



Bob's Office

The Office of Senator Robert Klitzkie

197 Hernan Cortes Ave., Suite A-1
Hagatna, Guam 96910

(671) 472-9355 • bob@bobsoffice.org • www.bobsoffice.org

November 8, 2005

The Honorable Speaker Mark Forbes
155 Hesler Place
Hagatna, Guam 96910

RE: Bill 138 (EC) - Committee Report

Mr. Speaker:

The Committee on Judiciary, Governmental Operations, and Reorganization, to which was referred **BILL 138 (EC), AN ACT TO AMEND SECTION 8319 OF CHAPTER 8, ARTICLE 3 OF TITLE 19 OF THE GUAM CODE ANNOTATED TO COURT FINDINGS AS TO THE RESIDENCY OF ANY PARTY TO A DIVORCE OR DISSOLUTION OF MARRIAGE**, has had the same under consideration, and now reports back the same with the recommendation **to pass**.

Transmitted herewith for your consideration and action is our committee report on the above subject matter. The Committee votes are as follows:

<u>4</u>	TO PASS
<u>0</u>	NOT TO PASS
<u>2</u>	TO REPORT OUT ONLY
<u>0</u>	ABSTAIN
<u>0</u>	INACTIVE FILE

A copy of the committee report and other pertinent documents are attached for your immediate reference.

Any questions on the report and the accompanying documents should be directed to my office via email at bob@bobsoffice.org or by phone at 472-9355.

Sincerely,

Bob
Senator Robert Klitzkie, Chairman
Committee on Judiciary, Governmental Operations & Reorganization



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November 8, 2005

Committee on Judiciary, Governmental Operations,
& Reorganization
155 Hesler Place
Hagatna, Guam 96910

RE: Voting Sheet for Bill 138 (EC)

Dear Members:

Transmitted herewith is the voting sheet and committee report on **BILL 138 (EC), AN ACT TO AMEND SECTION 8319 OF CHAPTER 8, ARTICLE 3 OF TITLE 19 OF THE GUAM CODE ANNOTATED TO COURT FINDINGS AS TO THE RESIDENCY OF ANY PARTY TO A DIVORCE OR DISSOLUTION OF MARRIAGE**, as substituted by the committee, for your review and signature.

Your attention to this matter is greatly appreciated.

Sincerely,



Bob

Senator Robert Klitzkie, Chairman

Committee on Judiciary, Governmental Operations,
& Reorganization



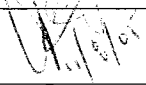

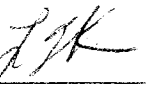




**Committee on Judiciary, Governmental Operations,
& Reorganization**

I Mina' Bente Ocho Na Liheslaturan Guahan

Bill 138 (EC)

AN ACT TO AMEND SECTION 8319 OF CHAPTER 8, ARTICLE 3 OF TITLE 19 OF THE GUAM CODE ANNOTATED TO COURT FINDINGS AS TO THE RESIDENCY OF ANY PARTY TO A DIVORCE OR DISSOLUTION OF MARRIAGE.

	Signature	To Pass	Not To Pass	Report Out of Committee	Abstain	Inactive File
Senator Robert Klitzkie, Chairman		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Speaker Mark Forbes, Ex-Officio		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Jesse Lujan, Member		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Adolpho Palacios, Member		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Larry Kasperbauer, Ph. D., Member		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Ray Tenorio, Member		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator B.J. Cruz, Member		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

I MINA' BENTE OCHO NA LIHESLATURAN GUAHAN
2005 (FIRST) REGULAR SESSION

Bill No. 138 (EC)

**As Substituted by the Committee on Judiciary,
Government Operations and Reorganization**

Introduced by:

**B.J.F. Cruz
R. Klitzkie**

**AN ACT TO AMEND SECTION 8319 OF CHAPTER 8,
ARTICLE 3 OF TITLE 19 OF THE GUAM CODE
ANNOTATED TO REQUIRE COURT FINDINGS AS
TO THE RESIDENCY OF ANY PARTY TO A
DIVORCE OR DISSOLUTION OF MARRIAGE.**

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. Section 8319 of Chapter 8, Article 3 of Title 19 of the
3 Guam Code Annotated is amended as follows:

4 "§8319. Residence, no presumption of jurisdiction. (a) In
5 actions for dissolution of marriage, neither the domicile nor
6 residence of the husband shall be deemed to be the domicile or
7 residence of the wife. For the purposes of such an action, each
8 may have a separate domicile or residence depending upon
9 proof of the fact and not upon legal presumptions. Physical
10 presence in Guam for ninety (90) days next preceding the

1 commencement of the action ~~or next preceding the entry of the~~
2 ~~final decree of divorce~~ shall give rise to a conclusive
3 presumption of residence in Guam as required by §8318 of this
4 Chapter. Allegations and proof of residence or other
5 compliance with the requirements of §8318 of this Chapter ~~need~~
6 ~~not~~ shall be pled or proved in any divorce or dissolution of
7 marriage granted upon the consent of the Defendant, and the
8 court ~~need~~ shall make ~~no~~ findings as to residency of any party
9 to a divorce or dissolution of marriage or as to compliance with
10 the requirements of §8318 of this Chapter in any divorce or
11 dissolution of marriage granted upon the consent of the
12 Defendant. Residency must be pled and proved in all divorces
13 or other actions for dissolutions of marriage, ~~to which the~~
14 ~~defendant does not consent.~~ Only the parties (i.e., the husband
15 or wife) ~~and no other person nor~~ or the court can raise the issue
16 of ~~nor~~ or object to the jurisdiction of the Superior Court of
17 Guam in an action for divorce or dissolution of marriage,
18 residence of the parties, or other compliance with §8318 of this
19 Chapter in any case even where the defendant has consented to
20 the divorce or dissolution of marriage. The Superior Court of
21 Guam is not presumed to have jurisdiction over any action for
22 divorce or dissolution of marriage which may be filed in the
23 Superior Court of Guam ~~and to which~~ because the defendant

1 consents.

2 ~~(b) The preceding subsection (a) shall take effect sixty (60) days~~
3 ~~after the effective date of this Act, shall be prospective in effect,~~
4 ~~and shall effect only divorces filed more than sixty (60) days~~
5 ~~after the effective date of this Act. All divorces filed prior to~~
6 ~~such effective date of subsection a) of this section shall be~~
7 ~~governed by the law in effect on the date filed."~~

8 (b) All consents to a divorce or dissolution of marriage must
9 be acknowledged or verified before a notary public or other
10 officer authorized to administer oaths within the United States
11 if signed in the United States, acknowledged or verified before
12 a consular officer of the United States or other United State
13 official authorized to take oaths if signed outside the United
14 States, or have a notarized acknowledgement or verification by
15 a foreign notary which is authenticated by a United States
16 consular officer.

I MINA' BENTE OCHO NA LIHESLATURAN GUAHAN
2005 (FIRST) REGULAR SESSION

Bill No. 138 (EC)

Introduced by:

B.J.F. Cruz
R. Klitzkie

AN ACT TO AMEND SECTION 8319 OF CHAPTER 8,
ARTICLE 3 OF TITLE 19 OF THE GUAM CODE
ANNOTATED TO COURT FINDINGS AS TO THE
RESIDENCY OF ANY PARTY TO A DIVORCE OR
DISSOLUTION OF MARRIAGE.

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1.** Section 8319 of Chapter 8, Article 3 of Title 19 of the
3 Guam Code Annotated is amended as follows:

4 “§8319. **Residence, no presumption of jurisdiction.** In actions
5 for dissolution of marriage, neither the domicile nor residence
6 of the husband shall be deemed to be the domicile or residence
7 of the wife. For the purposes of such an action, each may have a
8 separate domicile or residence depending upon proof of the
9 fact and not upon legal presumptions. Physical presence in
10 Guam for ninety (90) days next preceding the commencement
11 of the action or next preceding the entry of the final decree of
12 divorce shall give rise to a conclusive presumption of residence

1 in Guam as required by §8318 of this Chapter. Allegations and
2 proof of residence or other compliance with the requirements of
3 §8318 of this Chapter ~~need not~~ shall be plead or proved in any
4 divorce or dissolution of marriage granted upon the consent of
5 the Defendant, and the court ~~need~~ shall make ~~no~~ findings as to
6 residency of any party to a divorce or dissolution of marriage
7 or as to compliance with the requirements of §8318 of this
8 Chapter in any divorce or dissolution of marriage granted upon
9 the consent of the Defendant. Residency must be pled and
10 proved in all divorces or other actions for dissolutions of
11 marriage, ~~to which the defendant does not consent. Only the~~
12 ~~parties (i.e., the husband or wife), and not other~~ Any interested
13 ~~person nor~~ or the court can raise the issue of ~~nor~~ or object to the
14 jurisdiction of the Superior Court of Guam in an action for
15 divorce or dissolution of marriage, residence of the parties, or
16 other compliance with §8318 of this Chapter in any case even
17 where the defendant has consented to the divorce or
18 dissolution of marriage. The Superior Court of Guam is not
19 presumed to have jurisdiction over any action for divorce or
20 dissolution of marriage which may be filed in the Superior
21 Court of Guam ~~and to which~~ because the defendant consents.

22 ~~(b) The preceding subsection (a) shall take effect sixty (60) days~~
23 ~~after the effective date of this Act, shall be prospective in effect,~~

1 ~~and shall effect only divorces filed more than sixty (60) days~~
2 ~~after the effective date of this Act. All divorces filed prior to~~
3 ~~such effective date of subsection a) of this section shall be~~
4 ~~governed by the law in effect on the date filed."~~

I. OVERVIEW

The Committee on Judiciary, Governmental Operations, and Reorganization held public hearings on Bill 138 (EC) on May 23, 2005 and June 21, 2005 at 9:00am in the Guam Legislature public hearing rooms in Hagatna, Guam. Notice of public hearing was printed in the Pacific Daily News (see section IV) and disseminated throughout all local media.

