



# **JUDICIARY OF THE REPUBLIC OF THE MARSHALL ISLANDS**

## **2005/2006 REPORT**

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**HIGH COURT**  
**OF THE**  
**REPUBLIC OF THE MARSHALL ISLANDS**

Post Office Box B  
Majuro, MH 96960  
Marshall Islands  
Tel: (011-692) 625-3201/3297  
Fax: (011-692) 625-3323  
Email: rmicourts@ntamar.net

**Mission Statement:**

*Kottobar Eo:*

The mission of the Courts of the Marshall Islands is to fairly and efficiently resolve disputes properly brought before them, discharging their judicial duties and responsibilities in accordance with the Constitution, laws, and customs of this unique island nation.

*Kottobar eo an Jikin Ekajet ko an Marshall Islands ej non jermal jimwe ilo ejelok kalijeklok im jeb ilo aoleb abnono ko rej itok imair, im non komane jermal in ekajet im edro ko air ekkar non Jemenei eo, kakien ko, im manit ko an aelon kein ad im jej jenolok kaki jen lal ko jet ikijien manit im men ko bwinnid im ad jolet.*

I am pleased to present the 2005/2006 Report of the Judiciary of the Republic of the Marshall Islands. As an independent branch of government, the Judiciary's role is to fairly and efficiently resolve disputes.

This report reflects the dedication and hard work of the judges and staff that serve the Judiciary. We are committed to our mission, and I am proud and privileged to work with them. I greatly appreciate their expertise, dedication, and sacrifice.

On behalf of the Judiciary, I wish to express our sincere appreciation to the Nitijela for its continuing support of our budgetary and legislative requests. Also, I wish to express our profound thanks to H.E. President Note, Minister Capelle, and the other members of the Cabinet for their unflagging support for the Judiciary and its independence. We are committed to work with both the Cabinet and the Nitijela to build a Judiciary that will assure justice for all and the rule of law. Our search for excellence mandates that we work together in a spirit of respect and cooperation.

Carl B. Ingram  
Chief Justice, High Court  
Date: April 4, 2007

# **2005/2006 REPORT OF THE JUDICIARY OF THE REPUBLIC OF THE MARSHALL ISLANDS**

## **I. INTRODUCTION**

The Republic of the Marshall Islands consists of two nearly parallel archipelagic island chains of 29 atolls and 5 separate islands, 1,225 islands in all, about half way between Hawaii and Australia. The land area of the Marshall Islands totals 181.3 sq km (70 sq mi), about the size of Washington, DC. The lagoon waters total another 11,673 sq km (4,506.95 sq mi). As of July 2006, the estimated population of the Marshall Islands was 60,422.

After almost four decades under United States administration as part of the United Nations Trust Territory of the Pacific Islands (TTPI), the Marshall Islands on October 21, 1986, attained independence under the Compact of Free Association with the United States of America.

The Republic's judiciary (Judiciary) includes its Supreme Court, High Court, Traditional Rights Court, District Court, Community Courts (Const. Art. VI, Sec. 1(1)), Judicial Service Commission (Const. Art. VI, Sec. 5(1)), and court staff (27 MIRC 271). The Judiciary officially commenced operation on March 3, 1982, assuming judicial functions in the Marshall Islands that had been discharged by TTPI courts. See U.S. Department of the Interior Secretarial Order 3039, Section 5. An organizational chart of the Judiciary is attached as Appendix 1. A listing the Judiciary personnel is attached as Appendix 2.

This report summarizes the operations and accomplishments of the Judiciary in calendar years 2005 and 2006 as well as the challenges its faces. The Judiciary's need for additional funds for infrastructure and salaries is included at the end of the report.

## **II. THE COURTS AND THEIR WORK**

### **A. Supreme Court**

The Supreme Court is a superior court of record having appellate jurisdiction with final authority to adjudicate all cases and controversies properly brought before it. Const. Art. VI, Sec. 2(1). The Supreme Court consists of a chief justice and two associate justices. To date, all supreme court judges have been law-trained attorneys and most have been experienced judges. The current chief justice, a non-citizen, was appointed to a 10-year term in October 2003. Any citizen appointed to the Supreme Court would receive a lifetime appointment, i.e., until age 72. Const. Art. VI, Sec. 1(4). Generally, associate justices have been pro tem judges from other jurisdictions, e.g., the United States Ninth Circuit Court of Appeals, the United States Federal

District Court in Hawaii, the Republic of Palau, the Commonwealth of the Northern Mariana Islands, and Canada.

An appeal lies to the Supreme Court as of right from a final decision of the High Court in the exercise of its original jurisdiction; as of right from a final decision of the High Court in the exercise of its appellate jurisdiction, but only if the case involves a substantial question of law as to the interpretation or effect of the Constitution; and at the discretion of the Supreme Court from any final decision of any court. Const. Art. VI, Sec. 2(2). Also, the High Court may remove to the Supreme Court questions arising as to the interpretation or effect of the Constitution. Const. Art. VI, Sec. 2(3).

In 2005, the Supreme Court ruled on the two cases brought before it: one involved a land matter and the other a contract claim. In 2006, the Supreme Court ruled on eight cases: six criminal cases; one employment case involving the Government; and one land matter. At the end of calendar year 2006, 13 cases are pending before the Supreme Court. At its March 2007 session, the Supreme Court heard the two cases that counsel had fully briefed and held status conferences in two other cases. The remaining 9 cases are awaiting the completion of transcripts by reporters or the briefing by counsel. The Supreme Court's next session is planned for November 2007.

In addition to reviewing appeals, the Supreme Court oversees the admission of attorneys and trial assistants to practice law. In 2005, the Supreme Court admitted to practice three attorneys hired by the Office of the Attorney General (two of which were Marshallese) and two other attorneys hired by the Office of the Public Defender. Also, in 2005 the Supreme Court admitted to practice two German attorneys who sat for and passed the Supreme Court's bar examination. The German attorneys sought admission to perform legal work in connection with the ship registry.

