

THE JUDICIARY OF THE REPUBLIC OF THE MARSHALL ISLANDS

2008 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 2008 Report of the Judiciary of the Republic of the Marshall Islands. This report reflects the dedication and hard work of the judges and staff that serve the Judiciary. They 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 the President, the Minister of Justice, and the other members of the Cabinet for their unflagging support for the Judiciary in 2008. We are committed to work with the Cabinet and the Nitijela in the years to come 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: March 4, 2009

THE JUDICIARY OF THE REPUBLIC OF THE MARSHALL ISLANDS 2008 REPORT

I. INTRODUCTION

The Republic of the Marshall Islands (“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, D.C. The lagoon waters total another 11,673 sq km (4,506.95 sq mi). As of July 2008, the estimated population of the Marshall Islands was 63,174.

The Marshall Islands commenced constitutional government on May 1, 1979, and after almost four decades of United States administration under the United Nations Trust Territory of the Pacific Islands (TTPI) attained independence on October 21, 1986.

The Marshall Islands has a Westminster-style government with a 33-member parliament, the Nitijela, which elects from its members a president, who in turn selects from the Nitijela a cabinet. The Constitution vests legislative authority in the Nitijela and a council of chiefs (the Council of Iroij), executive authority in the Cabinet, and judicial authority in an independent judiciary.

The Marshall Islands judiciary (“Judiciary”) includes a supreme court, high court, traditional rights court, district court, and community courts, as well as a judicial service commission and court staff. The Judiciary officially commenced operation on March 3, 1982, assuming judicial functions in the Marshall Islands that had been discharged by TTPI courts. An organizational chart of the Judiciary is attached as Appendix 1. A listing of Judiciary personnel at the end of 2008 is attached as Appendix 2.

This report summarizes the operations and accomplishments of the Judiciary in calendar year 2008 as well as the challenges it 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. 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, Daniel N. Cadra, is a United States citizen appointed to a 10-year term in October 2003. Any Marshallese citizen appointed to the Supreme Court would be appointed to serve until age 72. 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. In 2008, the pro tem judges were two United States Federal Court judges, Senior Circuit Judge Clifford Wallace and Magistrate Judge Barry Kurren.

An appeal lies to the Supreme Court (i) as of right from a final decision of the High Court in the exercise of its original jurisdiction; (ii) 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 (iii) at the discretion of the Supreme Court from any final decision of any court. Also, the High Court may remove to the Supreme Court questions arising as to the interpretation or effect of the Constitution.

In 2008, the Supreme Court held two sessions: one in May and the other in December. During the May session, the Supreme Court heard and decided six cases: two were criminal cases and the other four were land matters. At the December session, the Supreme Court heard three cases: one criminal case and two land matters. At the end of 2008, 21 cases (including the three heard in December) were pending before the Supreme Court. To date in 2009, the Supreme Court has issued one opinion, will soon issue another, and has dismissed six appeals at the request of the parties or for the failure to prosecute. The remaining 13 cases await the completion of transcripts by reporters or briefing by counsel. As of the date of this report, there are no cases that are ready for argument before the Supreme Court, although in some cases counsel will file pre-argument motions for the court's resolution. The Supreme Court's next session is planned for mid-2009. The Supreme Court's decisions can be found on the Judiciary's website, <http://rmicourts.org/>.

In 2008, Supreme Court Chief Justice Cadra, together with High Court Chief Justice Carl Ingram, admitted four persons to the practice of law in the Republic, two of which were Marshallese: one was employed as an assistant public defender and the other was employed as a staff attorney for the Judiciary. Also, Justice Cadra reviewed and commented upon court rules drafted by High Court Chief Justice Ingram, including the following: a code of judicial conduct and amendments to the Traditional Rights Court Rules of Procedure, the Marshall Islands Civil Rules of Procedure, the Marshall Islands Criminal Rules of Procedure, and the Supreme Court Rules of Procedure.

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. 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.

The High Court currently consists of a chief justice and one associate justice: Chief Justice Carl B. Ingram and Associate Justice James H. Plasman. Both are law-trained attorneys, as have been all prior High Court justices, and both attend at least one professional development seminar each year. Chief Justice Ingram was appointed to a ten-year term commencing in October 2003. Associate Justice Plasman was appointed to a 4-year term commencing in January 2008. Both are United States citizens with more than 20 years experience in the Marshall Islands. Any Marshallese citizen appointed to the High Court would be appointed to serve until age 72.

The High Court's 2008 case statistics are set forth below.