Senators present on May 23, 2005:

Senator Robert Klitzkie, Chairman
Senator Adolpho Palacios, Member
Senator B.J. Cruz, Member

Senators present on June 21, 2005:

Senator Robert Klitzkie, Chairman
Senator Adolpho Palacios, Member
Senator B.J. Cruz, Member
Senator Larry Kasperbauer, Member
Senator Ray Tenorio, Member

II. SUMMARY OF TESTIMONY

The following bill was heard at the public hearing in which oral and/or written testimonies were provided:

Bill 138 (EC)

AN ACT TO AMEND SECTION 8319 OF CHAPTER 8, ARTICLE 3 OF TITLE 19 OF THE GUAM CODE ANNOTATED TO COURT FINDINGS AS TO THE RESIDENCY OF ANY PARTY TO A DIVORCE OR DISSOLUTION OF MARRIAGE

- **Attorney Mitch Thompson** of Maher and Thompson presented oral and written testimony in support of Bill 138 on 21 June. Mr. Thompson cited the cases of Williams v. North Carolina, 325 U.S. 226 (1945) and Sosna v. Iowa, 419 U.S. 393 (1975) to support his objection to Guam becoming a divorce mill. In these cases the U.S. Supreme Court found that a decree may be subject to collateral attack if jurisdiction has been established by the court which has issued the decree. Jurisdiction to grant divorces is founded on domicile; therefore, if there is no jurisdiction, the judgment is essentially a “meaningless piece of paper.” Additionally, Thompson stated that he believes Guam should not be sending out the message that Guam courts issue worthless judgments. Thompson believes that while Guam is making money from the current law and producing satisfied clients, it is not the basis by which we should be issuing judgments and drafting legislation. He urged the legislature to pass Bill 138 as written.

- **Ted Christopher**, an attorney with Cabot Law Offices, presented oral and written testimony on 21 June, and stood neither for nor against Bill 138. Mr. Christopher underlined the economic benefit that the current law provides for Guam in terms of the filing fees and gross receipts tax associated with non-resident divorces. He urged the legislature to consider the clients that are still undergoing the process or about to enter the process and how the current legislation may impact their situations. Also attached to Mr. Christopher’s testimony was a jurisdictional analysis surrounding Bill 138. He presented the case of Williams v. North Carolina, 325 U.S. 226 (1945) to draw distinction between domicile and residence. He outlined the finding of Williams and stated the following:

“Since the present Guam statute does not require a finding of domicile, Williams is distinguishable. Although Williams assumes that jurisdiction is founded on domicile, see 325 U.S. at 229, in 1998 Congress enlarged the

legislative power of Guam under 48 U.S.C. 1423a to ‘all rightful subjects of legislation’ from ‘legislation ... of local application.’ Even if 19 GCA 8318 still contains a residency requirement, the presumption of jurisdiction in Section 8319 applies only where the defendant consents and therefore again differs from Williams. ”

- **J. Brooks**, a consular officer with the U.S. Embassy in Islamabad, Pakistan, submitted written e-mail testimony in support of Bill 138. Brooks suggests that residency requirements be extended from three months to six months. In his line of work he finds that the “manipulation of U.S. immigration law remains endemic” and believes “stricter residency requirements to obtain an easy divorce with absolutely no residency requirement can do nothing but lead to abuse.” He concludes by stating that there is no real economic benefit with the current statute except the payment to Guam-based lawyers.

- **Carol Butler**, practitioner of family law with Butler & Telford-Butler, presented oral testimony in opposition of Bill 138 on the 21 June. Ms. Butler’s first argument against Bill 138 was geared toward U.S. military servicemen and women and the benefit of being able to obtain a divorce through Guam courts when stationed overseas. She continued to point out that there are economic benefits (filing fees and GRT) that would no longer be possible with the passage of Bill 138 and sees no real downside in not preserving the current state of the law. While Ms. Butler supports the measure of granting non-contested divorces, she did state that there needs to be some “clean-up” to the law as it relates to notarization. She stated that currently signatures are not subject to notarization, which clearly highlights the possibility of abuse by those using the service.

- **Ron Moroni**, of Tarpley and Moroni, presented oral and written testimony in opposition to Bill 138 on both 23 May and 21 June. Mr. Moroni offered the following reasons why the legislature should prevent the passage of Bill 138: 1.) The present law mainly provides assistance to American military personnel living overseas who do not meet the residency requirements of any US jurisdiction; 2.) Even with non resident divorces, Guam divorce filings are no higher than other communities of similar size; 3.) Allowing military and expats to obtain a divorce in Guam is consistent with other Guam legislation encouraging non residents to use Guam’s legal system; 4.) Non resident divorces provide revenue for the court but use little judicial resources; 5.) Bill 138 would not provide any benefits of any kind to the people of Guam; 5.) The present bill has some serious flaws, and should not be passed without revision; at a minimum, any law changing the existing residency requirement should contain a sunset provision or transitional period.

An additional document provided by Mr. Moroni addressed the jurisdictional issues surrounding Bill 138. To support his position, Moroni cited the 1945 U.S. Supreme Court decision, Williams v. North Carolina, 325 U.S. 226 (1945). The Williams case involved an ex parte divorce, a situation where only one party applies for the divorce and “the other does not consent or participate in the court proceedings.” Moroni states that the “Williams decision does not apply in a two-party divorce, where both parties consent.” Moroni states that Williams was reaffirmed by Johnson v. Muelberger, 340 U.S. 581, 71 S. Ct. 474 (U.S. 1951). He went further to explain that in the case of Johnson v. Muelberger, “the Supreme Court extended the rule to bar attacks by third parties, at least where the jurisdiction rendering the decree would not allow attacks by third parties.” Moroni concluded his Williams argument by stating that in this particular case the “North Carolina Court was allowed to attack the Nevada divorce, because it found the divorce was invalid under Nevada law” as it stood at the time of the case. He believes that “Guam non resident divorces are legal in Guam and must be given full faith and credit everywhere, so long as the divorce is obtained in accordance with Guam laws.”

* Mr. Moroni submitted written e-mail testimonials from his clients to demonstrate that the “service is primarily used by military and overseas Americans and others who have no other option for obtaining a divorce.” (See **Section IX**)

- **Stacey Cuasito**, secretary for the Law Office of Tarpley and Moroni, presented oral testimony in opposition of Bill 138 on both 23 May and 21 June. Ms. Cuasito believes the current law should be preserved for the

reason that it only addresses uncontested divorces where both parties have agreed. She shared instances of conversations with clients that prove that the current law has been beneficial for people with no other alternative, most especially military personnel overseas. Ms. Cuasito continued to highlight that the current law provides funding by which she is able to maintain employment and if passed, Bill 138 may take away this work opportunity.

- **Judy Shimizu**, office assistant and receptionist with the Law Office of Tarpley and Moroni, presented oral testimony in opposition of Bill 138 on 23 May. Ms. Shimizu's main concern with Bill 138 is the economic impact it may have on her current employment. She stated that if the funding from the current law is limited, she believes her job position will not be secure and force her to seek work elsewhere.

- **David Hopkins**, with Cabot Law Offices, presented oral testimony in opposition of Bill 138 on 23 May and requested that an additional opportunity be given for others to testify on the bill. While opposed to the legislation, Mr. Hopkins suggested that at a minimum, a transition period should be implemented into the bill. He stated that he (and Cabot Law Offices) joins in opposition as stated by Attorney Moroni.

- **A. Alexander Gorman**, of the Law Offices of Gorman & Garvas, submitted written testimony in opposition of Bill 138. Mr. Gorman believes the bill "will radically and without justification alter the present residency requirements for uncontested divorces in Guam." According to Gorman, policy and financial reasons give good enough cause not to proceed with Bill 138. He highlighted the following benefits under the current statute: Guam is the **only jurisdiction** to grant this type of divorce, these divorces bring in revenue that would otherwise have to be appropriated by the legislature, and law firms are able to offer more employment and increase the amount of GRT payments brought in through these divorces. He expressed concerns with current language allowing "any interested party" to challenge jurisdiction and also highlighted the lack of a transitional period for those already using the current Guam divorce statute. He urged the legislature not to pass Bill 138.

- **Gerald E. Gray**, an attorney specializing in family law, submitted written testimony in opposition of Bill 138. Mr. Gray stated that the current statute assists many U.S. military living overseas wishing for a divorce and believes that it has no detrimental effect on Guam. He continued to state that if the obligation of child support is the concern, it could easily be incorporated into Guam divorce and often is in some cases. Gray emphasizes the fact that non-resident divorces are done only when it is "completely uncontested." He believes this addresses the concern that Guam courts should not handle divorces for clients that do not reside here. He supported this argument by stating that uncontested divorces normally have no witnesses and when information is needed it is done through affidavit or documentary evidence. Gray suggested requiring testimony from both parties telephonically or live under the current law to alleviate this concern.

- **Lewis W. Littlepage**, a retired military officer, submitted written testimony in opposition of Bill 138. Mr. Littlepage believes that divorce in foreign countries works against U.S. servicemen and women and for that reason believes that the current Guam divorce law ensures that "their rights are fully protected." He stated that the inability to divorce in foreign countries can often times cause undue hardship to military personnel and therefore urged the Guam legislature to vote against Bill 138.

- **James S. Brooks**, a resident of Piti, Guam, submitted written testimony in opposition of Bill 138. Mr. Brooks believes that if passed, Bill 138 will cause negative economic impact on the island. He warned against diminishing revenues and the decrease in local law firm employment with the implementation of the legislation. Mr. Brooks also highlighted that "Congress has moved far from the Granville-Smith court's position" and states that the prohibitions that were "once placed on territorial legislatures regarding laws pertaining to the dissolution of marriage no longer exist." He believes that there is "no sound legal judgment to support the proposition that an individual may not submit him- or herself to the jurisdiction of a particular court."