In mid-2006, the Supreme Court admitted to practice a recent Marshallese law school graduate hired by the Judiciary as a law clerk and one other attorney hired by the Office of the Public Defender. In December 2006, the Supreme Court also admitted to practice two non-citizens who sat for and passed the bar examination. Both attorneys work in the Republic: one for the National Government and the other for one of the local governments. Also, at the request of the Office of the Public Defender, the Supreme Court admitted to practice before the District Court and Community Courts a trial assistant.

In 2005, the Supreme Court reviewed and commented upon court rules and correspondence prepared by the High Court, including revised Rules of Civil Procedure, revised Rules of Criminal Procedure, and correspondence with the United States Ninth Circuit Court of Appeals regarding Compact training funds. Also, in 2005 the Supreme Court and High Court issued an order creating a bar disciplinary committee. The committee, composed of two attorneys and one trial assistant, is tasked with reviewing complaints against attorneys and trial assistants.

In 2006, the Supreme Court, with assistance from other members of the Judiciary, updated the Supreme Court Rules of Procedure. Most of the changes to the rules were made to make them gender neutral, to correct grammar, and to make the rules easier to read. Substantively, the revised rules require counsel to set forth their grounds for appeal in the notice of appeal, as well as in the opening brief. Also, in 2006, the Chief Justice of the Supreme Court reviewed suggested updates to the Rules of Evidence, the Rules of Civil Procedure, the Rules of Criminal Procedure, the Traditional Rights Court Rules of Procedure, and the Schedule of Court Fees and Costs prepared by the High Court.

## **B. High Court**

The High Court is a superior court of record having general jurisdiction over controversies of law and fact in the Marshall Islands. Const. Art. VI, Sec. 3(1). The High Court currently consists of a chief justice and an associate justice. Both are law-trained attorneys, as have been all prior High Court judges, and both attend at least one professional development seminar each year. The current chief justice is a non-citizen but a 27-year resident of the Republic. He was appointed to a 10-year term in October 2003. The associate justice, also a non-citizen, was appointed to a 4-year term in December 2003. Any citizen appointed to the High Court would receive a lifetime appointment, i.e., until age 72. Const. Art. VI, Sec. 1(4). The High Court has original jurisdiction over all cases properly filed with it, appellate jurisdiction over cases originally filed in subordinate courts, and, unless otherwise provided by law, jurisdiction to review the legality of any final decision of a government agency. Const. Art. VI, Sec. 3(1).

The High Court's case statistics are set forth below.

### **1. Criminal Cases**

#### **a. Majuro**

**i. 2005.** In Majuro in 2005, the Government filed with the High Court 48 criminal cases resulting in 28 convictions, 13 acquittals or dismissals, and 7 pending cases. Of the 7 pending cases 4 charge visa violations or the illegal employment of aliens.

In Majuro in 2005, the Government also filed 4 juvenile cases resulting in 2 adjudications of delinquency, no dismissals, and 2 pending cases.

**ii. 2006.** In Majuro in 2006, the Government filed with the High Court 100 criminal cases resulting in 33 convictions, 22 acquittals, dismissals, or transfers, and 47 pending cases (note: two cases had two defendants). The Court is concerned that, as in 2005 and 2004, the majority of the pending cases are those charging visa violations or the illegal employment of aliens – 35 of 53 in 2006. The Court has expressed its concern to the Office of the Attorney-General (A-G) and the need to move these cases forward. Otherwise, the A-G's office is moving

its criminal cases. Some cases by their very nature take longer to resolve. As off-island laboratories provide drug test results to the A-G, the A-G is disposing of its drug cases.

In Majuro in 2006, the Government also filed 7 juvenile cases resulting in 3 adjudications of delinquency; 2 dismissals or acquittals, and 2 pending cases. The two pending cases should be resolved by April or May 2007.

**b. Ebeye**

**i. 2005.** In Ebeye in 2005, the Government filed with the High Court 24 criminal cases resulting in 14 convictions, no dismissals, and 10 pending cases.

**ii. 2006.** In Ebeye in 2006, the Government filed with the High Court 4 criminal cases resulting in 3 convictions, no dismissals, and 1 pending case.

**2. Civil Cases**

**a. Majuro**

**i. 2005.** In Majuro in 2005, the Government, plaintiffs, and petitioners filed with the High Court 222 civil cases (other than probates): 68 were disposed and are 154 pending. Of the 222 cases, 79 involved domestic matters (that is, customary adoptions, legal adoptions, divorces, paternity, child custody and support, guardianships, appointment of personal representatives, and name changes); 8 citizenship cases and 19 deportation cases; 82 cases collection cases; and 25 land rights or land leases cases. The largest number of pending cases are collection cases at 68. The Court has advised counsel to move their cases forward.

In Majuro in 2005, petitioners filed 48 probate cases: 43 were granted; 1 was dismissed; and 4 are pending. The High Court has had an assistant clerk of the courts remind counsel of the pending cases.

**ii. 2006.** In Majuro in 2006, the Government, plaintiffs, and petitioners filed with the High Court 167 civil cases (other than probates): 78 were disposed; and 89 are pending. Of the 167 cases, 61 involved domestic matters (that is, customary adoptions, legal adoptions, divorces, child custody and support, guardianships, and name changes); 18 citizenship cases and 3 deportation cases; 56 cases collection cases; and 16 land rights or land leases cases. The largest number of pending cases are collection cases at 38. As noted above, the Court has advised counsel to move their cases forward.

In Majuro in 2006, petitioners filed 14 probate cases: 13 were granted; and 1 is pending. The High Court has had an assistant clerk of the courts remind counsel of the pending cases.

## **b. Ebeye**

**i. 2005.** In Ebeye in 2005, the Government, plaintiffs, and petitioners filed with the High Court 21 civil cases (other than probates): 12 were disposed; and 9 are pending.

In Ebeye in 2005, petitioners filed 12 probate cases: 11 were granted; and 1 is pending.

**ii. 2006.** In Ebeye in 2006, the Government, plaintiffs, and petitioners filed with the High Court 33 civil cases (other than probates): 17 were disposed; and 16 are pending.

In Ebeye in 2006, petitioners filed 4 probate cases: 3 were granted; and 1 is pending.

