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A BILL FOR AN ACT

To further amend title 12 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-22 and 5-23, for the purpose of adding a new chapter 16 to establish procedures for the appointment and compensation of counsel in criminal cases in which the FSM Public Defender is not able to act due to a conflict, to appropriate the sum of \$20,000 for such compensation, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. Title 12 of the Code of the Federated States of
2 Micronesia is hereby further amended by adding a new section 1601 of
3 chapter 16 to read as follows:

4 "Section 1601. Conflict of Counsel.

5 (1) Multiple Defendants. In all criminal cases
6 having multiple defendants charged or joined in a single
7 information, the court having jurisdiction over the
8 criminal action shall inquire as to whether the defendants
9 have interests that cannot be properly represented by the
10 same counsel, and if the court determines the defendants
11 cannot be properly represented by the same counsel, then
12 the court shall by order appoint separate counsel for each
13 such defendant.

14 (2) Conflict of Interest. If the FSM Public Defender
15 is representing a defendant and files a motion and supporting
16 affidavit that allege facts demonstrating that a conflict
17 of interest exists pursuant to the applicable rules of
18 Professional Responsibility or applicable custom, the
19 trial court having jurisdiction over the criminal action,
20 if satisfied that a conflict exists, shall by order appoint
21 another counsel for the defendant."

22 Section 2. Title 12 of the Code of the Federated States of
23 Micronesia is hereby further amended by adding a new section
24 1602 of chapter 16 to read as follows:

25 "Section 1602. Selection of Counsel. Counsel appointed by

1 court order to represent a criminal defendant pursuant to
2 section 1601 of this chapter shall be selected by the
3 appointing court from a panel of attorneys and trial
4 counselors designated or approved by the court that has
5 jurisdiction over the particular criminal action."

6 Section 3. Title 12 of the Code of the Federated States of
7 Micronesia is hereby further amended by adding a new section 1603 of
8 chapter 16 to read as follows:

9 "Section 1603. Duration of Appointment. A defendant for
10 whom counsel is appointed pursuant to this chapter shall be
11 represented at every stage of the proceedings against him,
12 from his initial appearance before the court having
13 jurisdiction through appeal, including ancillary matters
14 appropriate to the proceedings. The court may in the
15 interest of justice substitute one appointed counsel for
16 another at any stage of the proceedings."

17 Section 4. Title 12 of the Code of the Federated States of
18 Micronesia is hereby further amended by adding a new section 1604 of
19 chapter 16 to read as follows:

20 "Section 1604. Payment for Representation.
21 (1) Hourly rate. Any attorney or trial counselor
22 appointed pursuant to this chapter shall, at the conclusion
23 of the representation or any segment thereof, be
24 compensated for his representation of the defendant in
25 accordance with the following rates:

1 (a) Misdemeanors - At a rate not to exceed \$15 per
2 hour for time expended in court and \$10 per hour for time
3 reasonably expended out of court; and

4 (b) Felonies - At a rate not to exceed \$30 per
5 hour for time expended in court and \$20 per hour for time
6 reasonably expended out of court.

7 (2) Reasonable expenses. Compensation may be
8 allowed for the reasonable cost of photocopying and other
9 associated expenses incurred in representing the defendant.
10 If the appointed counsel is required to travel to a State
11 other than his State of residence he shall be entitled to an
12 advance of reasonable travel expenses.

13 (3) Maximum amounts. For representation of a defendant
14 who is charged with one or more felony counts that carry a
15 maximum penalty of 10 years or more, the compensation paid
16 shall not exceed \$1,500; for representation of a defendant
17 charged with one or more felony counts that carry a maximum
18 penalty of less than 10 years, the compensation paid shall not
19 exceed \$1,000; and for representation of a defendant charged
20 with one or more misdemeanor charges, the compensation paid
21 shall not exceed \$250. For representation of a defendant in
22 an appellate proceeding the compensation shall not exceed
23 \$1,000 for all felonies and \$250 for all misdemeanors on each
24 appellate count. The limits on maximum compensation pre-
25 scribed in this section do not include reimbursement of

59,00

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1 reasonable expenses."