1. Civil Cases (other than Probate)

CIML	CY 2004 CASES			Status in CY 2005		Status in CY 2006		Status in CY 2007		Status in CY 2008	
	Filed	Disposed	Pending	Disposed	Pending	Disposed	Pending	Disposed	Pending	Disposed	Pending
Majuro	189	88	101	24	76	8	69	7	61	37	24
Ebeye	23	7	16	2	14	2	12	0	12	0	12

CIML	CY 2005 CASES			Status in CY 2006		Status in CY 2007		Status in CY 2008	
	Filed	Disposed	Pending	Disposed	Pending	Disposed	Pending	Disposed	Pending
Majuro	285	137	148	27	121	15	106	76	30
Ebeye	21	10	11	1	10	1	9	0	9

CIML	CY 2006 CASES			Status in CY 2007		Status in CY 2008	
	Filed	Disposed	Pending	Disposed	Pending	Disposed	Pending
Majuro	166	83	83	18	65	37	28
Ebeye	34	12	22	10	12	1	11

CIML	CY 2007 CASES			Status in CY 2008	
	Filed	Disposed	Pending	Disposed	Pending
Majuro	225	130	95	44	51
Ebeye	58	46	12	0	12

During the 5-year period (2004-2008):

Total Cases Filed: 1274

Total Disposed: 979

Total Pending: 295

Disposition Rate: 77%

* As of 12/31/2008

CIML	CY 2008 CASES		
	Filed	Disposed	Pending
Majuro	242	149	93
Ebeye	31	6	25

The five-year disposition rate for civil cases (other than probates) is approximately 77%. This is an improvement of 14% over 2007's figure of 63%. Of the 295 pending civil cases filed

from 2004 to 2008, the largest category was collection cases, 61. In 2008, the High Court disposed of more than 1,000 dormant civil cases. In 2009, the High Court will continue to encourage counsel to resolve dormant civil matters.

Of the 242 civil cases filed in Majuro in 2008, 110 involved domestic matters (that is, customary adoptions, legal adoptions, divorces, child custody and support, guardianships, and appointments of personal representations); 21 citizenship cases; 64 collection cases; and 13 land rights or land lease cases. From 2008 filings, the largest number of pending cases are collection cases, 27, and citizenship cases, 14. All of the 31 civil cases filed in Ebeye in 2008 involved domestic matters.

2. Probate Cases

PROBATE	CY 2004 CASES			Status in CY 2005		Status in CY 2006		Status in CY 2007		Status in CY 2008	
	Filed	Disposed	Pending	Disposed	Pending	Disposed	Pending	Disposed	Pending	Disposed	Pending
Majuro	32	21	11	10	1	0	1	1	0	0	0
Ebeye	10	4	6	4	2	1	1	1	0	0	0

PROBATE	CY 2005 CASES			Status in CY 2006		Status in CY 2007		Status in CY 2007	
	Filed	Disposed	Pending	Disposed	Pending	Disposed	Pending	Disposed	Pending
Majuro	47	33	14	9	5	4	1	1	0
Ebeye	12	9	3	1	2	1	1	0	1

PROBATE	CY 2006 CASES			Status in CY 2007		Status in CY 2008	
	Filed	Disposed	Pending	Disposed	Pending	Disposed	Pending
Majuro	14	9	5	5	5	0	0
Ebeye	4	3	1	0	1	1	0

PROBATE	CY 2007 CASES			Status in CY 2008	
	Filed	Disposed	Pending	Disposed	Pending
Majuro	21	13	8	5	3
Ebeye	0	0	0	0	0

During the 5-year period (2004-2008):

Total Cases Filed: 162

Total Disposed: 154

Total Pending: 8

Disposition Rate: 95 %

* As of 12/31/2008

PROBATE	CY 2008 CASES		
	Filed	Disposed	Pending
Majuro	20	16	4
Ebeye	2	2	0

In 2008, petitioners filed 22 probate cases before the High Court. By the end of 2008, 18 had been granted and four were pending. The High Court's five-year disposition rate for probate cases remains in the mid 90s. At the end of 2008, only eight probate matters filed during the five-year period from 2004 to 2008 were pending: three cases involve one family. The remaining cases should be resolved in 2009.

3. Criminal Cases

CRIMINAL	CY 2004 CASES			Status in CY 2005		Status in CY 2006		Status in CY 2007		Status in CY 2008	
	Filed	Disposed	Pending	Disposed	Pending	Disposed	Pending	Disposed	Pending	Disposed	Pending
Majuro	64	25	39	12	27	9	18	3	15	14	1
Ebeye	9	5	4	3	1	0	1	0	1	1	0

CRIMINAL	CY 2005 CASES			Status in CY 2006		Status in CY 2007		Status in CY 2008	
	Filed	Disposed	Pending	Disposed	Pending	Disposed	Pending	Disposed	Pending
Majuro	48	32	16	8	8	5	3	3	0
Ebeye	22	11	11	1	10	5	5	3	2

CRIMINAL	CY 2006 CASES			Status in CY 2007		Status in CY 2008	
	Filed	Disposed	Pending	Disposed	Pending	Disposed	Pending
Majuro	100	48	52	20	32	28	4
Ebeye	4	3	1	1	0	0	0

CRIMINAL	CY 2007 CASES			Status in CY 2008	
	Filed	Disposed	Pending	Disposed	Pending
Majuro	29	9	20	13	7
Ebeye	9	7	2	1	1

During the 5-year period (2004-2008):

Total Cases Filed: 331

Total Disposed: 290

Total Pending: 41

Disposition Rate: 88%

* As of 12/31/2008

CRIMINAL	CY 2008 CASES		
	Filed	Disposed	Pending
Majuro	27	10	17
Ebeye	19	10	9

The five-year disposition rate for criminal cases is approximately 88%, 12% better than last year's 76%.