## **C. Traditional Rights Court**

The Traditional Rights Court (TRC) is a court of record consisting of three or more judges appointed for terms of four to ten years and selected to include a fair representation of all classes of land rights: Iroijlaplap (high chief); where applicable, Iroijedrik (lower chief); Alap (head of commoner/worker clan); and Dri Jerbal (commoner/worker). Const. Art. VI, Sec. 4(1). The current TRC judges are lay judges who receive specialized training. In May 2005, the Cabinet upon recommendation from the Judicial Service Commission appointed a chief judge and two associate judges of the TRC for terms of four years.

The jurisdiction of the TRC is limited to questions relating to titles to land rights or other legal interests depending wholly or partly on customary law and traditional practices. Const. Art. VI, Sec. 4(3). The jurisdiction of the TRC may be invoked as of right upon application by a party to a pending High Court proceeding, provided the High Court judge certifies that a substantial question has arisen within the jurisdiction of the TRC. Const. Art. VI, Sec. 4(4). Customary law questions certified by the High Court are decided by the TRC sitting en banc and reported back to the High Court. Upon request by the TRC's presiding judge, a party, or the referring High Court judge, the Chief Justice of the High Court can appoint a High Court or District Court judge to sit with the TRC to make procedural and evidentiary rulings. In such joint-hearing cases, the High Court or District Court judge does not participate with the TRC in deliberations on its opinion, but may in the presence of all answer questions of law or procedure posed by the TRC. The TRC's jurisdiction also includes the rendering of an opinion on whether compensation for the taking of land rights in eminent domain proceedings is just. Const. Art. II, Sec. 5(7). The High Court is to give decisions of the TRC substantial weight, but TRC decisions are not binding unless the High Court concludes that justice so requires. Const. Art. VI, Sec. 4(5). The Supreme Court has held the High Court is to review and adopt the TRC's findings unless the findings are clearly erroneous or contrary to law.

In 2005, the TRC decided 5 cases, including a case confirming the rights of women as land owners. In 2006, the TRC decided 3 cases and set 4 others for hearings in 2007.

## **D. District Court**

The District Court is a court of record. 27 MIRC 226 and 230. It consists of a presiding judge and two associate judges appointed for 10-year terms. 27 MIRC 227(2). The current District Court judges are lay judges who receive specialized training. The District Court has original jurisdiction concurrent with the High Court (i) in civil cases where the amount claimed or the value of the property involved does not exceed \$10,000 (excluding matters within the exclusive jurisdiction of the High Court by Constitution or statute, land title cases, and admiralty and maritime matters) and (ii) in criminal cases involving offenses for which the maximum penalty does not exceed a fine of \$4,000 or imprisonment for a term of less than three years, or both. 27 MIRC 228. The District Court also has appellate jurisdiction to review any decision of a Community Court. 27 MIRC 229.

### **1. Majuro**

**a. 2005.** In Majuro in 2005, 1,212 cases were filed in the District Court: 419 small claims cases (414 disposed, 5 pending); no other civil cases; 715 traffic cases (524 disposed, and 191 pending); and 78 other criminal cases and local government ordinance cases (54 disposed, and 24 pending).

**b. 2006.** In Majuro in 2006, 654 cases were filed in the District Court: 435 small claims cases (430 disposed; and 5 pending); no other civil cases; 171 traffic cases (68 convictions; 11 acquittals or dismissals; and 92 pending); and 48 other criminal cases and local government ordinance cases (17 convictions; 5 acquittals or dismissals; and 26 pending).

Also in 2006, the Judicial Service Commission appointed Jimata M. Kabua for a 10-year term as an associate judge of the District Court. There are now two District Court judges in Majuro and one on Ebeye. If the District Court needs to go to an outer island, it usually will be one of the Majuro-based judges, but it can be the Ebeye-based judge.

### **2. Ebeye**

**a. 2005.** In Ebeye in 2005, 272 cases were filed in the District Court: 64 small claim cases (64 disposed; and none pending); 55 other civil cases (38 disposed; and 17 pending); 81 traffic cases (58 disposed; and 23 pending); 5 other criminal cases (5 disposed; and none pending); and 67 local government ordinance cases (67 disposed; and none pending).

**b. 2006.** In Ebeye in 2006, 537 cases were filed in the District Court: 118 small claim cases (51 disposed; and 67 pending); no other civil cases; 78 traffic cases (21 disposed; and 57 pending); 9 other criminal cases (7 disposed; and 2 pending); and 332 local government ordinance cases (327 disposed; and 5 pending).

## **E. Community Courts**

A Community Court is a court of record for a local government area, of which there are 24. 27 MIRC 232 and 238. Each Community Court consists of a presiding judge and such number of associate judges, if any, as the Judicial Service Commission may appoint. 27 MIRC 233(1). Appointments are made for 4-year terms. 27 MIRC 233(2). Community Court judges are lay judges with limited training. A Community Court has original jurisdiction concurrent with the High Court and the District Court within its atoll (i) in all civil cases where the amount claimed or the value of the property involved does not exceed \$200 (excluding matters within the exclusive jurisdiction of the High Court by Constitution or statute, land title cases, and admiralty and maritime matters) and (ii) in all criminal cases involving offenses for which the maximum penalty does not exceed a fine of \$400 or imprisonment for a term not exceeding six months, or both. 27 MIRC 234.

Since 2004, the Judicial Service Commission has appointed 22 Community Court judges for four-year terms for 17 outer island communities and will appoint another 8 upon the receipt of recommendations from local government councils. The 8 vacancies include one each for the following: Ailinglaplap; Arno; Enewetak; Ebon; Lib; Rongelap; Wotho; and unallocated.

During the past two years, the Presiding Judge of the District Court has provided training for 7 community court judges from the following atolls: Ailuk and Namdrik in 2005; and Ailinglaplap, Arno, Jabot, Mejit, and Ujea in 2006. Most of the training occurred when the judges came to Majuro for summer church conferences. The Judiciary encourages all Community Court judges who are in Majuro for other business to stop by the courthouse and arrange for training opportunities with the District Court judges.

