FOR PUBLICATION

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

PEOPLE OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS ex rel., ACTING ATTORNEY GENERAL CLYDE LEMONS, JR., Plaintiff, v. RICARDO S. ATALIG, Defendant.	**CIVIL CASE NO. 03-0396B** **ORDER DENYING WRIT OF QUO WARRANTO AND DISMISSING COUNTERCLAIM**

The Plaintiff (hereinafter properly referred to as "Petitioner") brings a motion for Complaint for Relief in *Quo Warranto*. The Defendant (hereinafter properly referred to as "Respondent") opposes the motion and brings a Counterclaim for Declaratory Judgment.

This matter, by its very nature, is highly political and comes with a general election around the corner and business at the Commonwealth Senate at a standstill. The parties have raised interesting and novel legal theories. After carefully considering the pleadings, the testimony of witnesses and the arguments of counsel at the hearing, the Court is prepared to rule.

BACKGROUND

The Attorney General's Office, by way of Acting Attorney General Clyde Lemons, brings this action in quo warranto to oust Ricardo S. Atalig, a duly elected Senator from Rota in the Senate of the Commonwealth of the Northern Mariana Islands, from his office because of his conviction of felonies in United States District Court of the Northern Mariana Islands.[1] Petitioner requests the Court declare, by operation of 1 CMC § 7851, the Respondent cannot retain office as a Senator of the First Senatorial District.

[1] United States of America v. Ricardo S. Atalig, CR-02-00027-01. Judgment and sentence entered 8/14/03. Sentenced to 63 months imprisonment.

DISCUSSION

I. QUO WARRANTO

A. The Writ of Quo Warranto

Quo warranto is an action that asks "by what authority" someone exercises the powers of a public office. Many states have statutes for the commencement of these actions. For example, in Arizona, the Attorney General "shall" bring a quo warranto action "when he has reason to believe that any such office . . . is being usurped, intruded into, or unlawfully held or exercised." *See* ARIZ. REV. STAT. 12-2041(B) (2003).

> When the [State's] attorney brings the [quo warranto] suit upon his own information . . . the only condition the law makes to his bringing the action is that he, as such officer, must legally believe that a public [] office has been usurped, intruded into, or is being unlawfully held. When he so believes, the law makes the bringing of the suit in the name of the state the officer's public duty.

Ariz. ex rel Hess v. Boehringer, 141 P. 126, 127 (Ariz. 1914). When a quo warranto action is filed on behalf of the people (rather than by a private individual who claims the office), the person being challenged bears the burden of proving the legitimacy of his or her claim to the title. "The general rule in a *quo warranto* proceeding is that the defendant must not only allege but he must prove by a preponderance of the evidence that he has title to the office." *Abbey v. Green*, 235 P. 150, 153 (Ariz. 1925).

This is the second quo warranto case to be filed in the Commonwealth,[2] clearly demonstrating that

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[2] The first quo warranto case filed in the Commonwealth was *Mafnas v. Commonwealth*, 2 N.M.I 248 (1991), *Mafnas v. Commonwealth*, Civ. No. 89-1110 (N.M.I. Super. Ct. Apr. 30, 1990) ([Unpublished order] Order of Dismissal of Petitioner's Second Amended Petition).

An action in quo warranto was brought to "test the title" of Presiding Judge Robert A. Hefner of the Superior Court. The Superior Court opinion concluded with the decision that only the Attorney General could bring an action in quo warranto and Mafnas' case was dismissed. On appeal, the Supreme Court reversed, holding that a private citizen could bring such an action and then decided the merits of the case and found that Hefner was the legally appointed Presiding Judge.

Mafnas was a private citizen who challenged Hefner's right to hold the office of Presiding Judge. Hefner had been holding the position of Chief Judge of the Commonwealth Trial Court. In 1989, the Legislature enacted PL 6-25, the Commonwealth Judicial Reorganization Act of 1989. This Act abolished the role of "Chief Judge" replacing it with the term "Presiding Judge." Mafnas claimed that as a taxpayer he had the standing to bring the action of quo warranto because Hefner had neither been appointed nor confirmed to the office of Presiding Judge.