The Court notes that in 2008, as in 2007, far fewer High Court criminal cases were filed than in 2006: 38 in 2007 and 46 in 2008 versus 104 in 2006. The reason for this decline is not apparent. Excluding visa-violator cases, the High Court expects to see at least 50 or more felony cases filed in Majuro each year. Of the 27 cases filed in Majuro in 2008, 13 involved assaultive behavior (other than sexual assaults), four involved burglary or larceny of a dwelling, three involved sexual assaults, two involved drunk or reckless driving, and two involved selling marijuana. Of the 19 felony cases filed in Ebeye in 2008, nine involved assaultive behavior (including two vehicular homicides and a sexual assault) and seven involved burglary or larceny of a dwelling.

The relatively large number of criminal cases filed in Ebeye in 2005, 22, was a result of cocaine cases. A bale of cocaine had washed ashore in the outer islands.

In 2008, the Office of the Attorney-General (“A-G”) disposed of more than 100 stale cases from previous years. The High Court has instructed the A-G and defense counsel to resolve criminal cases that are more than one year old. The defendants have a constitutional right to a speedy trial.

4. Juvenile Cases

JUVENILE	CY 2004 CASES			Status in CY 2005		Status in CY 2006		Status in CY 2007		Status in CY 2008	
	Filed	Disposed	Pending	Disposed	Pending	Disposed	Pending	Disposed	Pending	Disposed	Pending
Island											
Majuro	1	1	0	0	0	0	0	0	0	0	0
Ebeye	0	0	0	0	0	0	0	0	0	0	0

JUVENILE	CY 2005 CASES			Status in CY 2006		Status in CY 2007		Status in CY 2008	
	Filed	Disposed	Pending	Disposed	Pending	Disposed	Pending	Disposed	Pending
Island									
Majuro	4	2	2	1	1	1	0	0	0
Ebeye	1	0	1	0	1	0	1	1	0

JUVENILE	CY 2006 CASES			Status in CY 2007		Status in CY 2008	
	Filed	Disposed	Pending	Disposed	Pending	Disposed	Pending
Island							
Majuro	7	4	3	3	0	0	0
Ebeye	0	0	0	0	0	0	0

JUVENILE	CY 2007 CASES			Status in CY 2008	
	Filed	Disposed	Pending	Disposed	Pending
Island					
Majuro	1	1	0	0	0
Ebeye	0	0	0	0	0

During the 5-year period (2004-2008):

Total Cases Filed: 16

Total Disposed: 16

Total Pending: 0

Disposition Rate: 100%

* As of 12/31/2008

JUVENILE	CY 2008 CASES		
	Filed	Disposed	Pending
Island			
Majuro	2	2	0
Ebeye	0	0	0

The five-year disposition rate for juvenile cases remains high at 100%. However, the Judiciary notes that many fewer juvenile cases were filed in 2007 and 2008 than in 2006, 1 and 2 versus 7. As with the decline in criminal-case filings, the reason for the decline in juvenile cases is not apparent.

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: Irojlaplap (high chief); where applicable, Irojedrik (lower chief); Alap (head of commoner/worker clan); and Dri Jerbal (commoner/worker).

In May 2005, the Cabinet upon recommendation from the Judicial Service Commission appointed the current judges for terms of four years: Chief Judge Berson Joseph (alap member); Associate Judge Botlang Loeak (iroij member); and Associate Judge Kalemén Jinuna (dri jermal member). All are lay judges who receive specialized training. In January 2009, the Judicial Service Commission recommended to the Cabinet that the TRC members be reappointed. The matter is now pending before the Cabinet.

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. 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. Customary law questions certified by the High Court are decided by the TRC panel 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 the parties or their counsel 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.

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. The Supreme Court has held that the High Court is to review and adopt the TRC's findings unless the findings are clearly erroneous or contrary to law.

In 2008, the TRC issued three opinions or supplemental opinions and has scheduled seven other cases to be heard early in 2009.

D. District Court

The District Court is a court of record. It consists of a presiding judge and two associate judges appointed for 10-year terms: Presiding Judge Milton Zackios; Associate Judge Billy Samson (Ebeye); and Associate Judge Jimata Kabua. Their terms expire in 2015, 2011, and 2016, respectively. 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. The District Court also has appellate jurisdiction to review any decision of a Community Court.

The District Court's 2008 case statistics are set forth below.

1. Majuro. In Majuro in 2008, 1,959 cases were filed in the District Court: 259 small claims cases (235 disposed; and 24 pending); no other civil cases; 790 traffic cases (455 disposed; 335 pending); and 910 other criminal cases and local government ordinance cases (472 disposed; and 438 pending).

2. Ebeye. In Ebeye in 2008, 406 cases were filed in the District Court: 27 small claim cases (27 disposed; and none pending); no other civil cases; 57 traffic cases (49 disposed; and 8 pending); no other criminal cases; and 322 local government ordinance cases (129 disposed; and 193 pending).

E. Community Courts

A Community Court is a court of record for a local government area, of which there are 24. Each Community Court consists of a presiding judge and such number of associate judges, if any, as the Judicial Service Commission may appoint. Appointments are made for 4-year terms. 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 local government area (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.