## **F. Travel to the Outer Islands and Ebeye**

The Judiciary continues to travel to the outer islands on an as-needed basis. In February 2005, the High Court went to Ailuk to hear a civil case alleging unlawful detention. In June 2006, the TRC went to Jaluit to hear a land case. In July 2004, the District Court went to Wotje to hear a case charging drunk and disorderly conduct. In June 2005, the District Court went to Namdrik to hear a case charging malicious mischief.

The Judiciary believes that if the offices of the A-G, the Public Defender (PD), and the Micronesia Legal Services Corporation (MLSC) were to station attorneys on Ebeye full-time, there would be enough work to justify stationing a third High Court judge on Ebeye. Currently, the High Court travels to Ebeye once a month if cases are ready to proceed. The additional personnel cost for a third High Court judge would be about \$90,000. The Judiciary would seek a budget increase to cover this cost and related expenses (e.g., recruitment costs and the one time cost of constructing chambers for a High Court judge on Ebeye). A High Court judge on Ebeye could, when the need arises, more easily hold trials on the northern atolls. Also, a third High

Court judge is needed to relieve the heavy administrative burden on the two existing High Court judges.

## **G. Birth, Deaths, Marriages, and Notarizations**

### **1. Majuro**

**a. 2005.** In Majuro in 2005, the High Court and the District Court processed 350 delayed registrations of birth, 10 delayed registrations of death, and performed 10 marriages. The clerks notarized over 900 documents.

**b. 2006.** In Majuro in 2006, the High Court and the District Court processed 326 delayed registrations of birth, 7 delayed registrations of death, and performed 21 marriages. The clerks notarized over 500 documents.

### **2. Ebeye**

**a. 2005.** In Ebeye in 2005, the High Court and the District Court processed 2 delayed registrations of birth, no delayed registrations of death, and performed 14 marriages. The clerks notarized over 750 documents.

**b. 2006.** In Ebeye in 2006, the High Court and the District Court processed no delayed registrations of birth, no delayed registrations of death, and performed 3 marriages. The clerks notarized over 780 documents.

## **H. Court Staff**

As noted above, the Judiciary includes its staff: a chief clerk of the courts, a deputy chief clerk, eight assistant clerks, one law clerk, three bailiffs (seconded from the National Police) and one maintenance worker. The clerks also serve as translators from Marshallese to English and English to Marshallese.

## **I. Training**

As part of its continuing efforts to improve the provision of civil and criminal justice, in 2005 and 2006 the Judiciary provided and facilitated professional development training for the judges, court staff, and counsel. Funding for training came in part for the Judiciary's annual operating budget and in part from Compact funds available to supplement local funding.

## 1. 2005

In February 2005, the District Court judges attended a week-long course on contracts and torts conducted by the National Judicial College in Majuro, completing a three-year long certification process that included courses in evidence, criminal law, criminal procedure, civil procedure, and constitutional law for lay-judges.

In March and April 2005, the Chief Clerk traveled to Ebeye for two weeks to refresh court staff on proper filing, reporting, and accounting procedures. In May, the Chief Clerk traveled to Palau and Guam for a week to review their procedures for court administration. In July, the Deputy Chief Clerk and a senior Assistant Clerk attended a one-week workshop in Palau on government accounting, reporting, and auditing, the 16<sup>th</sup> Annual Conference of the Association of Pacific Islands Public Auditors. This workshop was a follow-on from one conducted in Majuro in 2004, which the clerks attended.

In May 2005, the Presiding Judge of the District Court attended a two-week course at the National Judicial College in Reno for limited jurisdiction judges. This course is designed for lay-judges. Course participants were taught the role and responsibilities of a judge; to apply a practical approach to Fourth Amendment issues and use approved guidelines for issuing search warrants; to conduct criminal hearings and trials in compliance with constitutional and statutory standards; to make decisions regarding the admissibility of evidence; to work effectively with court interpreters; to create an environment of fairness and impartiality in the courtroom; to determine appropriate sentencing alternatives for specific offenses and offenders; to mitigate potential trial disruptions and utilize effective courtroom control measures; to recognize addictive behavior; and to increase litigant, attorney, and public confidence in the courts by using proper case, calendar, and trial management techniques.

In July 2005, the Associate Justice of the High Court attended a one-week course on conducting the trial in Boston and a one-week course on scientific evidence and expert testimony in Reno offered by the National Judicial College. Participants of the trial course were taught to take a proactive role in handling trials; manage pretrial discovery and motions; preside over pretrial conferences in civil and criminal trials; identify when decisions should be written and adopt methods to write more efficiently; apply early settlement techniques and styles to different cases; manage opening and closing arguments and control the introduction of evidence; and handle *pro se* litigants in family, civil, and criminal courts. Participants of the scientific evidence and expert testimony course learned to analyze the dangers of the false positive in drug testing; to determine the extent of scientific predictability of future violence; to analyze the use of computer forensic evidence in the courtroom; to apply the admissibility standards of the Daubert, Frye, and Kumho Tire decisions; and to outline the major science-related issues on the court's horizon.

In early August 2005, the Judiciary sponsored an evidence and trial skills workshop conducted by National Judicial College contractor Judge Daniel Ryan. The workshop was attended by more than 20 members of the legal community, including judges, prosecutors, public

defenders, and legal services attorneys. The participants were provided with a framework for analyzing relevancy issues and learned to distinguish between hearsay and non-hearsay statements, to rule upon or make common hearsay objections quickly, correctly, and with more confidence, to recognize less common hearsay exceptions applicable to land cases, and to recognize confrontation clause problems. Through National Institute of Trial Advocacy mock trial exercises, the course also taught the participants how to correctly make and rule upon offers of real and demonstrative evidence and to refresh witnesses' recollections. The reaction to the workshop was extremely positive and the attendees have asked that the Judiciary schedule more such workshops – subject to funding, the Judiciary will.

In late August 2005, the TRC judges attended a workshop in American Samoa for land court judges. The topics included the history of American Indian Courts, the Navajo Nation Legal System, admitting evidence of customary law in Palau, how to find customary law, alternative or original dispute resolution, the role of native and tribal court judges in western legal ethics and indigenous society, and Navajo peacemaking.