The Superior Court dismissed Mafnas' claim based on the reasoning that a "quo warranto proceeding can be maintained only by the government, it cannot be sustained when brought by a private individual without the authority of the government." *Mafnas v. Commonwealth*, Civ. No. 89-1110 (N.M.I. Super. Ct. Apr. 30, 1990) ([Unpublished order] Order of Dismissal of Petitioner's Second Amended Petition at 7). The Superior Court found that there was no enabling statutory legislation and held that it was bound by common law rules forbidding private action.

However, the Supreme Court reasoned that Article X, Section 9 of the NMI Constitution afforded the right of

it is not a common and often used remedy. However, a review of the applicable law confirms that it is a proper remedy and is properly before this Court.

The *Mafnas* court noted that sometimes a quo warranto action is "the exclusive means for trying title to public office." *Mafnas v. Commonwealth*, 2 N.M.I. 248, 258 (1991). However, the writ is "customarily denied if a petitioner has another remedy at law or in equity that is fully as convenient and effective." *Id.* (*citing* II C. ANTIEAU, THE PRACTICE OF EXTRAORDINARY REMEDIES §§ 4.10 (1987)).

The Court is mindful of the standard set forth by *Mafnas* that "it is the duty of the court to consider all the conditions, including immediate and remote consequences and to determine with a broad vision of the public weal whether on the whole the common interests demand the issuance of this extraordinary remedy." *Id.* (*citing* ANTIEAU § 4.13 (*quoting Attorney General v. City of Methuen*, 129 N.E. 662, 667 (Mass. 1921)). In the instant case, both parties admit in their pleadings that quo warranto is the proper procedure to bring under this set of circumstances.

B. Standing to Bring an Action in Quo Warranto

Ricardo S. Atalig, the Respondent in this action, questions whether the People of the Commonwealth can bring this action through Clyde Lemons, the Acting Attorney General. Respondent contends that since there is not a duly appointed and confirmed Attorney General in the Commonwealth at this time, Mr. Lemons lacks the standing to bring an action in quo warranto against him. Respondent's argument relies on the reasoning set forth in *Demapan v Kara*, Civ. No. 99-0548 (N.M.I. Super. Ct. Jan. 20, 2000) (Decision and Order). Respondent's reliance is misplaced.

This Court has found that "[u]nder common law, quo warranto proceedings are brought by the attorney general or prosecuting attorney on behalf of the government or at the relation of a private person." *Mafnas*, 2 N.M.I. at 258 (*citing* ANTIEAU §§ 4.15-4.16). Mr. Atalig is correct in arguing that the typical quo warranto case is usually brought by the Attorney General's office of a state and often by the Attorney

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Mafnas as a taxpayer to seek the writ. The Supreme Court went on to hold that Hefner was legitimately holding the position of Presiding Judge and there was no need for the Governor to appoint him and for the Senate to confirm him to the renamed office. *Mafnas*, 2 N.M.I. at 268).

This Court is troubled by the fact that the Attorney General's Office was the entity representing Hefner at all stages of the litigation. This Court notes that the Attorney General's office wrongly defended Hefner. Even if the AG's office chose not to prosecute the case, it is not the proper entity to "defend" quo warranto cases, anymore than it could choose to defend an occasional criminal case.

General personally. However, the same proceeding could properly be brought by a Deputy or Assistant Attorney General. Indeed, the CNMI Supreme Court held in *Mafnas* that even a citizen could bring an action in the nature of quo warranto. *Id.* The *Mafnas* court reasoned that standing in a quo warranto action "is not a rigid or dogmatic rule but one that must be applied with some view to realities as well as practicalities. Standing should not be construed narrowly or restrictively." *Id.* at 261 (*citing Washakie County Sch. Dist. No 1 v. Herschler*, 606 P.2d 310, 317 (Wyo. 1980)).

In this case, the action is brought by a duly hired Assistant Attorney General, acting on behalf of the *People* of the Commonwealth through *the People's* Attorney General's office. This Court finds that the important factor in this quo warranto proceeding is that it is brought against Mr. Atalig by the Office of the Attorney General. Clyde Lemons, at this moment, is the closest the Commonwealth has to a legitimate Attorney General and is, therefore, a fit and proper person to institute this action.

C. Mootness of Quo Warranto Action

The next issue before the Court is whether Respondent's May 11 and August 13 letters of resignation (Pet.'s Exhibits B and C, respectively) render this matter moot. "[A] case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Powell v. McCormack*, 395 U.S. 486, 496, 89 S. Ct. 1944, 1951, 23 L. Ed. 2d 491, 496 (1969). In the context of this case, the Court must look to whether one or both of Respondent's resignation letters *automatically* end his stay in office. If so, there is no issue before the Court, since Respondent would no longer be a senator.