As of the end of 2008, the Judicial Service Commission had appointed 19 Community Court judges for four-year terms for 18 outer island communities and there were 11 vacancies awaiting the receipt of recommendations from local government councils. The 11 vacancies included the following atolls and islands and one unallocated seat: Ailinglaplap (2); Arno; Bikini/Kili; Enewetak; Jaluit; Lae; Lib; Rongelap; and Wotho. On January 6, 2009, the Judicial Service Commission on recommendation from the Lae Atoll Local Government Council re-appointed the Lae Community Court Judge for a four-year term. Accordingly, there are now 10 vacancies.

In 2008, the District Court judges provided training for three newly appointed community court judges from Mili Atoll, Ebon Atoll, and Jabat Island. Most trainings occur when the community court judges come 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. The Judiciary believes that if the offices of the A-G, the Public Defender ("PD"), and the Micronesian 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 in 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 \$100,000. 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. When Air Marshall Islands resumes regular service to the outer islands, the Judiciary will try to provide systematic training for community court judges.

G. Births, Deaths, Marriages, and Notarizations

1. Majuro. In Majuro in 2008, the High Court and the District Court processed 423 delayed registrations of birth, four delayed registrations of death, and performed 45 marriages. The clerks notarized 662 documents.

2. Ebeye. In Ebeye in 2008, the High Court and the District Court processed no delayed registrations of birth, no delayed registrations of death, and performed 12 marriages. The clerk notarized 117 documents.

H. Court Staff

In calendar year 2008, the Judiciary lost three key staff members: Chief Clerk Theresa B. Clinton, Assistant Clerk Lena Tiobech, and Staff Attorney Arsima Muller.

Sadly, Chief Clerk Clinton passed away in early 2008 after a long illness. She was responsible for many recent improvements in the clerk's office and will be greatly missed. The Judiciary promoted Deputy Chief Walter Elbon to chief clerk to take Ms. Clinton's place and promoted Clerk Ingrid Kabua to deputy chief to take Mr. Elbon's place.

In mid-2008, long-time clerk Lena Tiobech left the Judiciary to become the assistant clerk of the Nitijela. The Judiciary wishes her well in her new job. She too will be missed. To replace Ms. Tiobech, the Judiciary hired Sylvia Anuntak, who had served many years as a secretary for the SDA Schools.

In October, Arsima Muller left to accept a position with a large Hawaii law firm. This is an excellent career move for her, and the Judiciary wishes her all the best. Earlier in the year, the Judiciary, in recognition of Ms. Muller's contributions and value, had promoted her from law clerk to staff attorney. For the Judiciary, it was of no surprise that a large Hawaii law firm would want to hire her. Her work for the Judiciary was uniformly excellent.

In addition to the above-mentioned personnel, the Judiciary also has five other assistant clerks

(one in Ebeye), three bailiffs (seconded from the Department of Public Safety) and one maintenance worker. The clerks also serve as interpreters from Marshallese to English and English to Marshallese. The Office of the Attorney General has a Chinese translator on staff, provided by the Republic of China (Taiwan) Embassy. The Judiciary greatly appreciates the Taiwan's assistance.

I. Training and Regional Conferences

Consistent with internationally recognized practice, in 2008 the Judiciary provided and facilitated professional development training for the judges, court staff, and counsel. Funding for training came from the Judiciary's annual operating budget, the United States of America ("Compact Judicial Training Funds"), Australia ("AUSAID"), and New Zealand ("NZAID"). The Judiciary's 2008 training activities are set forth below.

In January 2008, Staff Attorney Arsima Muller attended a Singapore seminar on alternative dispute resolution techniques, including interest-based negotiation, other methods of negotiation (e.g., power-based and rights-based negotiation), and mediation. ADR methods were demonstrated through participant role-plays. Also, the participants were taken for site visits to the Community Mediation Centre and the Primary Dispute Resolution Centre, the Singapore International Arbitration Centre, and the Eagles Mediation and Counseling Centre, an NGO. At the conclusion, a professor from the Singapore Academy of Law spoke on the history of ADR in Singapore and forms of ADR that might be appropriate in other countries.

In January 2008, Traditional Rights Court Chief Judge Berson Joseph attended a judicial leadership workshop in New Zealand for lower court judges.

In early February 2008, the Judiciary hosted a one-week workshop in Majuro on mediation conducted by US Ninth Circuit Federal Court Magistrate Judge Valerie Cooke and US Ninth Circuit Alternative Dispute Resolution Program Director Howard Herman. The purpose of this training was to introduce judicial officers and the local bar to basic mediation concepts and to begin to train participants on how to conduct mediations. Over 15 judges and attorneys participated in the workshop and gave it high reviews.

In late February 2008, High Court Associate Justice James Plasman and District Court Presiding Judge Milton Zackios attended a Pacific Judicial Council workshop in Yap, FSM, on core competencies for courts (e.g., case flow management), procedural fairness (including access to the courts), and judicial leadership. The goal of this training is to assist chief justices and presiding judges in their role as court executives with particular focus on managing programs, services, and infrastructure. Principal areas covered included case preparation, adjudication and enforcement, court infrastructure, and program management.

In early March 2008, Deputy Chief Clerk Ingrid Kabua and Assistant Clerks Lena Tiobeck and Travis Joe attended the Third Pacific Judicial Council Court Administrator Training and

Conference in Pohnpei, FSM. The primary focus of 2008's court administrator training was on leadership skills, process improvement, ethics, and disaster preparedness. Upon her return, Deputy Chief Clerk Kabua lead the Judiciary in preparing a Continuity of Operations Plan ("COOP" plan).