III. FINDINGS & RECOMMENDATIONS

Local law has allowed “Guam divorce” to become an enticing catch phrase not for Guam residents, but for individuals without any claim to local residence or domicile. The current divorce statute, unlike the law of any other state in the United States, clearly avoids the question of jurisdiction of Guam courts. Thus, Guam courts have been used by numerous off-island parties for filing of divorces. This fact has enabled the dissolution of thousands of marriages and has caused Guam to bear such unfortunate labels as a “divorce mill” or “divorce capital.”

Evidence of this labeling is apparent from a simple search of “Guam divorce” on www.google.com. The search produces a total of 1,080,000 results that reference Guam divorce. The following are just a few of the examples that highlight the image that Guam is receiving under the current law:

- Guam could be the overseas divorce paradise. If both parties agree and sign a “consent to jurisdiction” form, a Guam divorce can be finalized in a few days. An added bonus is neither party has to leave the states. Guam technically has a 90-day residency requirement. But thanks to loopholes, this requirement can usually be avoided. The best part is that Guam falls under U.S. jurisdiction. This means your divorce will be recognized as valid in any of the fifty states.
http://www.legalzoom.com/articles/article_content/article13181.html
- Foreign countries like Mexico and Haiti are no longer ideal for divorce. Mexico used to be a jump across the border for divorce. Now, Mexico enforces strict residency requirements. And Haiti, a once-popular quickie divorce spot, has been crossed from the list. One of the parties must appear in court to obtain a Haitian divorce. And in today’s political climate, traveling to that part of the world is too dangerous.
http://www.legalzoom.com/articles/article_content/article13181.html
- World wide Guam Divorce!
All Services Supervised by a Licensed Nevada or Guam Attorney
Guam Divorce!
No Residency, Waiting Period or Travel!
We Make the Guam Divorce Process Easy!
CHEAPEST and FASTEST anywhere!
HURRY BEFORE IT IS TOO LATE! FILE NOW!
http://www.nevadadivorce.net/guam_divorce.html

Navigation through the website of Nevada Divorce & Bankruptcy Service, Inc. illustrates the extent to which law firms exploit Guam divorce laws. Clients are lured in by the use of quick comparisons between Guam divorce procedures and their state’s court procedures for divorce. This comparison is done between not just Guam and Oregon as shown in **Section IX**, but with 48 other states in the United States. There is no sound reason why firms in Nevada or any other state should be promoting and gaining economic benefit through the use of Guam divorce statutes.

Actual statements made during the public hearings are an even clearer indication of the need to amend the current Guam divorce law. The following is what some witnesses had to say:

- “The present structure was set up quite intentionally to allow people who are not residents of Guam to obtain a divorce here....This law was intended to create this opportunity. It was intended for two reasons: One, there are a great many people out there, particularly military people and Americans living

in Asia, that have no other form to get a divorce...Secondly, I think it was consciously passed. It wasn't some mistake or inadvertent language they put in there. It was quite a conscious attempt to promote law firms around here to take advantage of this and perhaps to promote some economic opportunity for Guam. I picked up and ran with this." - *Ron Moroni, as stated in public hearing on May 23, 2005*

- "Probably there is not another U.S. jurisdiction that would [grant these divorces]...for Americans living in a foreign country. I don't think there is any other place they can go [besides Guam]." - *Ron Moroni, as stated in public hearing on May 23, 2005*
- "...Guam is the only U.S. jurisdiction that provides for these types of consent to jurisdiction divorces." *A. Gorman, written testimony submitted to the Committee on Judiciary, Government Operations, & Reorganization*
- "...There are at least 5 Guam law firms that I know of that have already invested time, effort, and especially money into promoting this law in the worldwide community." *A. Gorman – written testimony as submitted to the Committee on Judiciary, Governmental Operations, & Reorganization*
- "There is no downside to allowing non-resident divorces." - *Ron Moroni, as stated in public hearing on June 21, 2005*

The issues relating to non-resident divorces are addressed in Bill 138 (EC) which was given its first public hearing on 23 May. Two witnesses alleged insufficient notice to the public and therefore requested an additional public hearing to allow others to testify on the bill. The chairman scheduled a second public hearing on 21 June. Discussion from both hearings has been adequately reviewed and summarized by the committee.

As memorandum of David Highsmith, legislative counsel, to Senator Robert Klitzkie, chairman of the Committee on Judiciary, Governmental Operations & Reorganization, dated October 23, 2005, states:

Bill 138 is designed to prevent off-island "quickie" divorces from being obtained on Guam when neither the husband nor the wife resides here. While Bill 138 has been pending before I Liheslaturan Guahan, two legal questions have arisen regarding the bill's effect which you have asked me to answer. The first is whether the Superior Court of Guam can grant a divorce when neither party resides here. The second is whether a U.S. serviceman who resides in a foreign state or country may retain domicile in his home state.

Opponents of Bill 138 argue that if the parties agree to be divorced on Guam, they can be granted a divorce by the Superior Court even if neither resides here. Thus, a U.S. serviceman stationed in Okinawa and his wife could, according to the opponents, obtain a valid U.S. divorce on Guam.

As to the second question, opponents of the bill have argued that a U.S. serviceman who is stationed abroad cannot obtain a divorce in his home state because he loses his residence in that state. Thus, a serviceman who grew up in Minnesota who is stationed in Japan for a few years could not obtain a divorce in Minnesota.

The opponents of Bill 138 would prefer for the Superior Court of Guam to continue to grant off-island divorces to military personnel and other U.S. citizens residing abroad. The claim there is no constitutional infirmity to do so and that U.S. Military personnel badly need such divorces because they cannot obtain them in their states of origin.

First, it is abundantly clear that the holding of **Williams v. North Carolina**, 325 U.S. 22 (1945) is still good law. That is, for a state to have subject matter jurisdiction to grant a divorce, either the husband or the wife have established domicile in that state according to that state's laws. The state granting the divorce must make a good faith finding that one of the parties is domiciled there in order to grant the divorce. **Sherrer v. Sherrer**, 334 U.S. 343, 68 S.Ct. 1087, 92 L.ED 1429 (1946); **Johnson v. Muelberger**, 340 U.S. 581, 71 S.Ct. 474 (1951).

If the granting state determines that the Plaintiff has established a bona fide domicile there, and the Defendant enters an appearance in that state, the Defendant cannot later attack the validity of the granting state's divorce decree. **Sherrer v. Sherrer**, supra. This is because of the Full Faith and Credit Clause of the Constitution.

The opponents are mistaken. The parties can never stipulate to subject matter jurisdiction and thus cannot, by their agreement, confer subject matter jurisdiction on the Superior Court. See **In re Marriage of Zierenberg**, 11 Cal.App4th 1436, 16 C.R.2d 238 (1992); **Muckle v. Superior Court**, C.A.4th 218, 125 C.R.2d 303 (2002).

Second, the bill's opponents are also mistaken the retention of domicile by military personnel. Domicile is largely a matter of intent and a person is generally domiciled where he intends to be domiciled. The serviceman from Minnesota who is stationed in Japan can retain his Minnesota domicile and obtain a divorce there. This is because the serviceman is not living in Japan voluntarily-he is living there because of military orders. **Salinger v. Hertz Corp.**, 535 N.W.2d 204, appeal denied 546 N.W.2d 263, recon. denied 550 N.W.2d 532 (Mich 1995); **Means v. Means**, 17 N.J.S.2d 1 (1945); **Lawrence v. Lawrence**, 53 N.Y.S.2d 288 (1945).

However, a serviceman who resides in a state that is not his state of origin may be deemed to have domicile there if the objective facts indicate that he intends to reside there. In *United States v. Minnesota*, 97 F.Supp.2d 973 (2000), for example, a serviceman who owned a house, had a driver's license and registered to vote in a state was deemed a resident of that state. This was a tax case, not a domestic case, but the same principle applies.

It should be noted that a serviceman who is stationed abroad has the option of submitting to the jurisdiction of a state in which his wife files for divorce and allowing that state to grant the divorce. **In re Custody of Nugent**, 955 P.2d 584 (Cal.App. 1997).

In summary, neither issue presents a serious obstacle to the bill's passage. The bill conforms to the Constitution and will not deprive a serviceman of his opportunity to acquire a divorce back home.

The committee finds the testimony from both hearings to be indications of the need to address issues of authentication of signatures and third party objections to jurisdictions in the dissolution of marriage under Guam courts.

Under Chapter 8, Title 19 of the Guam Code Annotated, there is currently no requirement for authenticating signatures by those consenting to divorce, leaving obvious opportunity for abuse and fraud. Testimony indicates that a substitute Bill 138 (EC) is necessary to require that all consents be authenticated by authorized individuals.

The committee recommends that authorized individuals be notaries public, officers authorized to administer oaths within the United States if signed in the United States, consular officers of the United States or other United State officials authorized to take oaths if signed outside the United States, and foreign notaries authenticated by a United States consular officer.

The committee finds the bill necessary for preserving the sanctity of the judgments of Guam courts. With no other United States jurisdiction granting divorces to non-residents, even when both parties consent, it makes no sense that we should subject our local court system to anything different.

