairs, Legal Counsel for the Micronesian Maritime Authority and the FSM Development Bank, Staff Attorney for the First Chuuk State Constitutional Convention and the First FSM Constitutional Convention. Mr. Robert previously served as Attorney General for the State of Chuuk and also represented the State of Chuuk on the negotiating team

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for the Amended Compact of Free Association with the United States of America.

Your committee notes that Mr. Robert is not currently a member in good standing of the FSM national legal bar. He is the subject of a disciplinary proceeding that is yet to be decided by the FSM Supreme Court. The matter is currently pending; however, the nominee's practice before the National Courts of the Federated States of Micronesia has been suspended since 2000. Your committee has been informed by the Chief Justice of the FSM Supreme Court that, until the Court releases an order, the matter is confidential and your committee may not access the related documentation. The Chief Justice commented that, although he does not know the nominee personally, a high standard regarding the ethical practice of law is expected of a Secretary of Justice.

The initial source of Mr. Robert's current suspension can be found at DPA No. 002-1997. This order resulting from the initial disciplinary proceeding is a matter of public record.

Your committee notes that Mr. Robert's clients in the subject matter were politically prominent individuals in the State of Chuuk. In a Joint Motion of Stipulated Facts presented to the court, Mr. Robert admitted to violating both Rules 1.7 and 1.16 regarding termination of representation. However, your committee understands that the violation of the rules occurred in an adversarial and highly politically sensitive context in the State of Chuuk, that ultimately caused Mr. Robert to hesitate to communicate with his client.

The court, after concluding that Mr. Robert had indeed violated the Disciplinary Rules, imposed discipline in the form of a ten month suspension. In the event of reinstatement after the suspension his future practice of law would be subject to certain supervisory restrictions in the first year after reinstatement. Finally, Mr. Robert was assessed costs in this matter.

Your committee notes that Mr. Robert has not yet been reinstated following his suspension. The matter remains pending.

WRITTEN COMMENTS

Your committee has received written comments regarding this nomination

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from the Chuuk State Office of the Attorney General, Micronesia Legal Services and Mr. Fredrick L. Ramp and Ms. Marstella Jack, both lawyers in private practice in the State of Pohnpei.

The communication from the Mr. Joses Gallen, the Chuuk State Attorney General states that there is no doubt the nominee is qualified to be Secretary of Justice. The letter goes on to say, "However, if Mr. Maketo Robert's qualification as a member of the FSM Bar is not an issue, we support his nomination".

Ms. Jack writes "I have no doubt that Mr. Robert can competently discharge the duties of that office". However, she also expresses a concern regarding, as she writes, "the ethical standards we expect of the Justice Secretary".

Mr. Ramp said his impressions of the nominee "have always been quite favorable", but wrote that it would be "inappropriate" to comment further given that he is currently handling a disciplinary matter, DPA 002-2005, for the FSM Supreme Court.

The communication received from the Micronesian Legal Services Corporation (MLSC), Pohnpei staff, is not supportive. The letter is critical of Mr. Robert, suggesting that when he left Pohnpei, he abandoned his clients without proper reassignment of his cases to other attorneys. The letter also suggests that some of the financial problems in the State of Chuuk may be attributed to advice from Mr. Robert in his role as Chuuk State Attorney General. However, MLSC concludes its letter by expressing its faith that "people can change over time" and offering support for the decision of the committee, whatever it may be.

PUBLIC HEARING

Your committee held a public hearing on the nomination in the afternoon of Saturday, November 17, 2007.

The hearing was conducted in an open fashion, in that the nominee and other witnesses participated together in the hearing. Present were the nominee, Maketo Robert, Speaker Figir, Chairman Sitan, and Senators Aritos, Nelson, Suka, and Welly. Witnesses included Acting Attorney General Asher, Director of the Public Defender's Office Sapelalut, Secretary Robert of the Department of Foreign Affairs,

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Director Nimea of the Office of Statistics, Budget, Overseas Development Assistance and Compact Management, and Ms. Marstella Jack, former Secretary of the Department of Justice and private legal practitioner in the State of Pohnpei. The President's Chief of Staff was also in attendance.

Mr. Robert confirmed to your committee that he is ready, willing and able to accept the nomination. He described how President Mori had asked him to consider the nomination and confided that he had been invited by previous administrations to be nominated for the Secretary of Justice position but that this is the first time he has accepted the nomination. The nominee did not elaborate as to why he decided at this time to accept the nomination.

In response to a number of questions, Mr. Robert confirmed that he is indeed under suspension and is not currently a member in good standing of the FSM bar. He explained to the committee that he is waiting for the court to complete its review of the matter and release a final order. The nominee stated that the Disciplinary Prosecutor assigned to his proceeding had recommended the matter be dismissed. Mr. Robert also explained that the original suspension took place in an exceedingly "hot" political situation in the State of Chuuk.