Also in early March 2008, Traditional Rights Court Judges Berson Joseph, Botlang Loeak, and Kalem Jinuna attended the Reno National Judicial College course "Essential Skills for Tribal Court Judges." This course assists judges in developing the basic skills necessary to preside over matters in customary courts. The course enables participants to outline appropriate jurisdictional boundaries; rule effectively on the admissibility of testimonial and documentary evidence; evaluate the role of tradition and custom in customary court proceedings; write clear and well-reasoned decisions; and establish and maintain rules of court appropriate for tribal/customary jurisdictions.

In early April 2008, Associate Justice James Plasman attended the National Judicial College course "General Jurisdiction." This course is designed to enable participants to manage their courtrooms and individual cases, including cases involving self-represented litigants; conduct jury and non-jury trials more effectively; summarize and apply developments in criminal law and procedure, family law, judicial discretion, judicial ethics, and sentencing; rule on evidence more confidently; make fair and unbiased decisions; and interact with the media in a positive manner. The skills learned in this course also enable the participants to communicate and listen more effectively in their courtrooms. Participants learned about various types of problem solving courts, including mental health courts and drug courts, and they observed a portion of an actual drug court session.

In April 2008, consultant Nik Soni, through a grant from the Pacific Judicial Development Program, conducted training for court staff on budget preparation and Excel. As a result of the training, the Judiciary was able to submit its FY 2009 budget request in full compliance with budget call circular issued by the Ministry of Finance. The two hours of Excel training proved to be more valuable than similar training offered in the past.

In late April/early May, District Court Presiding Judge Milton Zackios attended the National Judicial College course "Special Court Jurisdiction: Advanced." This course is designed for special court lay judges who have taken the Special Court Jurisdiction course. Instructors taught judges the following: to apply a practical approach search and seizure issues and use 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.

Also in late April/early May, District Court Associate Judge Jimata Kabua attended the National Judicial College course “Special Court Jurisdiction.” Specifically designed for judges without formal law school training, this course instructs participants on how to handle small claims, traffic court and misdemeanor cases more proficiently. It provides participants with the following skills: to conduct criminal hearings and trials in compliance with constitutional and statutory standards; to make appropriate evidentiary rulings; communicate effectively in court and with the media; to recognize the psychological profiles of offenders in court; manage self-represented litigants in criminal and civil cases; to appropriately sanction direct and indirect contempt; to control potential courtroom disruptions; to make appropriate decisions in small claims cases; to analyze the principles of damages and restitution in civil cases; and to apply legal reasoning to analyze the facts of a case. Participants also identify all of the components of a trial.

In May, High Court Chief Justice Ingram attended the National Judicial College course “Civil Mediation.” This course instructed participants on how to conduct a mediation session, outline common standards of conduct and ethical considerations for mediators, handle special problems and avoid classic errors, and summarize the interpersonal dynamics of mediation. Justice Ingram participated in 10 role-plays. This course proved to be an excellent follow up on the introduction to mediation course conducted in Majuro in February, and Chief Justice Ingram was able to apply his newly acquired skills shortly after his return to Majuro in a pending civil lawsuit.

In mid July 2008, Chief Clerk Walter Elbon, who is responsible for the Judiciary’s budget, attended the 19th Annual Conference of the Association of Pacific Islands Public Auditors. The 2008 conference offered two courses in the plenary sessions (Emerging Issues in Government Auditing and Accounting; and Ethical Decision Making for Auditors & Finance Officers) and 15 courses in four tracks. Chief Clerk Elbon took three courses from the Basic Finance Track (Everybody Loves Cash: Basic Cash Controls; Best Practices of High Performing Finance Offices; and Magical Mystery Tour: Unveiling the Year-End Close) and one course from the Finance Track (Performance Leadership: How to Manage for Continuous Improvements of Finance Operations).

In late July 2008, the Judiciary held interpreter training for court staff and staff from the following offices: Public Defender, Attorney General, Micronesian Legal Services, and the Nitijela, as well as three court clerks from Yap, FSM. About 20 participants attended the week-long training session, which included an introduction to ethical principles involved in court room interpretation and focused on hands-on skill building activities for staff involved in interpretation. An expert in interpreter training from the University of Hawaii at Manoa was flown to Majuro along with a certified Marshallese interpreter to conduct the training.

In October 2008, High Court Chief Justice Ingram attended the National Judicial College course “Best Practices for Handling Cases with Self-Represented Litigants.” Self-represented litigants now appear on court dockets in almost every case possible including civil, criminal felony, domestic relations, traffic, criminal misdemeanor, small claims, probate and

administrative cases. Self-represented litigants pose a special problem for the judge presiding over the case because they are not keenly aware of courtroom procedures and evidence rules. Those who complete the course are able to move a self-represented party civil docket expeditiously; use settlement techniques in cases involving self-represented litigants; recognize the limits on assisting self-represented parties; apply innovative methods and strategies to ensure that these litigants have proper access to the justice system; and use the best practices for managing high conflict litigants.

In November 2008, two clerks of the court attended a four-day workshop in Chuuk, FSM, on computer networking and the FTR recorder. The workshop covered the basics of computer networking and the operation of the FTR digital audio recorder. The participants received an excellent reference manual to bring back to their colleagues.