In October 2005, the Chief Clerk of the Court and an Assistant Clerk attended a Court Administrator's Train the Trainer's Conference in Guam. The topics covered at the conference included ethics for court employees, court management and leadership skills, issues of caseflow management, and power point presentations. Participants were expected to share what they have learned at the conference with their colleagues back home. In 2006, the Assistant Clerk conducted three one day-long ethics presentations: two in Majuro and one in Ebeye.

## **2. 2006**

Throughout 2006, the High Court Associate Justice, with the assistance of the court's Law Clerk, conducted training for trial assistants on Ebeye during the High Court's monthly Ebeye sessions. The training included admission of documents, hearsay, and relevance. The High Court intends to continue such training, when the Court's Ebeye schedule permits.

During the College of the Marshall Islands' spring 2006 term, the Judiciary sponsored two courses: Courtroom Evidence and Legal Ethics. Each course was attended by approximately 11 members of the legal community, including judges and attorneys and trial assistants from the offices the A-G, the PD, MLSC, and Majuro Atoll Local Government (MALGOV).

Also in the spring of 2006, the Associate Justice of the High Court and the Court's Law Clerk conducted a training workshop on search and seizure issues for the National and Majuro Local Departments of Public Safety. The workshop was part of the police departments' training week. The topics covered in the workshop included constitutional provisions, the Criminal Code, the Criminal Procedures Act, and relevant caselaw.

In late May 2006, the Judiciary, through Compact funding, sponsored the Chief Public Defender at the Hawaii State Public Defender's annual training seminar. The seminar is a course

designed to improve trial advocacy skills in the area of criminal defense. It consists of a one-week course of study where the participants used one of their pending cases to prepare for exercises in the various stages of a criminal jury trial. Participants performed opening statements, closing arguments, and direct and cross-examinations under the critical eye of guest mainland instructors and local private criminal defense practitioners, who provided critiques and useful tips in these areas. Lectures and discussion groups focusing on various criminal defense topics augmented the exercises. The goal of the seminar was to provide extensive continuing legal education for defense attorneys and to sharpen their skills in trial advocacy.

In mid-June 2006, the Assistant Clerk of the Courts responsible for computer programs spent a week with the Palau Judiciary's MIS Director. There, she received training on the Palau Judiciary's computerized case management system and instruction on how to adapt it for the Republic's Judiciary. The Palau case management system uses Microsoft Access, which the Judiciary has on its computers.

In late June 2006, the Chief Judge of the Traditional Rights Court and the Presiding Judge of the District Court attended the 3rd Asia Pacific Mediation Forum Conference. This conference was convened by the University of the South Pacific and held at the University of the South Pacific Suva, Fiji, to explore ways mediation takes place throughout the varying social and legal systems in the Asia Pacific region. The conference included two days of workshops and three days of presentations that examined mediation's practical relevance in the Pacific and Asia.

In late June 2006, the Chief Justice of the High Court attended a one-week National Judicial College course in Reno, Management Skills for Presiding Judges. The goal of the course was to assist chief and presiding judges hone their management, leadership, and communication skills. Course participants learn to identify the characteristics of effective presiding judge/court administration teams; to manage conflict between team members; to supervise staff and other judges with confidence; to employ innovative court administrative procedures; to develop effective budget plans; and to deal effectively with the other two branches of government.

In early July 2006, the Chief Justice of the Supreme Court attended a one-week National Judicial College course in Boston, Essential Skills for Appellate Judges. The course was designed for newly elected or appointed appellate judges. Participants analyzed the appellate review process and assessed logical and illogical arguments. The faculty lead the participants through the intricacies of small group dynamics in decision making. Other topics included improving writing and editing skills, inherent powers, and ethics.

In mid-July 2006, the Judiciary, with funding from Australia through the Pacific Judicial Development Program, sponsored a workshop on customary law. The workshop was conducted by Professor Donald Paterson from the University of the South Pacific ("USP") and was attended by the judges of the High Court, the TRC, and the District Court; the Minister in Assistance to the President; the Vice-Speaker; the Mayor of Majuro; the Chairman of the Nuclear Claims Tribunal; the Land Registry Registrar; the High Court's Law Clerk; and a Marshallese law

student home from studies at the USP. The workshop reviewed how customary law is applied and integrated into other court systems in the Pacific Basin. At the end of the workshop, the participants concluded that our system, when compared to others, was well suited for our needs. The workshop also reviewed the TRC rules of procedures. Suggestions made at the workshop were incorporated into the Judiciary's 2006 update of the TRC Rules of Procedure.

In mid-July 2006, the Judiciary provided training for interpreters, including approximately 15 staff from the courts, the offices of the A-G, the PD, MLSC, the Nuclear Claims Tribunal, the Nitijela, and MALGOV. Some team building activities for the staff were integrated into the training. The training included an introduction to ethical principles involved in courtroom interpretation and focused on skill-building activities for all staff involved in interpretation. Judges were also introduced to the code of professional ethics for interpreters and briefed on what the interpreters were learning. An expert in interpreter training from the University of Hawaii at Manoa was flown to Majuro to conduct the training. In connection with this workshop, the Chief Clerk of the Court produced a glossary of legal terms in Marshallese. The glossary will be a great benefit to the legal community.

In late July 2006, the Deputy Chief Clerk of the Courts and an Assistant Clerk, who are responsible for the Judiciary's finances, attended the Pohnpei July 24-28, 2006, 17<sup>th</sup> Annual Conference of the Association of Pacific Islands Public Auditors. The 2006 conference offered 20 courses in four separate tracks, including presentations on transparency and ethics in the plenary sessions and courses for finance officers as well as auditors. The Deputy Chief Clerk attended the Finance Track, and the Assistant Clerk attended the Basic Finance Track.

In November 2006, the Associate Justice of the High Court attended a one-week National Judicial College course in Reno, Advanced Evidence. The course is consistently rated one of the top courses at the College. The faculty not only lead participants through the quagmire of the Rules of Evidence but also compared and contrasted the common law rules. The course taught participants to rule on evidentiary issues with greater accuracy and confidence; to ensure that the baseline relevancy issues are met and their probative value outweighs unfair prejudice; to analyze quickly whether character evidence is admissible, particularly with regard to prior bad acts; to describe when habit and custom evidence may be admitted; to rule on impeachment objections after analyzing bias, capacity, and prior inconsistent statement rules; to outline an analytical scheme for ruling on hearsay objections and the exceptions; to recognize the judicial role of gatekeeper; and to confidently rule on issues relating to lay opinion and expert opinion testimony.