Accordingly, the Committee on Judiciary, Governmental Operations, and Reorganization does hereby submit it's findings and recommendations to *I Mina' Bente Ocho Na Liheslaturan Guahan* **TO PASS BILL 138, AS SUBSTITUTED, AN ACT TO AMEND SECTION 8319 OF CHAPTER 8, ARTICLE 3 OF TITLE 19 OF THE GUAM CODE ANNOTATED TO COURT FINDINGS AS TO THE RESIDENCY OF ANY PARTY TO A DIVORCE OR DISSOLUTION OF MARRIAGE.**

IV. NOTICES OF PUBLIC HEARING (23 May & 21 June)

***See below: Declarations Under Penalty of Perjury, Notices of Public Hearing and**

Media Listing

Declaration Under Penalty of Perjury of Audreya Punzalan

- 1.) I am employed as a Legislative Aide at the Office of Senator Robert Klitzkie.
- 2.) I was assigned the duty of disseminating a "Notice of Public Hearing" (Appendix A) to each newspaper of general circulation and all broadcasting stations which air a regular local news program within Guam.
- 3.) In such notice I included all information (Appendix A) required by the Open Government Law, Title 5 GCA Sections 8108 thru 8106.
- 4.) I e-mailed notice to all local media (Appendix B: Media E-mail Listing) on May 16, 2005 (*5 working days prior to hearing*) in accordance with 5 GCA §8108.
- 5.) I e-mailed a "Notice of Public Hearing" to all local media (Appendix B: Media E-mail Listing) on May 20, 2005 (*48 hours prior to hearing*) in accordance with 5 GCA §8108.
- 6.) I e-mailed notice to members of the Committee on Judiciary, Governmental Operations, and Reorganization on May 16, 2005 and May 20, 2005.
- 7.) I e-mailed notice to Speaker Forbes on May 16, 2005 and May 20, 2005 for posting on the Legislature's calendar, which can be accessed at the official website of the Guam Legislature (www.guamlegislature.com), in accordance with 5 GCA § 10306.
- 8.) I e-mailed a "Notice of Public Hearing" to all senators on May 16, 2005 and May 20, 2005 (cc: Clerk of the Legislature, Legislative Counsel, and Sgt-at-Arms). Bounce backs were received from Senator Calvo's email address and the notices were resent accordingly.
- 9.) I caused notice on www.bobsoffice.org, website for the Committee on Judiciary, Governmental Operations, and Reorganization, on May 16, 2005 in accordance with 5 GCA § 10306.
- 10.) Copies of all e-mail notices are on file at the Office of Senator Robert Klitzkie.

Declaration Under Penalty of Perjury

6 GCA Section 306

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on May 23, 2005 on Guam by



Audreya "Audi" Punzalan

Declaration Under Penalty of Perjury of Audreya Punzalan

- 1.) I am employed as a Legislative Aide at the Office of Senator Robert Klitzkie.
- 2.) I was assigned the duty of disseminating a "Notice of Public Hearing" (Appendix A) to each newspaper of general circulation and all broadcasting stations which air a regular local news program within Guam.
- 3.) In such notice I included all information (Appendix A) required by the Open Government Law, Title 5 GCA Sections 8108 thru 8106.
- 4.) I e-mailed notice to all local media (Appendix B: Media E-mail Listing) on June 14, 2005 (*5 working days prior to hearing*) in accordance with 5 GCA §8108.
- 5.) I e-mailed a "Notice of Public Hearing" to all local media (Appendix B: Media E-mail Listing) on June 16, 2005 & June 20, 2005 (*48 hours prior to hearing*) in accordance with 5 GCA §8108.
- 6.) I e-mailed notice to members of the Committee on Judiciary, Governmental Operations, and Reorganization on June 6, 2005, June 14, 2005 & June 20, 2005
- 7.) I e-mailed notice to Speaker Forbes on June 6, 2005, June 14, 2005 & June 20, 2005 for posting on the Legislature's calendar, which can be accessed at the official website of the Guam Legislature (www.guamlegislature.com), in accordance with 5 GCA § 10306.
- 8.) I e-mailed a "Notice of Public Hearing" to all senators on June 14, 2005 and June 20, 2005 (cc: Clerk of the Legislature, Legislative Counsel, and Sgt-at-Arms).
- 9.) I caused notice on www.bobsoffice.org, website for the Committee on Judiciary, Governmental Operations, and Reorganization, on May 31, 2005 in accordance with 5 GCA § 10306.
- 10.) Copies of all e-mail notices are on file at the Office of Senator Robert Klitzkie.

Declaration Under Penalty of Perjury

6 GCA Section 306

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on June 24, 2005 on Guam by



Audreya "Audi" Punzalan

APPENDIX A: NOTICES OF PUBLIC HEARING



I Mina' Bente Ocho Na Liheslaturan Guahan
Committee on Judiciary, Governmental Operations, & Reorganization

NOTICE OF PUBLIC HEARING

A public hearing will be held on Monday, May 23, 2005 at 9:00am in the Guam Legislature's public hearing room located at 155 Hesler Place in Hagatna. The public is invited to present oral and/or written testimony. The following appointment and bills will be heard:

Appointment of **Lourdes H. Cruz** to serve as a member of the Civil Service Commission.

~~Bill 102 (LS) AN ACT TO ADD NEW ARTICLE 3, CHAPTER 3, DIVISION 4, TITLE 17 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE ESTABLISHMENT OF SCHOOL COMMUNITY BASED MANAGEMENT. POSTPONED~~

~~Bill 138 (EC) AN ACT TO AMEND SECTION 8319 OF CHAPTER 8, ARTICLE 3 OF TITLE 19 OF THE GUAM CODE ANNOTATED TO COURT FINDINGS AS TO THE RESIDENCY OF ANY PARTY TO A DIVORCE OR DISSOLUTION OF MARRIAGE.~~

For more information, please visit www.bobsoffice.org/judiciary

*Written testimony can be submitted via e-mail to judiciary@bobsoffice.org

For ADA assistance, please contact the Office of Senator Robert Klitzkie at (671) 472-9355 ext. 3, or send request via email to judiciary@bobsoffice.org.



I Mina' Bente Ocho Na Liheslaturan Guahan
Committee on Judiciary, Governmental Operations, & Reorganization

NOTICE OF PUBLIC HEARING

A public hearing will be held on Tuesday, June 21, 2005 in the Guam Legislature's public hearing room located at 155 Hesler Place in Hagatna. The public is invited to present oral and/or written testimony. The following bills will be heard:

1:00pm

Bill 123 (EC) AN ACT TO TRANSFER THE ADMINISTRATION OF SOIL AND WATER CONSERVATION PROGRAMS CONTAINED IN ARTICLE 5 OF CHAPTER 63 OF TITLE 5, GUAM CODE ANNOTATED FROM THE DEPARTMENT OF AGRICULTURE TO THE UNIVERSITY OF GUAM.

Bill 141 (EC) AN ACT TO AMEND SECTION 10 OF CHAPTER V OF PUBLIC LAW 27-29 AND §8121 OF CHAPTER 8 OF TITLE 4, GUAM CODE ANNOTATED RELATIVE TO ALLOWING FOR THE EMPLOYMENT OF SUBSTITUTE, PART-TIME AND LIMITED-TERM SCHOOL BUS DRIVERS.

Bill 138 (EC) AN ACT TO AMEND SECTION 8319 OF CHAPTER 8, ARTICLE 3 OF TITLE 19 OF THE GUAM CODE ANNOTATED TO COURT FINDINGS AS TO THE RESIDENCY OF ANY PARTY TO A DIVORCE OR DISSOLUTION OF MARRIAGE.

4:00pm

Bill 92 (EC) AN ACT TO RECRUIT AND RETAIN DEPARTMENT OF EDUCATION TEACHERS, BY ADDING A NEW CHAPTER 5C TO DIVISION 1 OF TITLE 17, GUAM CODE ANNOTATED.

BILL 102 (LS) AN ACT TO ADD NEW ARTICLE 3, CHAPTER 3, DIVISION 4, TITLE 17 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE ESTABLISHMENT OF SCHOOL COMMUNITY BASED MANAGEMENT.

For more information, please visit www.bobsoffice.org/judiciary.

*Written testimony can be submitted via e-mail to judiciary@bobsoffice.org.

For ADA assistance, please contact the Office of Senator Robert Klitzkie at (671) 472-9355 ext. 3, or send request via email to judiciary@bobsoffice.org.

APPENDIX B: MEDIA E-MAIL LISTING

Notice to all media : Outlet Managers, Publishers, Producers	Notice to all media : News Directors, Editors, Reporters
<p><u>PRINT</u> Marianas Variety – Amier Younis, Ops Mgr, amier@mvguam.com Directions – Jerry Roberts, Publisher, jroberts@directionsguam.com Guam Business – Steve Nygard, Publisher, snygard@glimpses.guam.net Pacific Daily News – Government Meetings Section life@guampdn.com Marianas Business Journal – Steve Nygard, Publisher, snygard@glimpses.guam.net Guahan Magazine – Carlene Cooper-Nurse, Publisher, carlene@guahanmagazine.com Mabuhay News – Ritchie Lim, Publisher, paciwire@ite.net Mariana’s Variety – Ad Section , ads@mvguam.com</p> <p><u>TV</u> KUAM Ch. 8 – generalmanager@KUAM.com KUAM Ch. 11 – generalmanager@KUAM.com ABC 14 – David Larson, Gen Mgr, david@go14.tv KGTF – kgtf12@ite.net</p> <p><u>RADIO</u> K57 – Ray Gibson, General Mgr, rgibson@k57.com Power98 – Roque Aguon, General Mgr, raguon@power98.com 105 Rock – Albert Juan, General Mgr, ajuan@105therock.com I-94 FM – Fredalynn Mortera Hecita, fredalynn@kuam.com 610 AM – Ryan San Nicolas, ryan@kuam.com K-StereO – Ed Poppe, General Mgr, ksto@ite.net KISH (102.9 FM) – Ed Poppe, General Mgr, ksto@ite.net Hit Radio 100 – Vince Limuaco, Sales Mgr., marketing@hitradiol00.com KPRG (89.3 FM) – General Manager, kprg@kprg.org Harvest Family Radio – khmg@harvestministries.net KTKB – ktkb@ktkb.com KOLG 90.0 FM – Contact, chuck@kolg.org KTWG 800 AM – Ops Mgr , Kleilani63@hotmail.com</p>	<p><u>PRINT</u> Pacific Daily News –Rindraty Limtiaco, Exec. Editor, rlimtiaco@guampdn.com Marianas Variety – Mar-Vic Cagurangan, marvic@mvguam.com Directions – Gennette Quan, Editor, editor@directionsguam.com Guam Business – Maureen Maratita, Editor, mmaratita@glimpses.guam.net Marianas Business Journal – Maureen Maratita, Editor, mmaratita@glimpses.guam.net Guahan Magazine – Jayne Flores, Editor, jayne@guahanmagazine.com Mabuhay News – Ritchie Lim, Editor mabuhaynews@yahoo.com Mariana’s Variety – Ad Section, ads@mvguam.com</p> <p><u>TV</u> KUAM Ch.8 – Sabrina Matanane, News Dir, Sabrina@KUAM.com KUAM Ch. 11 – Sabrina Matanane, News Dir, Sabrina@KUAM.com</p> <p><u>RADIO</u> I-94 FM – Fredalynn Mortera Hecita, News (Radio) fredalynn@kuam.com 610 AM – Ryan San Nicolas, ryan@kuam.com K57, Power98, 105 Rock – Patty Arroyo, News Director, parroyo@k57.com K-StereO – Jean Hudson, News Director, kstone@ite.net KISH (102.9 FM) – Jean Hudson, News Director, kstone@ite.net</p>