J. Law Reports, Court Rules, Statutes

In mid 2008, the Judiciary completed and implemented a code of judicial conduct, which will be discussed in more detail below. In late 2008, the Judiciary also drafted amendments to the Marshall Islands Rules of Civil Procedure (“MIRCP”), the Marshall Islands Rules of Criminal Procedure (“MIRCrP”), the Marshall Islands Supreme Court Rules of Procedure (“SCRCP”), and the Traditional Rights Court Rules of Procedure (“TRC Rules”). The Supreme Court and the High Court adopted the amendments in January 2009. The amendment to the MIRCP adds a new Rule 11.1 providing sanctions for vexatious litigants. The amendments to the MIRCrP Rules 48(b)(1) and 46(c) and to SCRCP Rule 9(c) set the standard for granting stays in criminal cases pending sentencing and appeals. The amendment to the TRC Rules amends Rule 9 (i) to clarify the referral of matters back to the same TRC panel after a Rule 9 hearing before the High Court and (ii) to emphasize that the High Court will not circumvent the TRC by accepting new evidence on questions submitted to the TRC to decide.

In 2007, Law Clerk Muller completed work with attorneys from the A-G and the PD offices on a revised and modern criminal code. Whether to go forward with the revised code, or not, is the Ministry of Justice’s decision. To date, no action has been taken.

III. NEW DEVELOPMENTS

The Judiciary has progressed on four initiatives designed to promote accountability, efficiency, and accessibility: a code of judicial conduct, a website, biweekly radio broadcasts, and a staff manual.

A. Code of Judicial Conduct

In May 2008, the Judiciary completed and implemented a code of judicial conduct based upon the following principles: (i) independence; (ii) impartiality; (iii) integrity; (iv) propriety; (v) equality; (vi) competence and diligence; and (vii) accountability. The code adopts internationally

recognized standards for judicial conduct, provides guidance to judges, and affords the Judiciary a framework for regulating judicial conduct. The code will assist members of the executive, the legislature, lawyers, and the public to better understand and support the Judiciary. A copy of the code can be found on the Judiciary's website described below, <http://rmicourts.org/>.

B. Website

In July 2008, the Judiciary launched a website. The Judiciary's website includes the following: a detailed description of the Judiciary; all Marshall Islands Supreme Court cases; rules of admission and practice, court rules, the Constitution, statutes, selected regulations, customary law sources (including opinions of the Traditional Rights Court), recent and upcoming events, and related links. The Judiciary is very pleased with the website. It contains a wealth of information in an accessible format consistent with the Government's goal of transparency and accountability. To keep the site up to date, the Judiciary has requested from the Nitijela the latest statutes and amendments and from the AG the latest regulations.

C. Radio Broadcasts

In June 2008, the Judiciary staff initiated a biweekly radio program. To date, they have aired 11 programs on the structure of the Judiciary; the delayed registration of births and deaths and notary functions; small claims and traffic cases; and community courts. The radio programs are being well received and are proving to be a great way to educate the public about the Judiciary and its role, particularly those living on the outer islands.

D. Staff Manual

Also, in June, the Judiciary also received a grant from the Pacific Judicial Development Program to support a human resources project. The main components of the project are development of a staff manual, updating of job descriptions for each court staff position, identification of customer service requirements, and training on the manual. The Judiciary was fortunate to obtain the assistance of Elizabeth Connolly, a senior official in the Federal Courts in Australia. Ms. Connolly traveled to Majuro in June and the first product, the work flow portion of the manual, was delivered in July and has been put to use. The project is ongoing, with the development of job descriptions underway and drafts under review by court staff.

IV. JUDICIAL SERVICE COMMISSION

Along with the courts, the Constitution provides for a Judicial Service Commission ("JSC"), which consists of the Chief Justice of the High Court, as chair, the Attorney-General, and a private citizen selected by the Cabinet. The JSC nominates to Cabinet candidates for appointment to the Supreme Court, High Court, TRC, and the Nuclear Claims Tribunal ("NCT"), and the JSC appoints judges to the District Court and the Community Courts. In appointing Community Court judges, the JSC takes into consideration the wishes of the local communities

as expressed through their local government councils. The JSC also may make recommendations to the Nitijela regarding the qualifications of judges. 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. The JSC may make rules for regulating its procedures and generally for the better performance of its functions.

In 2008, the JSC recommended to the Cabinet appointment or reappointment of pro tem judges for the Supreme Court, the chair of the NCT, and members of the TRC. The JSC also appointed or renewed six community court judges in 2008. To date in 2009, the JSC has renewed the appointment of one community court judge.

V. ATTORNEY DISCIPLINARY ACTIONS

There are two complaints pending against trial assistants. The committee expects to resolve the complaints early in 2009.