During the College of the Marshall Islands' fall 2006 term, the Judiciary sponsored a Trial Practice and Procedure course. The course was attended by approximately 11 members of the legal community, including judges and attorneys and trial assistants from the offices of the A-G, PD, MLSC, and MALGOV.

## **J. Court Reports and Rules**

Over the past three years, the Judiciary has electronically published the Supreme Court Reports for the first 20 years of its existence, recommended updates of the Rules of Evidence, and undated the Rules of Criminal Procedure, the Rules of Civil Procedure, the Traditional Rights Court Rules of Procedure, and the Schedule of Court Costs and Costs. The Rules of Evidence had not been updated for over 10 years. The Rules of Criminal Procedure and the Rules of Civil Procedures had not been materially revised for over 30 years. The TRC Rules of Procedure had not been updated to conform with the Traditional Rights Court (Composition and Appointments) Act 1985. The schedules of costs and fees had not undergone a complete review for over 10 years. Prior to revising rules, the Judiciary sends a draft to the Republic's legal community for review and comment. The comment period is at least 30 days, often longer. Comments from the bar are considered and often incorporated.

In the summers of 2005 and 2006, the Judiciary obtained the services of first-year Harvard students. In 2005, the Harvard intern reviewed the latest developments in juvenile law and suggested amendments to the Republic's juvenile law and rules. The work product was of exceptional quality. In 2006, the Harvard intern reviewed the RMI Criminal Code in comparison with the Model Penal Code and suggested amendments. He also drafted rules for the testimony of child-witnesses who have been the victims of sexual assaults. The work product was very helpful.

In 2006, the Judiciary's full-time Law Clerk assisted the High Court and Supreme Court judges with legal research and writing. Her work has been uniformly excellent. In 2004, the A-G distributed for review a draft criminal code based upon the Model Penal Code. The Judiciary's Law Clerk is reviewing the Model Penal Code with attorneys from the A-G and the PD.

## **III. JUDICIAL SERVICE COMMISSION**

Along with the courts, the Constitution provides for a Judicial Service Commission (JSC) that consists of the Chief Justice of the High Court, as chair, the Attorney-General, and a private citizen selected by the Cabinet. Const. Art. VI, Sec. 5(1). The JSC nominates to Cabinet candidates for appointment to the Supreme Court, High Court, and TRC, and the JSC appoints judges to the District Court and the Community Courts. Const. Art. VI, Sec. 5(3); 27 MIRC 227(2); and 27 MIRC 233(2). In appointing Community Court judges, the JSC takes into consideration the wishes of the local communities as expressed through their local government councils. 27 MIRC 233(4). The JSC also may make recommendations to the Nitijela regarding the qualifications of judges. Const. Art. VI, Sec. 5(3)(b). In the exercise of its functions and powers, the JSC shall not receive any direction from the Cabinet or from any other authority or person, but shall act independently. Const. Art. VI, Sec. 5(4). The JSC may make rules for regulating its procedures and generally for the better performance of its functions. 27 MIRC 276.

#### **IV. THE RMI LEGAL AID FUND**

In FY 2006, the Nitijela appropriated \$20,000 to fund legal assistance for those who could not obtain assistance from MLSC or the PD and who could not otherwise afford to retain an attorney or trial assistant. The Judiciary administered the funds under rules promulgated in November and December 2000 by then Supreme Court Chief Justice Fields and High Court Justice Johnson.

The Deputy Chief Clerk of the Courts reports that 16 applications for the appointment of counsel were received or considered in FY 2006: one was approved for funding; however, the Department of Finance has yet to release the funds; three were denied, as all three applicants were represented by counsel and one of the three could have used the services of either MLSC or the PD; another withdrew his application—he also was being represented by existing counsel; two applications were under review by the Deputy Chief Clerk; and nine applicants failed to complete their applications. The Deputy Chief Clerk worked with the nine applicants to help them complete their applications—but to no avail. No funds were appropriated for FY 2007, and the funds obligated in FY 2006 have not been forthcoming.

#### **V. DISCIPLINARY ACTIONS**

As noted above, in 2005 the Supreme Court and the High Court created a disciplinary committee composed of two attorneys and one trial assistant to review complaints against attorneys and trial assistants. In 2006, the High Court referred to the committee for investigation two complaints. The matters should be resolved early in calendar year 2007.

#### **VI. BUILDINGS AND MAINTENANCE**

The Majuro Courthouse is over 30 years old. It was built with aggregate from the reef. Chloride ions have attacked the steel reinforcing rods causing them to rust and to crack the cement pillars. In 2005, the High Court asked the Facilities Engineering Division of the Ministry of Public Works (FED) to survey the damage and to propose recommendations. Based upon the FED's recommendations, the High Court requested that the FED solicit bids for the needed repair work. The repair project, commenced in September of 2006, is on going under the supervision of the FED. The FED is to make sure the rusted reinforcing rods are exposed, properly treated, and covered with cement. The stairs have deteriorated so badly that they need to be replaced. Once the work is completed, the High Court will ask the FED to solicit for bids to paint the courthouse with high quality paint. The High Court takes this opportunity to thank the FED for helping it preserve the Majuro Courthouse. The High Court will need to use Judiciary Fund moneys for the stairs and to paint the courthouse. The FED and the Judiciary have not been able to access Compact maintenance funds for the project.