APPENDIX C: COMMITTEE MEMBER E-MAILS

Senator Robert Klitzkie, Chairman
 Speaker Mark Forbes, Ex-Officio
 Senator Jesse A. Lujan, Member
 Senator Larry Kasperbauer, Ph.D., Member
 Senator Ray Tenorio, Member
 Senator Benjamin J.F. Cruz, Member
 Senator Adolpho B. Palacios, Sr., Member

bob@bobsoffice.org
speakerforbes@yahoo.com
jal@netpci.net
lk4kids@ite.net
ray@raytenorio.com
cjbjcruz@ite.net
patrickcepeda@hotmail.com

V. PUBLIC HEARING AGENDA (for 23 May and 21 June)



I Mina' Bente Ocho Na Liheslaturan Guahan
**Committee on Judiciary, Governmental Operations,
& Reorganization**

www.bobsoffice.org/judiciary

AGENDA

Guam Legislature, Public Hearing Room
Monday, May 23, 2005 – 9:00am

- 1.) Appointment of **Lourdes H. Cruz** to serve as a member of the Civil Service Commission.
- 2.) ~~**Bill 102 (LS)** AN ACT TO ADD NEW ARTICLE 3, CHAPTER 3, DIVISION 4, TITLE 17 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE ESTABLISHMENT OF SCHOOL COMMUNITY BASED MANAGEMENT. POSTPONED~~
- 3.) **Bill 138 (EC)** AN ACT TO AMEND SECTION 8319 OF CHAPTER 8, ARTICLE 3 OF TITLE 19 OF THE GUAM CODE ANNOTATED TO COURT FINDINGS AS TO THE RESIDENCY OF ANY PARTY TO A DIVORCE OR DISSOLUTION OF MARRIAGE.

*Written testimony can be submitted via e-mail to judiciary@bobsoffice.org



I Mina' Bente Ocho Na Liheslaturan Guahan
**Committee on Judiciary, Governmental Operations,
& Reorganization**

AGENDA

Tuesday, June 21, 2005
Guam Legislature: Public Hearing Room

1:00pm

Bill 123 (EC) AN ACT TO TRANSFER THE ADMINISTRATION OF SOIL AND WATER CONSERVATION PROGRAMS CONTAINED IN ARTICLE 5 OF CHAPTER 63 OF TITLE 5, GUAM CODE ANNOTATED FROM THE DEPARTMENT OF AGRICULTURE TO THE UNIVERSITY OF GUAM.

Bill 141 (EC) AN ACT TO AMEND SECTION 10 OF CHAPTER V OF PUBLIC LAW 27-29 AND §8121 OF CHAPTER 8 OF TITLE 4, GUAM CODE ANNOTATED RELATIVE TO ALLOWING FOR THE EMPLOYMENT OF SUBSTITUTE, PART-TIME AND LIMITED-TERM SCHOOL BUS DRIVERS.

Bill 138 (EC) AN ACT TO AMEND SECTION 8319 OF CHAPTER 8, ARTICLE 3 OF TITLE 19 OF THE GUAM CODE ANNOTATED TO COURT FINDINGS AS TO THE RESIDENCY OF ANY PARTY TO A DIVORCE OR DISSOLUTION OF MARRIAGE.

4:00pm

Bill 92 (EC) AN ACT TO RECRUIT AND RETAIN DEPARTMENT OF EDUCATION TEACHERS, BY ADDING A NEW CHAPTER 5C TO DIVISION 1 OF TITLE 17, GUAM CODE ANNOTATED.

BILL 102 (LS) AN ACT TO ADD NEW ARTICLE 3, CHAPTER 3, DIVISION 4, TITLE 17 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE ESTABLISHMENT OF SCHOOL COMMUNITY BASED MANAGEMENT.

www.bobsoffice.org/judiciary

*Written testimony can be submitted via e-mail to judiciary@bobsoffice.org

VI. SIGN-IN SHEET (for 23 May and 21 June)



Committee on Judiciary, Governmental Operations, and Reorganization

*J. Ninaa*¹, *Bennie Ocho*², *Na Liheshatarun* *Guam*
155 Hester Place Hagatna, Guam 96910

Bill No. 138 (EC)

AN ACT TO AMEND SECTION 8319 OF CHAPTER 8, ARTICLE 3 OF TITLE 19 OF THE GUAM CODE ANNOTATED TO COURT FINDINGS AS TO THE RESIDENCY OF ANY PARTY TO A DIVORCE OR DISSOLUTION OF MARRIAGE.

[illegible]



Committee on Judiciary, Governmental Operations, and Reorganization
I Mina' Rouse Ochoa Na Liheslaturan Guahan
 155 Hesler Place Hagatna, Guam 96910

Bill No. 138 (EC)

AN ACT TO AMEND SECTION 8319 OF CHAPTER 8, ARTICLE 3 OF TITLE 19 OF THE GUAM CODE ANNOTATED TO COURT FINDINGS AS TO THE RESIDENCY OF ANY PARTY TO A DIVORCE OR DISSOLUTION OF MARRIAGE.

	Name	Agency or Organization	Address	E-mail Address	Phone No.	Testimony		In Favor	Not In Favor
						Oral	Written		
1	Karl Moreno	Tanaply Mawac		moreno@guam.net	472-4539	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2	Stacy Canche	"			"	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3	Judy Sumiza	"			"	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4	Dr. Francisco	gelly	Rechts		632-7968	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
5	DAVID HOPKINS	CADOT LAW OFFICES		dhopkins@cadotlaw.com 696-2001					<input checked="" type="checkbox"/>
6									
7									
8									
9									
10									

VII. MINUTES (for 23 May and 21 June)

[Prepared by: Audreya Punzalan *5/23/2005]

Date: May 23, 2005

Location: Guam Legislature – Public Hearing Room
155 Hesler Street Hagatna, Guam

Called to order by Senator Robert Klitzkie, Chairman, at 9:00am

Senators present:

Senator Robert Klitzkie, Chairman
Senator Adolpho Palacios, Member
Senator B.J. Cruz, Member

Bill on agenda: Appointment of Lourdes H. Cruz to serve as a member of the Civil Service Commission, Bill 102 (LS) – *POSTPONED*, and Bill 138 (EC)

Appointment of Lourdes H. Cruz to serve as a member of the Civil Service Commission (EC) heard at 9:00am

- **Lourdes H. Cruz**, testified before the committee seeking confirmation to serve as member of the Civil Service Commission - 9:02am.
- **Vernon Perez**, Executive Director of the Civil Service Commission and staffer, presented oral and written testimony in support of the confirmation of Lourdes H. Cruz; he also presented oral testimony on behalf of Luis Baza - 9:24am.
- **Joe Garrido**, Resident of Dededo, representing self, presented oral testimony in support of the appointment to the Civil Service Commission – 9:30am.

Bill 138 (EC) was heard at 9:41am

- **Ron Moroni**, partner in law firm of Tarpley and Moroni, presented oral testimony in opposition of Bill 138 - 9:02am.
- **Stacy Cuasito**, Secretary for law firm of Tarpley and Moroni, testified in opposition of Bill 138 - 9:50am.
- **Judy Shimizu**, Office Assistant and Receptionist for the law firm of Tarpley and Moroni, testified in opposition of Bill 138 - 9:55am.
- **David Hopkins**, Cabot Law Offices, testified in opposition of Bill 138 - 9:56am.

*Questions and comments were presented to the panel by Senator Klitzkie, Senator Palacios and Senator B.J. Cruz.

[Prepared by: Audreya Punzalan *6/22/2005 @ 1:51pm]

Date: June 21, 2005

Location: Guam Legislature – Public Hearing Room
155 Hesler Street Hagatna, Guam

***1:00pm Hearing**

Called to order by Senator Robert Klitzkie, Chairman, at 1:00pm

Senators present:

Senator Robert Klitzkie, Chairman
Senator Adolpho Palacios, Member
Senator B.J. Cruz, Member
Senator Larry Kasperbauer, Member
Senator Ray Tenorio, Member

Bills on agenda: Bill 123 (EC); Bill 141 (EC); Bill 138 (EC) – continued from 5/23/2005

Bill 123 (EC) heard at 1:07pm

- **Paul Bassler**, Director of the Department of Agriculture, testified in support of Bill 123 (EC) at 1:07pm.
- **Benny San Nicolas**, Farmer of the Southern District of Inarajan & Chairman of the Southern Salt & Water Conservation District Board, testified in support of Bill 123 (EC) at 1:09pm.
- **Lee Yu din**, Dean of the College of Natural Applied Sciences (former College of Agriculture and Life Sciences) at the University of Guam, testified in support of Bill 123 (EC) at 1:10pm.
- **Ernie Wusstig**, Chairman of the Northern Salt and Water Conservation District Board & the Vice President of the Pacific Basin of Conservation Districts, testified in support of Bill 123 (EC) at 1:13pm.

*Questions and comments were presented to the panel by Senator Larry Kasperbauer, Senator Adolpho Palacios, and Senator Ray Tenorio.

Bill 141 (EC) was heard at 1:27pm

- Larry Perez, Acting Director of the Department of Public Works, testified in support of Bill 141 (EC) at 1:27pm. *Joining Perez was Frank Taitano, Superintendent of Bus Operations, to assist in providing information to the Committee.
- Robert Koss, Director of Field Services for the Guam Federation of Teachers, testified in opposition of Bill 141 (EC) at 1:30pm.