VI. BUILDINGS AND MAINTENANCE

The Majuro Courthouse is more than 30 years old; it was built with reef aggregate. Over the years, chloride ions from the reef material have caused steel reinforcing rods to rust and foundation pillars to crack. In 2006, the Judiciary 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 Judiciary requested that the FED solicit bids for work on the pillars. The pillar repair project, commenced in September of 2006, was completed in July of 2007. Similar restoration work was needed on the rest of the building, particularly the stairs, which were in an unsafe condition. In September 2008, the Judiciary asked the FED to solicit for bids for the remaining repair work and to paint the courthouse with high quality paint. The low bid came in at \$250,000 and was negotiated down to \$168,000, with the discovery of a pricing error. The Judiciary will use funds appropriated by the Nitijela to the Judiciary under its recurrent budget and from ROC funds, as well as moneys available from the Judiciary Fund. The Judiciary anticipates expending another \$60,000 to repair the Ebeye Courthouse in FY 2009.

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 was \$530,508 in 2005 dollars. The Majuro Courthouse 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,

courtrooms 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. Each year since 2005, the Judiciary has renewed its request for funds to construct this much needed extension.

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 almost anywhere in the world. In 2007, the Judiciary replaced five of its older computers. In 2008, the Judiciary replaced an additional two computers. In 2009, the Judiciary has replaced two computers and has purchased a network printer and two desktop copiers. Also in 2009, the Judiciary will attempt to replace two additional computers and the network server, all of which are more than 6 years old. Upgrade of computers and software is a critical need, as from time-to-time hard drives and motherboards on the older computers crash posing a risk of data loss.

VIII. LIBRARY

The Judiciary has a small, but functional, law library which includes hard copies of the following: United States Supreme Court cases through 2002 (recent volumes donated by the United States Federal District Court in Hawaii); American Law Reports First, Second, Third, Fourth, part of Fifth, and Federal; LaFave's on Criminal Law, Criminal Procedure, and Search and Seizure; Wharton on Criminal Law and Criminal Procedure; American Jurisprudence 2nd; Wright and Miller on Federal Practice and Procedure; Moore's Federal Practice (donated by attorney David Lowe); Corpus Juris Secundum (needs to be updated); Am Jur Trials and American Jurisprudence Proof of Facts (donated by the NCT); and others.

IX. SALARIES AND COMPENSATION

At current pay levels, the Judiciary is having difficulty retaining and attracting qualified personnel at all levels. In 2008, the Nitijela hired away one of the Judiciary's senior clerks. This problem is particularly acute for assistant clerks of the courts at the lower pay levels, i.e., 8, 9, and 10. 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 interpret in public, their interest fades. Without qualified interpreters, the Judiciary cannot function. Moreover, the Judiciary is facing a generation gap. Some of its clerks have or will turn 60 soon and be eligible to 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.

Furthermore, the salaries of High Court justices (\$70,000 per annum for the chief justice and \$60,000 per annum for the associate justice) lag behind salaries for comparable law-trained judges in Palau, American Samoa, the Northern Mariana Islands, and Guam (\$90,000 to \$125,000 for presiding judges or chief justices). In 2007, the Judiciary asked that the salaries of the chief justice and the associate justice of the High Court be increased to \$80,000 and \$70,000, respectively. These salaries are justified by the quality and quantity of work done, although they would still lag behind salaries paid in the above named-jurisdictions. The Judiciary seeks \$80,000 per annum for the chief justice as, adjusted for inflation, it is comparable to the \$45,000 the Marshall Islands paid its first High Court chief justice in 1982. Also, with the Cabinet's recent recommendation of \$65,000 per annum for the attorney-general, annual salaries of \$80,000 and \$70,000 for the chief justice and associate justice of the High Court would be appropriate and consistent.

