

RESOLUTION A

GUAM BAR ASSOCIATION

RESOLUTION RELATIVE TO SUPPORTING EQUAL RIGHTS AND THE EXTENSION OF CIVIL RIGHTS TO THOSE LIVING IN GUAM AND THE OTHER TERRITORIES

Introduced By:

Jordan Lawrence Pauluhn
Jacqueline Taitano Terlaje

Approved as Amended
by Vote on March 19, 2024
GBA Annual Meeting

Whereas, Guam was colonized by the United States in 1898 following the Spanish-American War and has remained a territory of the United States ever since.

Whereas, in 1950, the Organic Act of Guam finally extended the right of U.S. citizenship to the residents of Guam, providing them with certain rights and privileges as American citizens.

Whereas, even after the provision of U.S. citizenship to the native inhabitants and other residents of Guam, the United States did not give equal civil rights to the residents of Guam.

Whereas, individuals living in Guam are unable to vote for President and lack voting representation in both chambers of the United States Congress, while individuals living outside of the United States are granted the right to vote in federal elections.

Whereas, other U.S. territories—including Puerto Rico, CNMI, American Samoa, and the U.S. Virgin Islands—also stand in a marginalized status under the laws of the United States.

Whereas, the United States Supreme Court formalized the second-class status of the territories when it announced its opinions in the Insular Cases including, *De Lima v. Bidwell*, 182 U.S. 1 (1901); *Goetze v. United States*, 182 U.S. 221 (1901); *Dooley v. United States*, 182 U.S. 222 (1901); *Armstrong v. United States*, 182 U.S. 243 (1901); *Downes v. Bidwell*, 182 U.S. 244 (1901); and, *Huus v. New York and Porto Rico Steamship Co.*, 182 U.S. 392 (1901).

Whereas, in a concurring opinion in *United States v. Vaello Madero*, 596 U.S. 159 (2022), Justice Neil Gorsuch recognized that the Insular Cases “have no foundation in the Constitution and rest instead on racial stereotypes,” and “deserve no place in our law.”

Whereas, the rights in the U.S. Constitution have never been fully extending to those living in Guam and the territories.

Whereas, the American Bar Association (ABA) adopted Resolution 404 (revised) opposing the “territorial incorporation doctrine” established in the Insular Cases and demanding that the people living in U.S. territories be afforded the same rights, liberties, and protections as the people of the states.

Whereas, the lack of self-determination for those living in Guam and the other territories undermines the civil and human rights that must be extended to communities possessing inherent sovereignty and right to self-governance.

Whereas, the United States Virgin Islands Advisory Committee to the U.S. Commission on Civil Rights recently submitted a report entitled *The Status of Civil Rights in the U.S. Virgin Islands* in December 2023 recommending measures the U.S. Commission on Civil Rights should take to address some of the inequities faced by those living in the territories.

Whereas, the general population of the United States likely lacks awareness of the political status of U.S. Citizens living in Guam and the other territories.

Whereas, lawyers have a unique obligation to advance the causes of justice and advocate for the equality of all individuals under the law.

Whereas, the purposes of the Guam Bar Association are to improve the administration of justice and the standards of the legal profession, encourage higher and better education of its members, assist in the admission and discipline of its members and in the formulation and administration of measures to prevent the unauthorized practice of law, and assume such other responsibilities and duties as the Supreme Court of Guam may from time to time determine.

Whereas, consistent with its purposes, the Guam Bar Association seeks to acknowledge and help correct the historic marginalization of individuals from and living in Guam and the other territories.

Whereas, all U.S. citizens irrespective of their residence are entitled to equal rights to participate in the government and vote in elections for President and Congress.

Therefore, the Guam Bar Association resolves the following to support the extension of equal civil rights to those living in Guam and the other U.S. territories:

It is Resolved, the Guam Bar Association officially recognized that the marginalization of those living in Guam and the U.S. territories violates basic principles of self-determination and human and civil rights.

Be it Resolved, the Guam Bar Association supports ABA Resolution 404 (revised) including the provision urging Congress to enact legislation that provides the people of the United States territories the same rights, liberties, and protections as those afforded to the people of the states.