*Questions and comments were presented to the panel by Senator Robert Klitzkie, Senator Adolpho Palacios, and Senator Larry Kasperbauer.

Bill 138 (EC) was heard at 1:46pm

- Carol Buttler, Practitioner at Butler & Telford Butler, testified in opposition of Bill 138 (EC) at 1:46pm.
- Ron Moroni, Attorney of Tarpley & Moroni, testified in opposition of Bill 138 (EC) at 2:04pm.
- Mitch Thompson of Maher & Thompson, testified in support of Bill 138 (EC) at 2:18pm.
- Ted Christopher, Attorney with Cabot Law Office, testified on Bill 138 (EC) at 2:22pm and did not say whether his was in support or opposition of the bill.
- Stacy Cuasito, Secretary for the Law Office of Tarpley & Moroni, testified in opposition of Bill 138 (EC) at 2:25pm.

*Questions and comments were presented to the panel by Senator Robert Klitzkie, Senator B.J. Cruz, Senator Ray Tenorio, and Senator Adolpho Palacios.

***4:00pm Hearing**

Called to order by Senator Robert Klitzkie, Chairman, at 4:00pm

Senators present:

Senator Robert Klitzkie, Chairman
Senator Judith Won Pat
Senator Adolpho Palacios

Bills on agenda: Bill 92 (EC); Bill 102 (LS)

Bill 92 (EC) was heard at 4:00pm

Testimony: No people were present to testify on the bill.

Bill 102 (LS) was heard at 4:00pm

Testimony: No people were present to testify on the bill.

VIII. WAIVER OF FISCAL NOTE**BUREAU OF BUDGET & MANAGEMENT RESEARCH**

OFFICE OF THE GOVERNOR
Post Office Box 2950, Hagåtña Guam 96932

FELIX PEREZ CAMACHO
GOVERNOR

CARLOS P. BORDALLO
DIRECTOR

KALEO SCOTT MOYLAN
LIEUTENANT GOVERNOR

JOSE S. CALVO
DEPUTY DIRECTOR

The Bureau requests that Bill No. 138 (EC) be granted a waiver pursuant to Public Law 12-229 as amended for the following reason(s):

The proposed legislation seeks to amend §8319 of Chapter 8, Article 3 of Title 19 GCA relative to Court findings as to the residency of parties to a divorce or dissolution of marriage. In summary, the legislation defines the role of the Superior Court of Guam relative to jurisdiction over divorce or dissolution of marriage proceedings and further outlines residency as it applies to compliance with §8318 of the same Title and Chapter of the GCA.

In its current form, the proposed legislation is administrative in nature and does not pose a fiscal impact on the Government of Guam.

/s/

Carlos P. Bordallo
Director, BBMR

Signed 5/25/05.

IX. Appendix

See Attached: - Written Testimony

- Nevada Divorce & bankruptcy Services, Inc. document

-----Original Message-----

From: ted [mailto:ted@netpci.com]

Sent: Wednesday, June 22, 2005 4:34 PM

To: Bob Klitzkie

Subject: Bill 138

Mr. Chair:

This letter is written to follow up on my comments at the public hearing held yesterday on Bill 138.

It is beyond peradventure that a decree of divorce may be subject to collateral attack if the rendering court lacked jurisdiction over at least one of the parties. The United States Supreme Court, in Williams v. North Carolina, 325 U.S. 226 (1945) made clear that a court's jurisdiction to grant a divorce is founded on domicile.

In Williams, the Supreme Court held that North Carolina could properly reject a Nevada divorce decree, even though Williams had resided in Nevada for the statutory period of time required by Nevada to file for divorce, because under the circumstances, Williams was not a bona fide resident of Nevada, and therefore the Nevada court lacked jurisdiction to grant a divorce.

If neither of the parties obtaining a "mail order" divorce on Guam is a bona fide resident of Guam, a divorce decree issued by the Guam court is subject to collateral attack because the Guam court lacked jurisdiction over the parties.

The Williams court noted that the sister state was not bound by an unfounded, even if not collusive, recital of jurisdiction by the rendering court. While a party who participates in a Guam divorce proceeding might be bound by a finding of jurisdiction, third parties, such as creditors, grandparents, and sister states, would not be so bound. Williams, at p. 230.

In a later opinion, the U.S. Supreme Court noted that one very cogent reason for a state to impose a residency requirement of one year before a divorce may be granted was to provide a greater safeguard against such collateral attacks. In Sosna v. Iowa, 419 U.S. 393 (1975), the court also noted that a state court rendering a divorce decree when it lacks jurisdiction becomes an officious intermeddler. Sosna, at p. 407.

It should also be noted that Guam courts have previously recognized the jurisdictional problems with such "mail order" divorces. See, Espiritu v. Espiritu, Superior Court of Guam Domestic Case No.DM741-89, Decision and Order, September 13, 1989 (court cannot acquire jurisdiction through consent of parties; divorce denied); McAllister v. McAllister, Superior Court of Guam Domestic Case DM1263-87, Decision and Order, October 4, 1986 (Guam Legislature lacked authority under Organic Act to enact law creating jurisdiction over non-residents).

The current law allows non-residents to obtain "quickie" divorces, but these "quickies" are essentially worthless because they are subject to collateral attack by third parties. Bill 138 is a necessary remedial step, as Guam is apparently the only U.S. jurisdiction which permits divorce mills to operate. I urge the Legislature to enact Bill 138 as soon as possible.

Mitch Thompson

I am Ted Christopher, I am an attorney with the Cabot Law Offices in Guam, and I am present on behalf of the Cabot Law Offices to address Bill No. 138 on behalf of the Cabot Law Offices.

Our law firm does not presume to tell this body how it should vote on this bill, and neither do I personally. But we do want to share with the legislature some of the effect of the present law on Guam and how it has benefitted some of our clients.

We have seen projections that the present law may generate more than a quarter of a million dollars per year in judicial filing fees alone, not to mention additional amounts in additional gross receipts taxes paid by the law firms and other businesses which participate in the prosecution of the cases and income taxes paid by the employees of those businesses.

The reason that the present law brings so much money into Guam is that it responds to an otherwise unsatisfied demand. The present law gives individuals greater control over their own marriages. There are many people who have fallen through the cracks in the system and would have difficulty obtaining a divorce without the present law. This may include people such as military personnel for whom it may be impractical to obtain a divorce in their home states, and others whose status may leave them without a permanent residence anywhere. It also may include people who are faced with restrictive divorce laws in other jurisdictions. And there are individuals whose particular circumstances make an immediate divorce desirable, often to escape physical violence or to remarry, adopt children or change their status before they or other interested parties die.

Although many people have used the present law, the number is not so high as to turn Guam into a divorce capital. For most people, shopping around the world for the court which will give them the best result is not something they do routinely, but only in important circumstances. And the Guam courts can and do control the number of these cases through their control over the scheduling of their calendars.

With respect to any moral arguments against the present law, the legislature should consider whether they would be best addressed by an amendment to the United States Constitution rather than by a further act of this body. Otherwise, Bill No. 138 might simply pave the way for other jurisdictions to step in and take over the market which Guam gives up. A divorce is no more moral simply because it is granted outside Guam.

If the legislature is inclined to pass Bill No. 138, then it should consider taking into account the many individuals who already have relied on it. The Cabot Law Offices is personally aware of approximately 160 people who either have filed or are about to file divorce actions under the present law, and I spoke with another attorney in Guam yesterday who told me that he personally knows of 200 more. A substantial number of these people are affiliated with the United States military, and some of them already have made significant personal plans, including remarriage, in reasonable reliance on the existing law.

June 22, 2005

Dear Senator Klitzkie:

Although as I indicated I have not taken a position either for or against Bill No. 138, and although as I also indicated I personally have never represented a party in a nonresident divorce, I do appreciate the opportunity to appear before your committee on June 21, 2005.

For your convenience, I enclose a copy of the testimony I gave. As you see and recall, my discussion of the effect of the present law does not necessarily assume that no other jurisdiction could lawfully hear the cases brought in Guam; rather, it mentions “difficulty obtaining a divorce,” “impractical to obtain a divorce,” “restrictive divorce laws,” and “circumstances [which] make an immediate divorce desirable.” However, there does appear to be historical support for the distinction I drew during questioning between domicile and residence. See, e.g., 24 AmJur 2d, Divorce and Separation 239 (1983)(“In many states, though, the statutes, instead of providing that one of the parties must have a domicil within the state, require that he have a ‘residence,’ or that he ‘reside,’ within the state”).

In Williams v. North Carolina, 325 U.S. 226, 236 (1945), reh’g denied, 325 U.S. 895 (1945), the petitioners, long-time residents of North Carolina, went to Nevada, where they stayed in an auto-court for transients, filed suits for divorce as soon as the Nevada law permitted, married one another as soon as the divorces were obtained, and promptly returned to North Carolina to live. These were ex parte divorces: the other spouses had neither appeared nor been served with process in Nevada. See id. at 227. The U.S. Supreme Court held that “North Carolina was entitled to find, as she did, that [petitioners] did not acquire domicils in Nevada.” See id. at 239. But what made that finding relevant in Williams was that Nevada had made a finding of domicile. See id. at 227.

Since the present Guam statute does not require a finding of domicile, Williams is distinguishable. Although Williams assumes that jurisdiction is founded on domicile, see 325 U.S. at 229, in 1998 Congress enlarged the legislative power of Guam under 48 U.S.C. 1423a to “all rightful subjects of legislation” from “legislation ... of local application.”

Even if 19 GCA 8318 still contains a residency requirement, the presumption of jurisdiction in Section 8319 applies only where the defendant consents and therefore again differs from Williams. The rationale of Williams is that “those not parties to a litigation ought not to be foreclosed by the interested actions of others.” 325 U.S. at 230. Subsequent U.S. Supreme Court decisions have made clear that Williams therefore does not apply where both parties had the opportunity to contest jurisdiction. See Johnson v. Muelberger, 340 U.S. 581, 587 (1951); Sherrer v. Sherrer, 334 U.S. 343, 349 (1948); Coe v. Coe, 334 U.S. 378, 384 (1948). Further, there is a good faith argument for overruling Williams. See 325 U.S. at 244 (Rutledge, J., dissenting) and 261 (Black, J., dissenting).