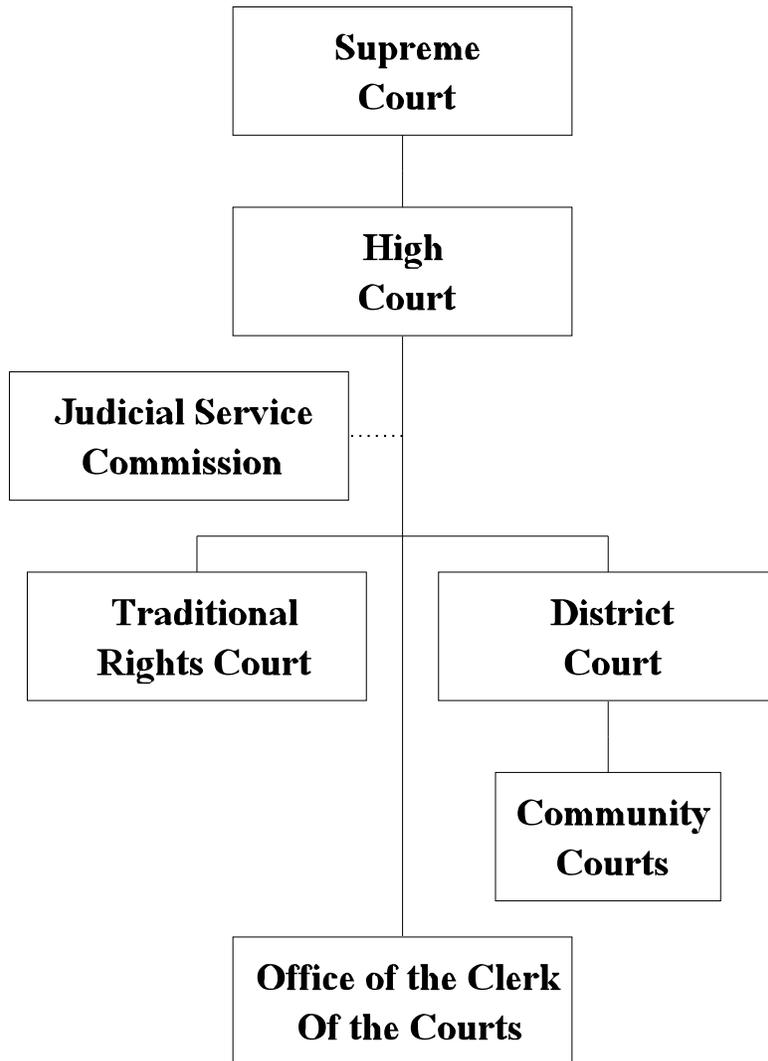
X. ANNUAL BUDGET

For FY 2008, the Nitijela appropriated \$914,479 for the Judiciary: \$677,373.00 for salaries and wages and \$237,106.00 for all others. The Judiciary was able to access \$884,127.76. With two months to go in the fiscal year, the Ministry of Finance refused to process a number of the Judiciary's purchase requisitions claiming the General Fund was "constrained." The replacement of three computers that had crashed and one that was not working properly had to be postponed until FY 2009. A breakdown of the FY 2008 budget and expenditure is set forth below.

Code No.	Description	Original Budget	Actual Expenditure	Balance
1010	Salary & Wages Expatriate	145,000.00	145,000.00	0
1011	Salary & Wages Marshallese	457,520.00	432,967.33	24,552.67
1019	Ebeye Differential	8,288.00	8,159.49	128.60
1114	Personnel Benefits-Expatriate	15,225.00	15,225.00	0
1115	Personnel Benefits-Marshallese	46,040.00	41,455.67	4,584.33
1116	Employee Insurance	5,300.00	6,730.00	(1,430.00)
1510	Professional Service	7,000.00	8,378.69	(1,378.69)
1515	Audit Expense	5,672.00	5,672.00	0
1520	Contractual Service	5,000.00	7,256.64	(2,256.00)
2020	Travel	10,000.00	11,930.00	(1,930.00)
2021	International Travel	25,000.00	25,543.35	(543.35)
2115	Leased Housing	72,000.00	71,250.00	750.00
2123	Repatriation & Home Leave	5,000.00	7,036.00	(2,036.00)
2125	Training & Staff Development	15,000.00	15,199.20	199.20
2205	Rentals	2,500.00	1,000.00	1,500.00
2215	Utilities	18,684.00	14,494.54	4,189.46
2305	Communication	16,000.00	17,985.35	1,985.35
2315	Insurance	750.00	674.00	76.00
2320	Printing & Reproduction	2,500.00	1,687.40	812.60
2325	Repairs	10,000.00	8,852.70	1,147.30

2401	Freight	1,000.00	456.17	543.83
2405	Office/Computer Supplies	1,500.00	1,699.98	(199.98)
2410	POL(Fuel)	15,000.00	10,434.68	4,565.32
2415	Food Stuff	1,000.00	569.19	430.81
2420	Books	4,000.00	4,302.40	(302.77)
2440	Equip & Tools	5,000.00	8,987.77	(3,987.77)
2445	Water	1,500.00	1,243.45	256.55
2450	Other Supplies & Materials	10,000.00	6,936.76	3,063.24
3133	Furniture & Fixture	3,000.00	3,000.00	0
	TOTAL	914,479.00	884,127.76	30,351.24

**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 James H. Plasman (1/7/08-1/6/12)

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 (vacant)

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 Bryant Tojar Tabto (4/13/08-4/12/12)

Bikini and Kili Community Court Presiding Judge (vacant)

Ebon Community Court Presiding Judge Aaron Silk (7/9/08-7/8/12)

Enewetak and Ujelang Community Court Presiding Judge (vacant)

Jabat Community Court Presiding Judge Tari Jamodre (4/13/08-4/12/12)

Jaluit Community Court Associate Judge (vacant)

Jaluit Community Court Associate Judge Lee Jabuwe (1/8/06-1/7/11)

Lae Community Court Presiding Judge John Braine (1/6/09-1/5/13)

Lib Community Court Presiding Judge (vacant)

Likiep Community Court Presiding Judge Ambros Capelle (10/1/07-9/30/11)

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 (4/13/08-4/12/12)

Mili Community Court Presiding Judge Michael Anmontha (7/9/08-7/8/12)

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)
Utrik Community Court Presiding Judge Enja Attari (12/19/08-12/18/12)
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 Filimon Manoni, Member
Maria K. Fowler, Member Representing the Public

Staff

Chief Clerk of the Courts Walter K. Elbon
Deputy Chief Clerk of the Courts Ingrid K. Kabua
Assistant Clerk of the Courts Sepe Joash
Assistant Clerk of the Courts Armen Bolkeim (Ebeye)
Assistant Clerk of the Courts Travis Joe
Assistant Clerk of the Courts Hainrick Moore
Assistant Clerk of the Courts Nikki Holly
Assistant Clerk of the Courts Sylvia Anuntak
Staff Attorney Arsima Muller (through October 2008)
Bailiff Johnny Antolok, Captain
Bailiff Jukku Benjamin, Sergeant
Bailiff Valentin Boon, Police Officer III
Maintenance Langmeto Peter