Also in 2005, the FED, at the request of the Judiciary, prepared a proposal for an extension to the Majuro Courthouse to add a ground-floor courtroom with second-floor offices for the TRC

and District Court. The estimated cost of the construction project is \$530,508 in 2005 dollars. The Majuro Courthouse, built more than 30 years ago, was designed for one High Court judge, one District Court judge, and limited support staff. It was not designed to house its current occupants: two High Court Judges, three TRC judges, two District Court judges, and their staff. The three TRC judges are housed in a small office designed for one prosecutor, and the District Court's court room is a small office designed for one public defender. These cramped quarters are inadequate for the judges and the public. Furthermore, the Judiciary's two full-sized court rooms are on the second floor and not readily accessible by older people and those who cannot easily walk up stairs. This is an unacceptable situation for most TRC cases. If the Majuro Courthouse were to be built today, court rooms and the clerk's offices would be on the ground floor, accessible to the public. Without an elevator, it would be illegal in United States jurisdictions to build the Courthouse as it is currently configured. The Judiciary requests funding of this much needed extension.

Additionally, in late 2004-2005, the Judiciary had the Ebeye Courthouse painted, new benches built, a new counter installed in the clerk's office, and floor tile installed in the bathroom. Also in 2006, the Judiciary replaced damaged or worn air conditioners at the Ebeye Courthouse, the TRC's chambers in Majuro, and the Courtroom A in the Majuro Courthouse.

## **VII. TECHNOLOGY**

The courthouses on Majuro and Ebeye are equipped with computers, printers, faxes, and photocopiers and have Internet access (@ 64kps in Majuro) and email service. The courts permit the filing and service of documents via fax and email attachment. The computers in Majuro are linked together in a network, and the Majuro Courthouse has a scanner with OSC software permitting the courts to scan documents and send them most anywhere in the world.

## **VIII. LIBRARY**

The Judiciary has a small, but functional law library which includes hard copies of the following: United States Supreme Court cases through 1997; American Law Reports First, Second, Third, Fourth, part of Fifth, and Federal; LaFave's on Criminal Law, Criminal Procedure, and Search and Seizure; Warton on Criminal Law and Criminal Procedure; American Juris Prudence 2nd; Wright and Miller on Federal Practice and Procedure; Moore's Federal Practice (needs to be updated); Corpus Juris Secundum (needs to be updated); and others. Also, Judiciary has access to United States federal statutes and Supreme Court, Court of Appeals, and District Court cases and to state statutes and supreme court cases through Loislaw® over the Internet. Internet access to caselaw and statutes is much more cost effective than trying to maintain a library of books. For example, access to United States federal and state statutes and cases via Loislaw® costs only \$1,500 per year. Whereas, the cost of purchasing a new, up to date set of United States federal cases and state cases from the Pacific region (not including their statutes) would cost over \$20,000. The annual update cost for the books exceeds \$12,000. Moreover, the Judiciary does not have space for all the books. For these same reasons, courts

everywhere, particularly in remote locations, include technology as part of their planning process. The Republic's courts will continue to exploit technology to better serve the people and the government.

## **IX. SALARIES FOR COURT STAFF AND JUDGES**

At current pay levels, the Judiciary is having difficulty retaining and attracting qualified personnel at all levels. This problem is particularly acute for assistant clerks of the courts at the lower pay levels, i.e., 8, 9, and 10. One assistant clerk recently left to attend law school and another almost left to work for another government entity. Finding qualified applicants who can translate Marshallese and English and who can perform other necessary tasks is proving increasingly difficult. Although many may be interested in working with the courts, when they find out that they have to translate in public their interest fades. Without qualified translators, the Judiciary cannot function. Moreover, the Judiciary is facing a generation gap. Many of its clerks are over 50 years of age and some will turn 60 soon and retire. The Judiciary must be able to retain its younger clerks so that they will be ready to assume senior positions in the near future. To stay competitive and to meet the demands of the future, the Judiciary needs to increase pay levels for assistant clerks of the courts. To do this, the Judiciary requests an increase of \$15,000-\$20,000 for FY 2008 in its personnel budget.

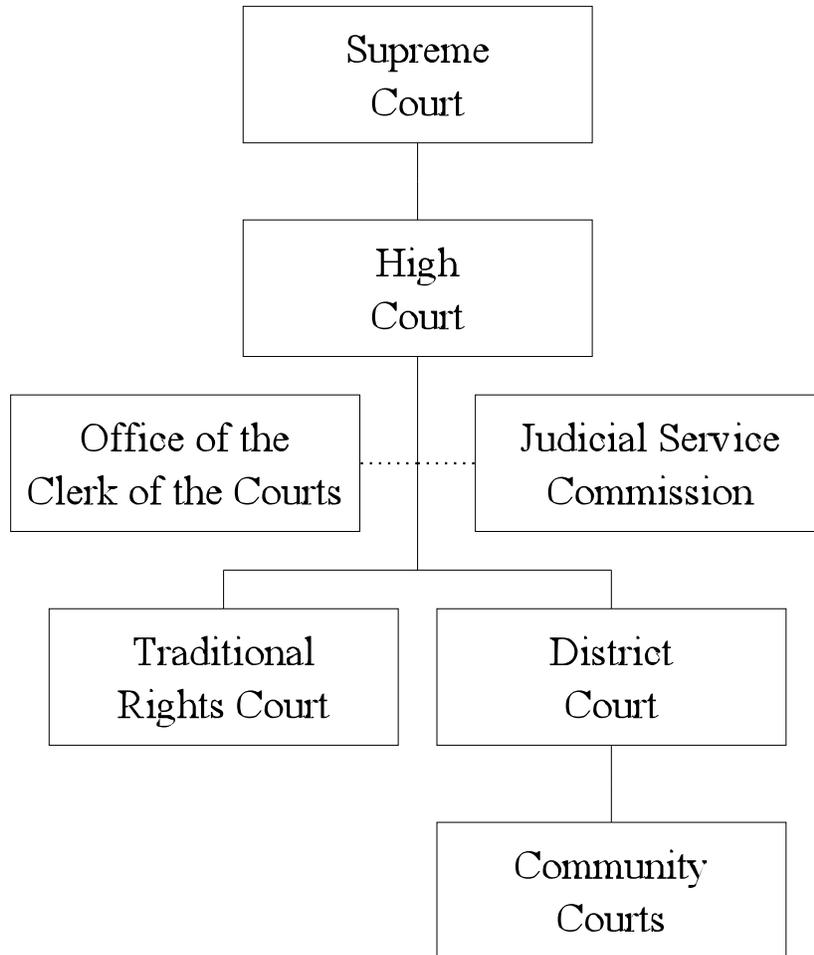
Also, High Court judges' salaries have not kept pace with inflation or the salaries of other law-trained general jurisdiction judges in the region. In 1982, the base salary of the High Court Chief Justice was \$45,000. In today's dollars that is approximately \$80,000 (assuming an average annual consumer priced index change of 3.13 percent, based upon figures supplied by the Economic Policy, Planning, and Statistics Office for 1992 through 2006). Currently, the High Court Chief Justice's base salary is only \$55,000-60,000 and the Associate Justice's base salary is \$50,000-55,000.