Sincerely,

Ted Christopher

----- Original Message -----

From: <webhosting-userform@bobsoffice.org>

To: <webmaster@bobsoffice.org>

Sent: Monday, October 03, 2005 3:40 PM

Subject: Comments from emailbob.html

> Name = j. brooks

> Email = brooksja2@state.gov

> Feedback = Dear Senator Klitzie -

>

> I am not a resident of Guam. I am a consular officer at the U.S. Embassy

> in Islamabad, Pakistan. I read an article about your propsed changed to

> make it hard to obtain divorce on Guam. I believe that that residency

> requirement should be 6 months instead of 3 months. At this office, not

> only do we assist and advise American citizens living or visiting

> Pakistan, we also issue the range of immigrant and non-immigrant visas.

> Manipulation of U.S. immigration law remains endemic and I believe

> stricter residency requirements to obtain an easy divorce with absolutely

> no residency requirement can do nothing but lead to abuse. Also Guam

> gains no economic benefit, except payment to a Guam-based lawyer (probably

> by mail). Thank you for your time.

> submit = Send

> subject = Comments from emailbob.html

> REMOTE_HOST: 169.252.4.21

>

Law Offices
TARPLEY & MORONI, LLP
A Law Firm including a Professional Corporation

Telephone: (671) 472-1539
Facsimile: (671) 472-4526

Bank of Hawaii Building
134 West Soledad Avenue, Suite 402
Hagatna, Guam 96910

E-mail: tarpley@guam.net
E-mail: Moroni@guam.net

June 29, 2005

VIA EMAIL: www.bobsoffice.org

Senator Robert Klitzkie
Chairman, Committee on Judiciary, Governmental
Operations & Reorganization
197 Hernan Cortez
Hagatna, Guam 96910

RE: Written Summary of Testimony Against Bill 138 Presented before the Committee on Judiciary Governmental & Reorganization at the Public hearing held on June 21, 2005.

I. The present law, mainly provides assistance to American Military Personnel living overseas, that do not meet the residency requirements of any US jurisdiction.

There seems to be a perception by the sponsors of bill 138, that Guam's present laws are being mainly used by people in the mainland that are trying to avoid their local laws, or family obligations. This perception is not supported by fact.

The vast majority of people taking advantage of Guam's non resident divorce statute are American Military personnel serving overseas in the defense of their country. Because their duties require them to move frequently, they often do not meet the divorce residency requirements of any US state. In most instances, if they cannot obtain a divorce in Guam, they cannot obtain one anywhere.

Guam offers them the only opportunity to obtain the protection of the US justice system, and to end their marriage in peaceful, orderly fashion. Many have been separated from their spouses for years and wish to remarry before going into a war zone. Some have not lived in any US state for years, and were it not for Guam's compassionate laws would have no way to solve a difficult problem. These soldiers and sailors are greatly appreciative of this service and the support Guam provides. That is, Guam's current laws, greatly enhance the Island image as a place where American military is appreciated.

We examined the 50 recent divorces we handled. Eighty-five percent (85%) involved service men and women serving overseas or American expats working overseas as defense contractors, missionaries or State Department employees.

We recently sent a brief request for letters of support from some of our recent clients. Within two days, we received over 40 letters of support.

Dennis P. a US serviceman in Asia, used our service last year when he had no where else to turn. When he heard that the legislature is considering changing the law, he wrote:

As there are no other alternatives for Military members or those associated with the Military, who live transient lifestyles, it would be quite regretful to put forth legislation ending peoples' ability to file for divorce through the Guam courts.

My ex-wife and I found the ability to file our divorce through the Guam courts, a service to be the only option for us. Were we not able to deal with our divorce the way we did ... it would have caused us both even more hardships on top of dealing with the divorce to begin with. We were divorcing as I was PCSing out of my Military assignment in Japan and she and I were to return to two States that couldn't have been farther apart – MA and CA – both of which had divorce laws which required residency.

If we were not able to have accomplished our divorce the way we did, it would have driven one or both of us to measures that would have caused greater problems for us down the line.

Tim worked for the US embassy in China. When he contacted us in March, he wrote:

My wife and I are both USA citizens. We have two children, also USA citizens. We have both lived in China for the last 7 years. Now we are planning to divorce but can't seem to find a place that allows us to do so. USA law requires us to be residents of a state but we have been overseas for 7 years and have no home state. Can we divorce in Guam without residency? We have already settled the financial and custody aspects. We only need to file the divorce. Can you help us?

We were able to obtain a valid US divorce for him in a reasonable time which did not require him to end his career in China. Last week, when he heard about the bill, he wrote:

You can tell them that I was literally in "no mans land" as China has no divorce laws for foreigners and one must live in the USA to be divorced there. Without the Guam option my ex-wife and I would have had an extremely difficult time finalizing our divorce. This was

the only option available that met our needs and allowed us to amicably separate.

In recent years, this legislature has taken to renaming roads to pay tribute to the men and woman who serve their country. While this has been an important gesture which I fully support, it did not provide any tangible benefit to any service men or women. Guam's divorce laws, on the other hand, do provide an important service for the military people, when they have no where else to turn. The supporters of bill 138 want to take this benefit away, for no articulated reason. I urge the legislature to show that it does support the military, in ways that are more than symbolic and to leave the present laws alone.

II. Even with Non Resident Divorces, Guam Divorce filings are no higher than other communities of similar size.

One concern is that Guam is becoming a "divorce mill". This concern is not based on fact. Before Non Resident Divorces became common, the superior court had about 700---800 domestic filings in a typical year. Last year, there were about 2000 domestic filings. This includes not only divorces, but child custody and support cases. Based on population, the number of divorce filings in Guam, is at about the national average. In California, for example there are 160,000 divorce filings in a normal year. The City of Phoenix, Arizona normally has about 20,000. In other words, on the basis of population, there are no more divorces filed in Guam, than in other US jurisdictions.

The reason is obvious. For most people, it still makes sense to file for divorce in the place where they live. In fact, in many states, the laws enable people to file an uncontested divorce on their own, without lawyers, so long as they meet the residency requirement. Forms are often downloaded from the internet. For residents, divorce is relatively inexpensive. So, the image that people all over the country are flocking to Guam's divorce courts to avoid their local laws, is just not true. The Guam laws are mainly being used by those few unfortunate people who cannot get a divorce anywhere else because they do not meet local residency requirements.

III. Allowing military and expats to obtain a divorce in Guam is consistent with other Guam legislation encouraging non resident to use Guam's legal system.

In our last hearing, one Senator stated that he felt it was inappropriate for the Guam court's to handle divorces when the parties do not live here and the evidence may not be here.

However, non residents may only obtain a divorce in Guam if it is completely uncontested and the parties are in agreement on all issues. Rarely is evidence or testimony needed in an uncontested divorce. What evidence is needed is usually

provided in the form of sworn statements. This is the case in an uncontested divorce, even when both parties live in Guam.

This year, the legislature passed Public Law 28-37 – the Uniform Child Custody Jurisdiction And Enforcement Act For Local Application And Enforcement. This law provides that

The superior Court of Guam has jurisdiction to make ... child-custody determination ..if ... no court of any other State would have jurisdiction...

The legislature just opened up Guam courts for child custody determinations when the parties could not meet the jurisdictional requirements of other states. Now military people living in Japan or Korea with their children may seek a custody determination in Guam. By Bill 138 the legislature is considering passing a law, that will prevent these same Citizens from obtaining a divorce in Guam.

It should also be noted, that Guam's laws do not impose a residency requirement for any other type of law suit. For example, a person residing in Ohio could get in a car accident in Florida with a person from Texas. There is nothing to prevent a dispute arising from the accident to be tried in the Guam Superior Court, if both parties consent to the Court's jurisdiction. Why should it be any different for divorce.

IV. Non resident divorces provide revenue for the court but use little judicial resources.

Our court system is suffering from a fiscal crisis. The current filing fee at the court for an NRD is \$150.00. That amount could easily be raised to \$200.00, without substantially affecting the number of NRD filings. NRDs have the potential of generating as much as \$300,000.00 in annual filing fees for the court.

Fees from domestic filings are used to pay for counsel for indigent defendants. If the filings are stopped, other funds will need to be appropriated to pay for criminal defense counsel.

V. Bill 138 would not provide any benefits of any kind to the people of Guam.

Allowing NRDs, does not lead to any crime, does not cost taxpayers any money, and does not result in any social ills. This industry brings in money from the outside, but does not require investment in infrastructure. On the other hand, I have not heard anyone articulate any way in which Guam would be better off if Bill 138 passes.

VI. The present law has some serious flaws, and should not be passed without revision.

Legislative drafting should not be done in haste. I am concerned that the sponsors of the bill in their zeal to stop non resident divorces, have not carefully researched the bill. It almost certainly will have effects that were not intended.

Perhaps the most troubling part of the bill, is that it would allow "any interested person" to challenge a Guam divorce.

I am not aware of any other US jurisdiction that by statute allows someone other than the husband or wife, to question the jurisdiction of the court, or the residency of the parties. This will lead to endless litigation, and will mean that no one obtaining a divorce in Guam, will ever be certain that their divorce is final. Let me give you three examples of what will happen if the bill passes in its present form.

A man divorces his wife in Guam. After the divorce, she racks up thousands of dollars in debt. When she can't pay, the creditors sue the ex husband, arguing that the divorce is not valid and he is still liable for the wife's debts.

A woman obtains a Guam divorce, and then remarries. When her second husband dies 25 years later, she claims his inheritance, as his spouse. His distant relatives challenge this, so they can obtain the inheritance. They argue that her divorce, which occurred years earlier, was not valid and the woman was therefore never married to the man that died.