Here, this is not the case. Respondent's resignation letters both come with conditions. His May 11 resignation letter has the condition that it not take effect until October 1, or until his successor is chosen. His August 13 resignation letter, which rescinds his May 11 resignation, has the condition that it not be effective until a special election is called by the Governor and his successor is qualified to hold office. Respondent maintains that although he has, in fact, resigned, his resignation is not yet effective. The Attorney General's office maintains that a special election cannot be called until the office is vacant and the

office cannot be vacant until Respondent unequivocally resigns[3].

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[3] It should be noted that Respondent has stated under oath that he would be "happy" if the Governor did call a special election and he would do nothing to oppose such a special election. The following colloquy took place between the Court and Mr. Atalig at the Order to Show Cause hearing on August 22, 2003 at 9:00 a.m.

The Court: I have some questions for you Senator Atalig. I bet you're absolutely sick of seeing the inside of a courtroom, aren't you?

Mr. Atalig: It looks like this is my second trial.

The Court: Are you tired of being in court?

Mr. Atalig: Yes sir.

The Court Do you feel a little bit better now that you have had a chance to get your story out for a change as to what happened?

Mr. Atalig Yes, I think so.

The Court Do you realize that many of the things that you did were illegal under the law? Both local and federal law?

Mr. Atalig: Yes sir. I did not seek legal opinion and this is...

The Court Alright, but as you look back on it now, you know that you committed some illegal acts and now you are facing a terrible punishment for it, aren't you?

Mr. Atalig: That's right.

The Court: Sixty three months, which is a long time. And, do you sometimes kind of feel like saying, why me, why me? This kind of stuff has been going on forever in the Commonwealth of the Northern Mariana Islands, hasn't it?

Mr. Atalig: That's correct.

The Court: Not only in Rota and Tinian, but also Saipan?

Mr. Atalig: That's correct.

The Court: That when people take office, they're expected to hire relatives, they're expected to hire those that turned out the vote for them and then kind of turn a blind eye as to whether these people even show up for the job, whether they even perform the job. Right? It's kind of like the culture of the CNMI, isn't it?

Mr. Atalig: That's correct.

The Court: And yet, you, who were basically following the culture, are now going to go to jail, sixty three months, in a federal prison, right?

Mr. Atalig: Right.

The Court: And that must bother you, doesn't it? It makes you angry sometimes, doesn't it?

Mr. Atalig: Of course.

The Court: And it also makes you sad sometimes.

Mr. Atalig: A mixture of everything.

The Court: Right. And on top of it, we have this hearing where the Attorney General's Office is now trying to, is now asking me to make a judgment of ouster and basically kick you out of the office. Let me ask you a question: If today, at 4 o'clock, the Governor of the Northern Mariana Islands declared that there was a vacancy for your senate seat in Rota and called for a special election, would that bother you? Would you be upset by that or would you be happy by that?

Mr. Atalig: I will be happy for the Governor to declare a special election.

The Court: But by him declaring a vacancy, he's actually saying that you're no longer a senator. Would that upset you? Or would you, once again, be happy that somebody has done something and it has finally ended.

Mr. Atalig: I think, I will be happy. More than happy to see that happens.

Mr. Atalig indicates that he would be happy and relieved if the Governor called a special election. It appears highly doubtful that a special election would be contested, so it may be appropriate for the Governor to call such an election and not be dissuaded by Mr. Atalig's conditional resignations.

The Court firmly believes that Mr. Atalig was quite honest in his responses to the Court's questions. What is most

This Court is respectful of the doctrine of separation of powers, see discussion *infra*, and will not determine for the legislative branch of government when a resignation letter takes effect. Similarly, it cannot rule on whether such letter can be accepted, when it can be acted upon and whether conditions can be attached to a resignation. Although it is arguable that a court may properly address such matters in an ordinary civil case, the doctrine of separation of powers mandates that one branch of government will not interfere in the basic workings of another. Matters dealing with the resignation of a member of the legislature must be dealt with by that branch alone, even if such matters leave an impasse in the conduct of the People's business because of political infighting and stalemates.

The Court concludes that Respondent's letters of resignation are not unequivocal. Therefore, for the purposes of this quo warranto matter, he has not resigned and this matter is not moot in determining whether he can be ousted from office.