Mr. Robert was asked how, if confirmed, he could fulfill his duties as Attorney General if he is not a member in good standing of the FSM bar. He responded that while he was the Chuuk State Attorney General, he never appeared in court. He reviewed the progress of cases and gave direction to his attorneys. He saw no reason, he said, why he could not take the same approach as Secretary of the FSM Department of Justice and that it would not affect the efficiency of the office.

Mr. Robert was asked if there were any previous disciplinary actions against him in his practice as a lawyer. He replied that he had once paid a small fine in a contempt of court matter that took place in 1981 [1 FSM Intrm. 18]. Mr. Robert was fined for appearing late at a hearing because, before the hearing, he had been required to travel to Madolenihmw, in Pohnpei. Mr. Robert said he had not realized how far Madolenihmw is and that construction work was underway. As a result, he was late returning. The fine was originally \$12.50 but was reduced by the court, after reflection, to \$5.00.

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When asked what his plans and priorities for the Department of Justice would be, if confirmed, Mr. Robert said he is familiar with the work of the Department through his work as Staff Attorney for the J&GO committee of the FSM Congress. He said, however, that at this time, he has had no opportunity to closely analyze the Department and therefore has no plans for it at this time. He will, he said, make plans and priorities if confirmed. He further stated that he would consider the current operations of the Department and ask the staff there now to assist him in making a legal plan for the future of the nation.

Speaker Figir commented that the Department is currently in a chaotic situation, with many cases, including criminal cases, pending. He asked the nominee how he would approach these matters. Mr. Robert replied that it is the responsibility of the Secretary of Justice to assist the President in implementing the Constitution and ensuring compliance with our Constitution and our laws. He said he is prepared to hire more lawyers to deal with the caseload.

Mr. Robert further stated that any rumors that he would dismiss cases against certain accused persons from the State of Chuuk are unfounded. Chairman Sitan confirmed the existence of these fears and stated that any such dismissals would be contrary to our system of law and governance in the FSM.

Mr. Robert went on to volunteer the information that he had worked on the infamous "Amnesty" bill (C.B. No. 13-76) while employed as Staff Attorney for the J&GO committee. During the hearing, Mr. Robert defended C.B. No. 13-76 and his work on it as a lawyer, saying that there is precedent for the idea of amnesty in the American Civil War, after which amnesty was granted to the alleged perpetrators of "atrocious crimes", to give the society an opportunity to "start over again". Mr. Robert mentioned his work on the amnesty bill to illustrate that he does not hesitate to work on matters that may be controversial or unpopular. The nominee further stated that he would not hesitate to prosecute even his own relatives.

Acting Attorney General Asher noted that this was his first ever meeting with the nominee and could therefore not comment on the nominee's ability as a lawyer or as a manager. He did state,

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however, that the Department of Justice is understaffed and overworked and needs someone to take responsibility as soon as possible.

Mr. Joey Sapelalut, Director of the Office of the Public Defender, said he has seen Mr. Robert in Chuuk and that he is an experienced lawyer who cites legal rules from memory. He said the nominee is well-qualified for the position and recommended that the committee not dwell on the nominee's disciplinary actions in making its decision regarding this nomination. He also recommended the committee stop looking outside the FSM for legal assistance.

Ms. Marstella Jack, former FSM Attorney General, reiterated the comment that the Department needs someone urgently to take leadership and that timing is crucial.

CONCLUSION

The majority of your committee members find the nominee to be fully qualified and experienced for the position of Secretary of the Department of Justice. Your committee takes note of the nominee being the subject of an ongoing disciplinary proceeding before the court and acknowledges concerns that this could reflect on the appearance of leadership the nominee can offer as the chief law enforcement officer of the FSM.

Your committee views the contempt of court matter for which the nominee was ordered to pay a small fine to be technical in nature.

As to the other disciplinary matter, outlined above, your committee is concerned with regard to the extended period of time the matter has been pending without resolution. As the original suspension was imposed in December 1999, the matter has now been unresolved for close to eight years. Your committee notes that the Disciplinary Rules and Procedures for attorneys and trial counselors practicing in the National Courts of the FSM say, at Rule 13, that a petition for reinstatement by a suspended attorney shall be set down for hearing within thirty (30) days. At the conclusion of the hearing, the hearing justice shall enter an appropriate order within fifteen (15) days. The nominee has informed your committee that he has petitioned for reinstatement and that a finding has been made by the current disciplinary counsel. In view of this, your committee fully expects

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the court to enter an order soon.

Based on the above, your committee on Judiciary and Governmental Operations is in accord with the intent and purpose of C.R. No. 15-57 and recommends its adoption in the form attached hereto as C.R. No. 15-57.

Respectfully submitted,

/s/ Peter Sitan
Peter Sitan, chairman

/s/ Fredrico O. Primo
Fredrico O. Primo, vice chairman

/s/ Tiwiter Aritos
Tiwiter Aritos, member

Isaac V. Figir, member

/s/ Dohsis Halbert
Dohsis Halbert, member

/s/ Moses A. Nelson
Moses A. Nelson, member

/s/ Paliknoa K. Welly
Paliknoa K. Welly, member