## Northern Mariana Islands Representative to the United States, Froilan C. TENORIO vs. COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS and Governor Pedro P. TENORIO

Appellate No. 84-9015 District Court NMI Appellate Division

Decided June 13, 1986

## 1. Constitution (NMI) - Office of the Representative

The Office of the Representative to the United States is an independent constitutional office which does not fall neatly within any of the three traditional branches of government; however, it is not a fourth branch of government.

## 2. Constitution (NMI) - Executive

The functions of the liaison offices in Guam and Hawaii are more akin to the administrative and executive functions of the Governor's office than they are to the offices of the Washington Representative and therefore are appropriately placed under the control of the Governor.

## 3. Constitution (NMI) - Office of the Representative

The Legislature has the authority pursuant to the NMI Constitution to prescribe the duties of the Representative to the United States; accordingly, its action removing from the Representative control over the liaison offices which it had previously given are constitutional. NMI Constitution, Art. V, §1.

	FILED Clerk District Court
1	UNITES STATES DISTRICT COURT JUN 13 1986
2	FOR THE JUN 13 500 NORTHERN MARIANA ISLANDS For The Northeny Mariana Islands
3	APPELLATE DIVISION
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5	NORTHERN MARIANA ISLANDS ) DCA NO. 84-9015
6	REPRESENTATIVE TO THE UNITED ) STATES, FROILAN C. TENORIO, )
7	Plaintiff-Appellant,
8	vs. <u>OPINION</u>
9	COMMONWEALTH OF THE NORTHERN ) MARIANA ISLANDS and GOVERNOR )
10	PEDRO P. TENORIO,
11	Defendants-Appellees.
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21	BEFORE: Judges LAURETA, DUENAS and REAL*, District Judges
22	LAURETA, District Judge:
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25	*Honorable Manuel L. Real, Chief Judge, United States District
26	Court, Central District of California, sitting by designation.

1 Froilan C. Tenorio, the Representative to the United 2 States for the Commonwealth of the Northern Mariana Islands 3 (CNMI), brought this action against the Governor of the CNMI and the CNMI seeking to have Public Law 3-92 (P.L. 3-92) declared 5 unconstitutional because its effect was to legislatively strip 6 his office of constitutionally delegated power in derogation of 7 the principle of separation of powers. The Commonwealth Trial 8 Court granted the Government's motion for summary judgment. The 9 question presented by this appeal is whether P.L. 3-92, which 10 vests authority over the Marianas/Guam and Marianas/Hawaii 11 liaison offices in the Governor's office, violates the separation 12 of powers doctrine and is therefore unconstitutional. For the 13 following reasons we answer no to this question and accordingly 14 we affirm.

Section 901 of the Covenant to Establish a Commonwealth 15 of the Northern Mariana Islands in Political Union with the 16 United States (Covenant) states that the "constitution or laws of 17 the Northern Mariana Islands may provide for the appointment or 18 election of a Resident Representative to the United States." 19 This position is set out in Article V, §1, of the Constitution of 20 the Commonwealth of the Northern Mariana Islands (CNMI Constitu-21 tion). 22

23 The First Northern Marianas Commonwealth Legislature 24 enacted Public Law 1-1 in January, 1978, which implemented 25 Article V of the Constitution and appropriated funds for the 26 Office of the Representative to the United States (Representa-

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tive). Public Law 1-38, enacted in September, 1979, established the Marianas/Hawaii Liaison Office and placed it under the direct supervision of the Representative. Appropriations for that office were allotted to the Representative.

In October, 1980, the Marianas/Guam Liaison Office was established by Executive Order No. 19 issued by the Governor. This order set up the Marianas/Guam Liaison Office within the Office of the Governor. Funding for this office was provided in Public Law 3-9 which appropriated funds for the Guam office to Representative's Office. Because of the the apparent inconsistency between Executive Order No. 19 and P.L. 3-9 the Governor and the Representative entered into a "Memorandum of Understanding" in August, 1982, in which the parties agreed that the Guam office would be under the control of the Governor.

In the November, 1983 general election appellant defeated the incumbent Representative. Prior to his taking office, P.L. 3-92 was enacted. This law placed the Hawaii and Guam liaison offices within the Office of the Governor providing that the officers for these offices would be appointed by the Governor and function under his direct supervision and control. This law further provided that funding for these offices would be appropriated through the Governor's office. P.L. 3-92 specifically repealed P.L. 1-1 and P.L. 1-38 and vacated Executive Order No. 19.

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Article V, §1 of the CNMI Constitution states that: A representative to the United States shall be elected to represent the Commonwealth in the United States and to perform those related duties provided by law. The governor shall provide a certification of selection promptly to the United States Department of State and to the representative.

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Appellant interprets this section as creating a separate and independent branch of government and argues that the legislature violated the doctrine of separation of powers when it enacted P.L. 3-92 stripping his office of its constitutionally delegated power. The trial court summarily dismissed this theory.

[1] The CNMI Constitution sets up three branches of govern-10 11 ment: the Legislative Branch, Article II, the Executive Branch, Article III, and the Judicial Branch, Article IV. The Constitu-12 tion does not support appellant's conclusion that the Representa-13 tive is the fourth branch of Government. The Constitution does 14 not specifically delineate which branch of government the 15 Representative falls under. He does not have authority to 16 legislate nor does he involve himself directly with CNMI 17 legislation. Certainly, he does not function as a judicial 18 He does not execute the laws as do members of the 19 officer. executive branch. His purpose is to represent the Commonwealth 20 in its relations with the United States. We view the Represente-21 tive's office as an independent constitutional office which does 22 not fall neatly within any of the three traditional branches of 23 government, but this does not mean that it is a fourth branch. 24

are strictly related to assisting the Governor in such matters as

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medical referrals and student assistance and providing other governmental services in Hawaii and Guam." $^{1/}$  Described in this manner, the functions of the liaison offices are more akin to the administrative and executive functions of the Governor's office than they are to the offices of the Washington Representative.

[3] Article V, §1 of the Constitution which sets out the office of the Representative to the United States states that he or she shall perform those duties as "provided by law." This section specifically authorizes the legislature to set out the duties of the Representative's office. Initially, the legislature placed the Marienas/Hawaii office and the funding for the Marianas/Guam office under the control of the Representative's office. It clearly had the power to subsequently remove this authority, which it did, and there is no constitutional infirmity in that act.

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JUDGE ALFRED LAURETA
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JUDGE CRISTOBAL S. DUENAS
JUDGE MANUEL L. REAL

17 Trial Court opinion, p. 10, Record, p.13.

For these reasons we affirm.