II. OUSTING MR. ATALIG FROM OFFICE

A. Separation of Powers

In order to answer the question, whether this Court will oust Mr. Atalig from office, it is necessary

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disconcerting is his belief that the hiring of ghost employees, unqualified employees who qualify only because they supplied a candidate a meaningful number of votes and employees who don't perform an honest day's work is part of the "culture" of the Northern Mariana Islands. Culture can mean many things, but it is doubtful that Mr. Atalig means the Chamorro and Carolinian cultures that date back hundreds of years. What Mr. Atalig apparently means is a political culture that dates back only twenty-five years and seems to have been remarkably cultivated by the CNMI's first and second generation of politicians. It remains to be seen in these times of economic woes if this "something for nothing" government job culture is tolerated by the present generation or the next one.

It should be noted that during the hearing, testimony was given by the Public Auditor and a former Attorney General that the CNMI lacks the necessary statutes to stamp out corruption and that is why prosecution is left to the federal government, as in Mr. Atalig's case. They cite the lack of serious punishment in the Government Ethics Code Act of 1992, 1 CMC §§ 8501, *et. seq.,* implying that it is the Commonwealth's only "corruption" statute. Although new statutes geared towards fighting corruption in government could be useful, the Court notes that there are currently misconduct in Public Office and theft statutes on the books. (6 CMC § 3202 and 6 CMC §§ 1601, *et. seq.*, respectively.) Mr. Atalig, Mr. Dela Cruz and others could have easily been prosecuted on multiple counts under local laws. Their cases did not involve federal funds.

What is missing is the *political will* to prosecute anyone significant for doing the things that Mr. Atalig refers to as the "culture". Although there have been a handful of local misconduct in office prosecutions in the history of the Commonwealth, none have involved elected officials, former elected or appointed officials or persons holding high government positions. Even though the Public Auditor testified that there is a room full of boxes of investigated cases involving government corruption (possibly more serious than Mr. Atalig's crime) at his office, there will be no rush to prosecute by the Office of Attorney General. Instead, it will be left up to the federal authorities to prosecute. Until a fearless Attorney General (most likely, elected) files charges against an elected official like Mr. Atalig or a higher-up in a past or present administration under Commonwealth law, this state of affairs may continue long enough for it truly to become part of the "culture".

to begin the analysis with a look at separation of powers in a republican form of government, such as the CNMI's. One of the fundamental principles of the American constitutional system is that governmental powers are divided among the three branches of government – the legislative, executive and judicial branches. This principle, which is called separation of powers, allocates legislative powers to the legislature, executive powers to the executive branch and judicial powers go to the judicial branch.

The constitutional restraints are overstepped where one department of government attempts to exercise powers exclusively delegated to another. Thus, courts are hesitant, because of respect for this basic concept of separation of powers, to intervene in the internal affairs of the legislature as a coordinate branch of government, since it is not the province of the courts to direct the legislature how to do its work. 16A AM. JUR. 2D *Constitutional Law* § 388 (1979).

For example, in *Lee v. Lancaster*, 262 So. 2d 124, 125 (La. Ct. App. 1972), a Louisiana appellate court held that where the constitutional article providing that each House shall be the judge of the qualifications of its own members is applicable, as in the case of general election contest, the courts have no jurisdiction. The overwhelming weight of opinions in U.S. courts agree that the discipline and removal of a legislator is within the sole province of the body in which that legislator serves as a member. *See generally, French v. Senate of State of Cal.*, 80 P. 1031 (Cal. 1905); *Fla. ex rel. Rigby v. Junkin*, 1 So. 2d 177 (Fld. 1941); *English v. Bryant*, 152 So. 2d 167 (Fla.1963); *Raney v. Stovall*, 361 S.W.2d 518 (Ky.1962); *Wixson v. Green*, 521 P.2d 817 (Okla.1974); and *Reaves v. Jones*, 515 S.W.2d 201 (Ark.1974).

Further, in *In re Opinion of the Justices*, 47 So. 2d 586 (Ala.1960), the Alabama Supreme Court declared that there was nothing in its Constitution which conferred either original or appellate jurisdiction on the Supreme Court, or any other court, to determine questions relating to the procedure for removing a state senator from office or declaring the office vacant.