Below are the base salaries of judges in other relevant jurisdictions:

- Palau: Associate Justice, \$80,000; Chief Justice, \$90,000;
- American Samoa: Chief Justice, \$118,000;
- Commonwealth of the Northern Mariana Islands (CNMI): general trial court judge, \$120,000; presiding judge, \$123,000;
- Guam: general trial judge, \$100,000; presiding judge, \$125,000-128,000;
- Virgin Islands territorial court judge, \$135,000; presiding judge \$145,000; and
- National average for a state general trial court judge in the United States, \$119,630.

The Judiciary respectfully requests an increase in the base salary of High Court judges: to \$80,000 for the Chief Justice of the High Court; and to \$70,000 for the Associate Justice of the High Court. These figures are still less than those in Palau, Guam, CNMI, and American Samoa, but consistent with the 1982 salaries. Also, to better serve Kwajalein and to distribute the work load, the Judiciary also respectfully requests that the Cabinet and the Nitijela consider funding a third High Court judge.

**ORGANIZATIONAL CHART  
FOR THE  
MARSHALL ISLANDS JUDICIARY**



## **COURT PERSONNEL**

### **Justices and Judges**

Supreme Court Chief Justice Daniel N. Cadra (9/21/03-9/20/13)

High Court Chief Justice Carl B. Ingram (10/5/03-10/4/13)

High Court Associate Justice Richard G. Hickson (12/3/03-12/2/07)

Traditional Rights Court Chief Judge Berson Joseph (5/2/05-5/1/09)

Traditional Rights Court Associate Justice Botlang A. Loeak (5/30/05-5/29/09)

Traditional Rights Court Associate Justice Kalemén Jinuna (5/30/05-5/29/09)

Presiding District Court Judge Milton Zackios (4/4/05-4/3/15)

Associate District Court Judge Billy A. Samson (3/12/01-3/11/11)

Associate District Court Judge Jimata M. Kabua (10/30/06-10/29/16)

Ailinglaplap Community Court Presiding Judge Juda Menwe (2/1/04-1/31/08)

Ailinglaplap Community Court Associate Judge Mannu Rakin (1/8/06-1/7/10)

Ailinglaplap Community Court Associate Judge (vacant)

Ailuk Community Court Presiding Judge Elsiai Jetton (10/1/05-9/30/09)

Arno Community Court Presiding Judge Jessa Botla (10/1/05-9/30/09)

Arno Community Court Associate Judge Komi Laibwij (10/1/05-9/30/09)

Arno Community Court Associate Judge (vacant)

Aur Community Court Presiding Judge Davo Jeur (7/1/04-6/30/08)

Bikini and Kili Community Court Presiding Judge Tommy Irujiman Jibok (1/1/05-12/31/08)

Ebon Community Court Presiding Judge (vacant)

Enewetak and Ujelong Community Court Presiding Judge (vacant)

Jabat Community Court Presiding Judge Isaac Naisher (3/1/04-2/28/08)

Jaluit Community Court Associate Judge Order Lani (2/1/04-1/31/08)

Jaluit Community Court Associate Judge Lee Jabuwe (1/8/06-1/7/10)

Lae Community Court Presiding Judge John Braine (1/1/05-12/31/08)

Lib Community Court Presiding Judge (vacant)

Likiep Community Court Presiding Judge Rumold Capelle (2/1/04-1/31/08)

Maloelap Community Court Presiding Judge Jemkar Bano (3/1/05-2/28/09)

Maloelap Community Court Associate Judge Wilton Swain (3/1/05-2/28/09)

Mejit Community Court Presiding Judge Eli Sam (2/1/04-1/31/08)

Mili Community Court Presiding Judge Elson Daniel (7/1/04-6/30/08)

Namdrik Community Court Presiding Judge Alden Luther (3/1/05-2/28/09)

Namu Community Court Presiding Judge Obet Joab (10/1/05-9/30/09)

Rongelap Community Court Presiding Judge (vacant)

Ujae Community Court Presiding Judge Wewe Jeik (10/1/05-9/30/09)  
Utrok Community Court Presiding Judge Enja Attari (7/1/04-6/30/08)  
Wotho Community Court Presiding Judge (vacant)  
Wotje Community Court Presiding Judge Samuel Lanwe (10/10/05-10/09/09)  
Wotje Community Court Associate Judge Mejwarik Elbon (10/10/05-10/09/09)  
Unallocated (vacant)

### **Judicial Service Commission**

High Court Chief Justice Carl B. Ingram, Chair  
Attorney-General S. Posesi Bloomfield, Member  
Maria K. Fowler, Member Representing the Public

### **Staff**

Chief Clerk of the Courts Theresa B. Clinton  
Deputy Chief Clerk of the Courts Walter K. Elbon  
Assistant Clerk of the Courts Lena Tiobech  
Assistant Clerk of the Courts Sepe Joash  
Assistant Clerk of the Courts Patricia Keju Helkena  
Assistant Clerk of the Courts Hemetlynn Thomas Kumtak  
Assistant Clerk of the Courts Ingrid K. Kabua  
Assistant Clerk of the Courts Ebeye Armen Bolkeim  
Assistant Clerk of the Courts Majuro Travis Joe  
Assistant Clerk of the Courts Ebeye (vacant)  
Law Clerk Arsima Muller  
Bailiff Jukku Benjamin, Sgt.  
Bailiff Valentin Boone, Off.  
Bailiff Bojan Riklon  
Maintenance Peter Langmeto