2 Section 5. Title 12 of the Code of the Federated States of Micro-
3 nesia is hereby further amended by adding a new section 1605 of chapter
4 16 to read as follows:

5 "Section 1605. Waving maximum amounts. Payment in excess of
6 any maximum amount prescribed in section 1604(3) of this
7 chapter may be made for extended or complex representation
8 whenever the court in which the representation was rendered
9 certifies that the amount of the excess payment is necessary
10 to provide fair compensation and the payment is approved by
11 the Chief Justice of the court having jurisdiction over the
12 case."

13 Section 6. Title 12 of the Code of the Federated States of Micro-
14 nesia is hereby further amended by adding a new section 1606 of chapter
15 16 to read as follows:

16 "Section 1606. Filing claims. A separate claim for
17 compensation and reimbursement shall be made to the trial
18 court and to each appellate court before which the counsel
19 appointed pursuant to this chapter has represented the
20 defendant. Each claim shall be supported by a sworn written
21 statement specifying the time expended, services rendered and
22 expenses incurred while the case was pending before the court
23 having jurisdiction, and the compensation and reimbursement
24 applied for and received in the same case from any source.
25 The court having jurisdiction shall fix the compensation and

1 reimbursement to be paid by order."

2 Section 7. Title 12 of the Code of the Federated States of Micro-
3 nesia is hereby further amended by adding a new section 1607 of chapter
4 16 to read as follows:

5 "Section 1607. Criminal Defense Fund. There is hereby
6 created and established the Criminal Defense Fund, herein-
7 after referred to as the 'Fund,' separate from the General Fund
8 of the Federated States of Micronesia and all other funds.
9 The purpose of the Fund is to satisfy court orders fixing
10 compensation and reimbursement of appointed criminal counsel
11 pursuant to this chapter. Moneys for the Fund shall be
12 derived from appropriations by the Congress of the Federated
13 States of Micronesia and from any and all other appropriate
14 sources. The Fund shall be administered by the FSM Public
15 Defender in accordance with the provisions of this chapter
16 and all other applicable law. The Public Defender shall
17 report to the Congress of the Federated States of Micronesia
18 on the status of the Fund at least once each fiscal year.
19 Such report shall include at a minimum an audited financial
20 statement and recommendations on the need, if any, for
21 for additional appropriations."

22 Section 8. Title 12 of the Code of the Federated States of
23 Micronesia is hereby further amended by adding a new section 1608 of
24 chapter 16 to read as follows:

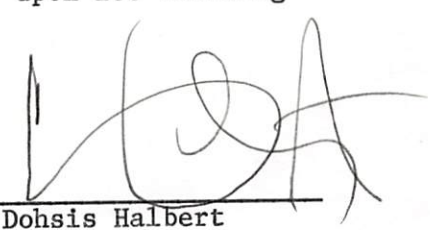
25 "Section 1608. Payment of claims. Court orders fixing

1 compensation and reimbursement pursuant to section 1606 of
 2 this chapter shall be paid from the Fund. It shall be the
 3 responsibility of the appointed attorney or trial counselor
 4 to obtain the order and submit a certified copy of such order
 5 along with a copy of the claim for compensation to the FSM
 6 Public Defender for payment."

7 Section 9. The sum of \$20,000, or so much thereof as may be
 8 necessary, is hereby appropriated from the General Fund of the
 9 Federated States of Micronesia for the fiscal year ending September 30,
 10 1989, for the purpose of funding the Criminal Defense Fund established
 11 by section 7 of this act. All funds appropriated by this act shall be
 12 allotted, managed, administered, and accounted for in accordance with
 13 applicable law, including, but not limited to, the Financial
 14 Management Act of 1979. The allottee shall be the FSM Public Defender
 15 who shall be responsible for ensuring that these funds, or so much
 16 thereof as may be necessary, are used solely for the purpose specified
 17 in this act, and that no obligations are incurred in excess of the sum
 18 appropriated. The authority of the allottee to obligate funds
 19 appropriated by this act shall not lapse.

20 Section 10. This act shall become law upon approval by the
 21 President of the Federated States of Micronesia or upon its becoming
 22 law without such approval.

23
 24 Date: 5/30/89

Introduced by: 
Dohsis Halbert

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