Be it Resolved, the Guam Bar Association supports the recommendations made by the United States Virgin Islands Advisory Committee to the U.S. Commission on Civil Rights in its report entitled *The Status of Civil Rights in the U.S. Virgin Islands*.

It is Further Resolved, the Guam Bar Association calls on the U.S. government and the Government of Guam to engage in discussions regarding Guam's political status and the lack of civil rights in the territories.

It is Further Resolved, the Guam Bar Association encourages its members to educate members of the general population of about the civil rights challenges facing the residents of Guam.

It is Further Resolved, the Guam Bar Association supports the implementation of the Constitution in full and the extension of all civil rights to Guam and its residents.

Be it Finally Resolved, a copy of this Resolution shall be posted on the Guam Bar Association website and disseminated to any relevant or interested stakeholder as directed by the Guam Bar Association Board of Governors.

So Resolved, this Nineteenth Day of March, in the year Two Thousand and Twenty Four.

RESOLUTION B

**RESOLUTION SUPPORTING AN EXEMPTION FOR INDIGENT
DEFENSE APPOINTMENTS DUE TO SENIOR ATTORNEY STATUS**

Submitted:

Stephen P. Hattori¹

Approved by Vote on March 19, 2024
GBA Annual Meeting

WHEREAS, the appointment of counsel in criminal cases is one of constitutional importance;

WHEREAS, qualified jurors are exempt from serving as jurors when they reach sixty-five years of age;

WHEREAS, when the Private Attorney Panel is exhausted and counsel must be appointed in criminal matters, the Courts appoint active bar members who reside in Guam to represent indigent defendants;

WHEREAS, an increasing number of attorneys who are in advanced years are seeking to wind down their practice and transfer to inactive membership to avoid appointment in criminal matters;

WHEREAS, Guam is facing a historic shortage of attorneys, one being exacerbated by the premature retirement of our more senior and experienced attorneys;

WHEREAS, other jurisdictions have exempted senior attorneys from appointment in criminal matters, including North Carolina, South Carolina and Puerto Rico;

¹ This proposed resolution was amended by the GBA Committee on Resolutions during its meeting on March 14, 2024.

WHEREAS, an exemption that can be claimed by the senior attorney would encourage such senior attorneys to remain active in the Bar and handling matters that would be handled by remaining attorneys;

WHEREAS, a voluntary exemption would slow the exodus of our senior attorneys thus providing experienced attorneys who can continue to practice and train younger attorneys.

NOW THEREFORE, BE IT RESOLVED, BY THE GUAM BAR ASSOCIATION ACTIVE MEMBERSHIP IN ATTENDANCE AT THE 2024 ANNUAL MEETING HELD ON MARCH 19, 2024:

1. That the Guam Bar Association recommends to the Judicial Council, the Courts of Guam, and the Standing Committee to Oversee the Private Attorney Panel that those attorneys who have reached the age of Sixty Eight (68) shall be exempt from future indigent defense appointments if the senior member requests the exemption;
2. That a paragraph (E) be added to the Miscellaneous Rules of the Superior Court 1.1.3(b)(3), which would read:

(E) Exemption for Senior Status:

Any GBA member aged Sixty Eight (68) or older shall be exempt from future indigent criminal appointments if that member requests the exemption. Any member claiming the exemption shall submit a written request to the Chief Justice notifying the Judiciary of Guam of the circumstances. This exemption applies to all potential indigent criminal appointments, whether on the PAP or a general lists of active GBA members otherwise subject to indigent criminal appointments.