One of the basic powers of the legislative branch of government is its power to expel, suspend and discipline its own members. The California Supreme court reasoned that the inherent capacity of a legislative body to control its own proceedings is so basic that "if this [express state constitutional] provision were omitted, and there were no other constitutional limitations on the power, the power would nevertheless exist, and could be exercised by a majority." French, 80 P. at 1032. Because senators and

representatives are elected by the people in periodic elections and it is the *will* of the people to choose *their* elected representatives for a specified period of time, this Court cannot and will not expel a member of the legislature unless it is permitted pursuant to the CNMI Constitution or a properly written statute.

B. Forfeiture of Office

Respondent argues that the only, and exclusive, way a member of the Commonwealth Senate can be expelled is pursuant to the N.M.I. Constitution. He argues that under the Constitution, there are two ways to force a senator to vacate his office: one way is pursuant to Article II, Section 14(a), which allows the Senate to expel its own members by the affirmative vote of three-fourths of its members. This has been tried in Respondent's case and has not been successful. The other method is by way of a petition for recall and vote pursuant to Article IX Section 3. Petitioner argues that there is one more way that a member of the Senate may be expelled -- by way of a forfeiture or expulsion statute.

The Government of the CNMI, through its Attorney General's office, advises this Court that the Commonwealth has such a forfeiture statute and it is found at 1 CMC § 7851. This statute states: "[a]ny person who is convicted under a prosecution pursuant to 1 CMC§ 7847 shall be prohibited from working for the government of the Commonwealth for a period of 10 years from the date of conviction of a crime."[4] Section 7851 is triggered by action from the Public Auditor. The Commonwealth Auditing Act of 1983, 1 CMC §§ 7811, *et seq.*, established the Office of Public Auditor and created a statutory framework for a myriad of functions to be performed by that office. Years later, in 1994, Public Law 9-68, codified as 1 CMC § 7851, was passed, ostensibly to punish government workers who were convicted of felonies, by prohibiting them from working for the government for a period of ten years from the date of conviction. Although expelling elected representatives is not mentioned anywhere in the Commonwealth Auditing Act, as amended, the Attorney General's office argues, straight-faced, that the plain meaning of this statute

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[4] Section 7847 of Title 1 of the Commonwealth Code states:

(a) In carrying out his or her duties, the Public Auditor shall report to the Attorney General whenever the Public Auditor has reasonable grounds to believe there has been violations of either federal or Commonwealth criminal law. The Attorney General may institute further proceedings.

(b) If the Public Auditor has reasonable grounds to believe the Governor or Attorney General has violated federal or Commonwealth criminal law, the Public Auditor may use the legal counsel for the office of the Public Auditor or retain special counsel who shall serve as an assistant attorney general for the purposes of investigating and prosecuting, if necessary, the criminal law violations.

means that Ricardo S. Atalig must be expelled from his office as senator because he was convicted of federal crimes.

A forfeiture (of office) statute provides that an elected representative will lose his right to hold office if he is convicted of a felony. As stated, *supra*, the principle of separation of powers will not allow the judicial branch of government to interfere in the workings of the legislative branch of government unless it is done pursuant to an appropriate statute. An appropriate statute is one that very specifically mentions elected legislative (and other) officials and clearly defines the reasons and procedures for forfeiture and expulsion from office. An example of a well-written forfeiture statute is one from the State of New Jersey.[5]

When this so-called CNMI "forfeiture of office" statute is compared to forfeiture statues in other

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[5] The following is excerpted from The New Jersey Code of Criminal Justice:

> a. A person holding any public office, position, or employment, elective or appointive, under the government of this State or any agency or political subdivision thereof, who is convicted of an offense shall forfeit such office or position if:
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> (1) He is convicted under the laws of this State of an offense involving dishonesty or of a crime of the third degree or above or under the laws of another state or of the United States of an offense or a crime which, if committed in this State, would be such an offense or crime;
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> (2) He is convicted of an offense involving or touching such office, position or employment; or
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> (3) The Constitution or a statute other than the code so provides.
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> b. A court of this State shall enter an order of forfeiture pursuant to subsection a.:
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> (1) Immediately upon a finding of guilt by the trier of fact or a plea of guilty entered in any court of this State unless the court, for good cause shown, orders a stay of such forfeiture pending a hearing on the merits at the time of sentencing; or
>
> (2) Upon application of the county prosecutor or the Attorney General, when the forfeiture is based upon a conviction of an offense under the laws of another state or of the United States. An order of forfeiture pursuant to this paragraph shall be deemed to have taken effect on the date the person was found guilty by the trier of fact or pled guilty to the offense.
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> c. No court shall grant a stay of an order of forfeiture pending appeal of a conviction or forfeiture order unless the court is clearly convinced that there is a substantial likelihood of success on the merits. If the conviction be reversed or the order of forfeiture be overturned, he shall be restored, if feasible, to his office, position or employment with all the rights, emoluments and salary thereof from the date of forfeiture.
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> . . . .
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> g. In any case in which the issue of forfeiture is not raised in a court of this State at the time of a finding of guilt, entry of guilty plea or sentencing, a forfeiture of public office, position or employment required by this section may be ordered by a court of this State upon application of the county prosecutor or the Attorney General or upon application of the public officer or public entity having authority to remove the person convicted from his public office, position or employment. The fact that a court has declined to order forfeiture shall not preclude the public officer or public entity having authority to remove the person convicted from seeking to remove or suspend the person from his office, position or employment on the ground that the conduct giving rise to the conviction demonstrates that the person is unfit to hold the office, position or employment.

N.J. REV. STAT. § 2C:51-2 (2003).

states,[6] and when one keeps in mind the fundamental principle of separation of powers, it is not only a stretch of the imagination to think that this statute can be used to oust an elected representative -- it is a fantasy.

Section 7851 of Title 1 of the Commonwealth Code does not contain the words, "office," "forfeiture" or "expulsion," which are key words found in statutes dealing with elected representatives in other states. In fact, the statute does not mention elected officials or eviction from office. The statute does contain the phrase, "working for the government," and it could be argued that anyone (including a legislator, the governor, lt. governor or a judge) who receives a government paycheck every two weeks, is "working for the government." However, given the fundamental separation of powers issues involved here, to imply that it should apply to elected officials like Ricardo S. Atalig and that he should be ousted from office by this Court is overreaching. Ricardo S. Atalig was elected three times as Senator from Rota, in open and honest elections. He is more than an employee "working for the government"- he is a duly elected Senator and if he is to be expelled, the forfeiture statute must specifically mention his office and his status. Although this Court is of the opinion that Mr. Atalig should forfeit his office, 1 CMC § 7851 falls woefully short of being the kind of forfeiture statute required to oust a duly elected senator by judicial fiat. To interpret this statute as a method and means of expelling a senator is to ride roughshod over the rights of a coequal branch of government. Section 7851 simply does not give the court the power to expel a senator.[7]

The Court will not decide, at this time, whether the N.M.I. Constitution is the exclusive and only way of expelling a senator who has been convicted of a felony.

III. THE RESPONDENT'S COUNTERCLAIM

The Respondent has filed a counterclaim seeking a declaratory judgment against the suspension of Senator Atalig. The writ of quo warranto is considered an extraordinary writ. As such, it is in the same league as other extraordinary writs such as certiorari, mandamus, prohibition, and habeas corpus. A response to an extraordinary writ frequently is unnecessary. If a Respondent is ordered to file a response,

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[6] *See generally*, MO. REV. STAT. § 561.021 (2002); R.I. GEN. LAWS § 13-6-2.1 (2002); KAN. STAT. ANN. § 60-1205 (2002); HAW. REV. STAT. § 831-2 (2002); AND NEV. REV. STAT. § 197.230 (2002).

[7] At most, as written, 1 CMC § 7851 arguably could be used to keep Mr. Atalig from obtaining further government employment once he leaves office.

it may make arguments both as to the merits of the case and in opposition to jurisdiction, i.e., that the court's discretionary jurisdiction should not be exercised because the case is not appropriate for the issuance of an extraordinary writ. FLORIDA APPELLATE PRACTICE § 18.13 (1998). Here, the Respondent's answer is a sufficient response to a petition for a writ of quo warranto. However, the arguments of Respondent's counterclaim are improper to bring in this quo warranto action. Therefore, the Court will not address the merits of the counterclaim.

CONCLUSION

Based on the forgoing, the Office of the Attorney General's writ of quo warranto is **DENIED** and a judgment of ouster will not be granted. The Respondent's counterclaim for declaratory judgment is **DISMISSED.**

SO ORDERED this 2nd day of October 2003.

/s/
KENNETH L. GOVENDO, Associate Judge