AMENDED RESOLUTION C

**AMENDED RESOLUTION SUPPORTING REQUIREMENT
THAT ALL ACTIVE MEMBERS TO PARTICIPATE IN
INDIGENT DEFENSE APPOINTMENTS**

Submitted:

Jacqueline Taitano Terlaje

Approved as Amended
by Vote on March 19, 2024
GBA Annual Meeting
(Mar. 25, 2024 typographical edits by Board)

WHEREAS, the Courts of Guam have experienced a significant decrease in private panel attorneys serving as court-appointed counsel under the Miscellaneous Rules re: Indigent Defense;

WHEREAS, the Courts of Guam found it necessary to suspend appointment to the Private Attorney Panel by Promulgation Order 06-006-25 (Nov. 17, 2023) for the purpose of addressing the concerns over the strain imposed on the indigent appointment system, and has continued to appoint active members of the Guam Bar with certain exceptions to criminal cases;

WHEREAS, the Courts of Guam have granted exceptions to active members of the Guam Bar reducing the availability of appointments and increasing the appointments to many lawyers who have not engaged in criminal law practice for most of their careers;

WHEREAS, the Guam Bar has an unprecedented amount of attorneys in government service totaling 115 of its 274 members, many of whom do not perform any prosecutorial function, and whose appointment under the Indigent Defense Rule

would augment the aid necessary to ensure the protection of constitutional rights afforded to the citizens of Guam under the Organic Act of Guam;

WHEREAS, the Courts of Guam in consultation with the Presiding Judge of the Superior Court of Guam, the Board of Governors, and other members of the Guam Bar, identified 167 total lawyers from the active members of the Guam Bar, and has actively appointed from this list of lawyers since November 17, 2023;

WHEREAS, the Guam Bar has experienced an 11% shift from active to inactive membership between November 17, 2023 and January 1, 2024. The Board of Governors has been informed that the bulk of this shift is due to our senior attorneys concerns over the appointment of criminal matters to attorneys who have had little to no criminal law practice despite their more than fifty years of membership in the Guam Bar;

WHEREAS, as of January 1, 2024, following the period of annual registration, the Guam Bar active membership in the private sector has declined from 167 to 124, representing a nearly 16% decrease in attorneys available for appointment under the Indigent Defense Rule;

WHEREAS, the Guam Bar active membership who reside outside of Guam, represents 17% of the total active members, or 47 active members, as of January 1, 2024;

WHEREAS, the Board of Governors has received multiple complaints on the appointment process with many firms reporting more than ten (10) criminal appointment in less than a three (3) month period;

WHEREAS, the active members in private practice are unequivocally bearing the total burden of the Indigent Defense Rule, and their civil case management timelines are being impacted by the appointment of criminal matters to their dockets;

WHEREAS¹, the Courts of Guam pursuant to the Organic Act of Guam is the sole authority to govern attorneys and judicial ethics and the practice of law in Guam, including admission to practice and the conduct and discipline of persons admitted to practice law. 48 U.S.C.A. § 1424-1(a)(7).

NOW THEREFORE, BE IT RESOLVED, BY THE GUAM BAR ASSOCIATION ACTIVE MEMBERSHIP IN ATTENDANCE AT THE 2024 ANNUAL MEETING HELD ON MARCH 19, 2024:

That the Guam Bar Association strongly recommends to the Courts of Guam that all active lawyers licensed in Guam and who reside in Guam², who do not have a conflict of interest, should be equally appointed under the Indigent Defense Rules.

That the Guam Bar Association recommends to the Courts of Guam that equal appointment under the Indigent Defense Rules and/or Rules of Admission, should require that government attorneys in Guam, who do not perform any prosecutorial function and/or currently work for one of the public defense entities, should equally be appointed under the Indigent Defense Rules.

That the Guam Bar Association recommends to the Courts of Guam that the equal application of the Indigent Defense Rules to all active members is necessary to avoid an unequal burden on private attorneys.

¹ Original version contained “WHEREAS,” and the Board of Directors edited Amended Resolution C by unanimous consent based upon agreement that this was a typographical error.

²Original version contained “and who do not reside in Guam,” and the Board of Directors edited Amended Resolution C by unanimous consent based upon agreement that the intention of the membership based upon the oral motion at the Annual Meeting was to exclude from criminal appointments all active attorneys who do not reside in Guam.

That the Guam Bar Association further recommends that upon the adoption of any rule equally applying the Indigent Defense Rules to all active members, that such rule also require that every attorney appointed under the rules, with the aid and assistance of its applicable entity, whether private or public, seek payment and/or reimbursement under the court appointment rules to recover all amounts due under the Indigent Defense Rules for each appointment.