A man divorces and remarries. He puts his new wife on his medical insurance. Several years later, when she contracts a serious illness, the insurer refuses to cover the costs. The insurer, with lots of money to hire lawyers challenges her earlier divorce. Though both she and her ex husband believe the divorce is valid, they do not have the resources to take on the insurance company. Her medical bills go unpaid.

Most US jurisdictions would not allow such challenges. However, if Bill 138 passes we can expect this type of litigation on a regular basis.

VII. At a minimum, any law changing the existing residency requirement should contain a sunset provision or transitional period.

While, citizens of Guam could reasonably differ as to whether this island should allow NRDs, it would be an act of Legislative irresponsibility to make changes to the existing law, without a Sunset provision, stating that the changes will not take effect for at least one year.

Please consider some of the ramifications of passing the Bill in its current form:

A. Pending Cases May Need to Be Dismissed. At any given time, there are undoubtedly dozens of non resident divorces pending in court. The present bill, which appears to have been drafted in haste, does not state whether it will apply to pending cases. The parties to these divorces hired Guam attorneys, and filed in Guam based on their good faith reliance on existing Guam laws. The rules should not be changed in the middle of the game. These people, at a bare minimum, should be permitted to have their divorces finalized.

B. Many Cases are already in the pipeline. It is not only the people that have already filed for an NRD that will be hurt. On any given day, there may many more cases where people have retained a Guam attorney to handle their divorce but have not yet filed. I have found that it is not unusual for parties to return their signed pleadings to me, months after they have retained my services. These people also relied on the existing laws passed by the Guam Legislature. Many have weddings planned. For others, their right to immigrate to the US is dependant upon the completion of a Guam divorce. Many military men are trying to straighten out their family affairs before deploying to a combat zone.

Changing the rules in the middle of the game will wreak havoc on these people's lives. It will make Guam seem like a backward and uncaring island with an unstable legal system. The damage to Guam's reputation will be tremendous.

C. Many employees will lose their jobs or have their income substantially reduced, if Bill 138 is passed. I would estimate that there are at least twenty (20) employees around the island, that will either lose their job or have their income or hours reduced, if Bill 138 becomes law. A transitional period is necessary, in order to allow these people to find other employment. In my own office, there are at least two (2) employees that will be immediately affected. Both have families they help to support. If the Legislature is inclined to change the existing law, it should show some compassion for these people, by providing for a substantial transitional period.

Thank you for the opportunity to comment on Bill 138. I strongly urge the legislature to vote no.

Sincerely,

Ron Moroni

Law Offices
TARPLEY & MORONI, LLP
A Law Firm including a Professional Corporation

Telephone: (671) 472-1539
Facsimile: (671) 472-4526

Bank of Hawaii Building
134 West Soledad Avenue, Suite 402
Hagatna, Guam 96910

E-mail: tarpley@guam.net
E-mail: Moroni@guam.net

October 18, 2005

VIA EMAIL AND DELIVERY

Senator Robert Klitzkie
Chairman, Committee on Judiciary, Governmental
Operations & Reorganization
197 Hernan Cortez
Hagatna, Guam 96910

RE: BILL 138 – JURISDICTIONAL ISSUE

Dear Chairman:

At the public hearing on Bill 138, several attorneys testified against the bill. One local attorney testified in favor of the Bill. His argument was solely based on a 1945 US Supreme Court decision, **Williams v. North Carolina, 325 U.S. 226 (1945)**. The attorney explained that the case involved a Nevada Divorce that was later challenged in North Carolina on the grounds that the parties to the divorce were not residents of Nevada. The attorney asserted that the ancient case stood for the proposition that Guam divorces could be challenged in other states, and were therefore worthless pieces of paper.

I did not have a copy of the case at the time of the hearing. Based on memory, I tried to explain to the committee that the case was of no relevance because it involved an "ex parte" divorce. An ex parte divorce is one where only one of the parties applies for the divorce, and the other does not consent or participate in the court proceedings. This is very different from a Guam non resident divorce, where both parties must consent to the divorce and to the jurisdiction of the court. The attorney that testified in favor of the bill does not, to my knowledge, practice family law, and may not have been familiar with this important distinction.

I told the chairman, I would review the case, and determine whether, in fact, my recollection was correct and whether **Williams** did involve an ex parte situation.

Williams did involve an ex parte divorce. In the first paragraph of the decision, the Supreme Court states the question before it as whether:

"a divorce granted by Nevada, on a finding that one spouse was domiciled in Nevada, must be respected in North Carolina, where ... *the other spouse had neither appeared nor been served with process in Nevada...*"

In other words, Williams' wife did not agree with the divorce and did not file a consent with the Nevada court. In several decisions over the next several years, the Supreme Court made clear that the Williams decision does not apply in a two-party divorce, where both parties consent. In Johnson v. Muelberger, 340 U.S. 581, 71 S.Ct. 474 (U.S. 1951), the Supreme Court summarized its decisions in this area, and reaffirmed that Williams only applied to "ex parte" divorces. The decision states:

"...The later Williams case left a sister state free to determine whether there was domicile of one party in an 'ex parte' proceeding so as to give the court jurisdiction to enter a decree. (citations)

Three years later a question undecided in Williams II was answered. In Sherrer v. Sherrer, 334 U.S. 343, 68 S.Ct. 1087, 1097, 92 L.Ed. 1429, a Florida divorce, where both parties appeared personally or by counsel, was held by Massachusetts not to be entitled to full faith or credit in that state because both parties lacked Florida domicile. 320 Mass. 351, 358, 69 N.E.2d 801, 805. We reversed, saying:

'We believe that the decision of this Court in the Davis case and those in related situations are clearly indicative of the result to be reached here. ***Those cases stand for the proposition that the requirements of full faith and credit bar a defendant from collaterally attacking a divorce decree on jurisdictional grounds in the courts of a sister State where there has been participation by the defendant in the divorce proceedings, where the defendant has been accorded full opportunity to contest the jurisdictional issues, and where the decree is not susceptible to such collateral attack in the courts of the State which rendered the decree.***'

It is clear from the foregoing that, under our decisions, a state by virtue of the clause must give full faith and credit to an out-of-state divorce by barring either party to that divorce who has been personally served or who has entered a personal appearance from collaterally attacking the decree. Such an attack is barred where the party attacking would not be permitted to make a collateral attack in the courts of the granting state.

In Johnson v. Muelberger, the Supreme Court extended the rule to bar attacks by third parties, at least where the jurisdiction rendering the decree would not allow attacks by third parties:

"When a divorce cannot be attacked for lack of jurisdiction by parties actually before the court or strangers in the rendering state,

it cannot be attacked by them anywhere in the Union. The Full Faith and Credit Clause forbids."

Williams is clearly not applicable to Guam non resident divorces since both parties must consent to the divorce and both enter an appearance in the case. As the above ruling makes clear, a two-party divorce may not be challenged in another jurisdiction by either the parties to the divorce or third parties.

There is another equally important reason why **Williams v. State of N. C.** does not apply. In **Williams**, the North Carolina Court was allowed to attack the Nevada divorce, because it found that the divorce was invalid under ***Nevada*** law. Nevada law at the time, limited divorces to Nevada residents. **Williams** had obtained the divorce by committing a fraud on the Nevada court, by saying he was a resident there when, in fact, he was not. Since the divorce was illegal in Nevada, it could be attacked in North Carolina.

Guam non resident divorces are legal in Guam and must be given full faith and credit everywhere, so long as the divorce is obtained in accordance with Guam's laws.

Finally, let me note that this is not just my opinion. There have been more than a thousand non resident divorces rendered by our local court over the last several years. The issue has been given careful consideration by the capable judges who sit on the Superior court. There is no reported instance of a Guam non resident divorce being denied recognition by another US jurisdiction or State or Federal agency. Hundreds have passed the muster of INS, Social Security, US embassies, adoption agencies, and issuers of marriage licenses, in dozens of states. Referrals are regularly made to me by US JAG officers and private attorneys from around the country, who have examined Guam's laws and are convinced Guam's present statute is fully enforceable. In fact, many of my clients have been attorneys.

Sincerely,

Ron Moroni

Law Offices
TARPLEY & MORONI, LLP
A Law Firm including a Professional Corporation
Bank of Hawaii Building
134 West Soledad Avenue, Suite 402
Hagatna, Guam 96910

Telephone: (671) 472-1539
Facsimile: (671) 472-4526

E-mail: tarpley@guam.net
E-mail: Moroni@guam.net

June 28, 2005

Members of the 28th Legislature of Guam
155 Hesler Place
Hagatna, Guam 96910

**RE: BILL 138 – AN ACT TO AMEND SECTION 8319 OF CHAPTER 8, ARTICLE 3
OF THE TITLE 19 OF THE GUAM CODE ANNOTATED TO COURT FINDINGS
AS TO THE RESIDENCY OF ANY PARTY TO A DIVORCE OR DISSOLUTION
OF MARRIAGE**

Dear Senators:

When we learned that the Legislature was considering Bill 138, which would modify the residency requirements for obtaining a divorce in Guam, we emailed some of our past clients. Enclosed are a portion of the emails we received. As you can see, they demonstrate that this service is primarily used by military and overseas Americans and others, who have no other option for obtaining a divorce.

We have blackened out their actual email addresses, to preserve their privacy. However, they were all informed that these letters would be forwarded to the Legislature. Should any Senator wish to contact any individual directly, please let us know and we will provide you with their actual email address.

Thank you for your kind consideration of these materials.

Sincerely,


Ron Moroni

Ron Moroni

From: [REDACTED]
To: <admin@expatdivorces.com>; <moroni@guam.net>
Cc: "Tim, Farey" [REDACTED]
Sent: Tuesday, March 15, 2005 11:59 AM
Subject: Guam divorce

Dear Sirs

My wife and I are both USA citizens. We have two children, also USA citizens. We have both lived in China for the last 7 years. Now we are planning to divorce but can't seem to find a place that allows us to do so. USA law requires us to be residents of a state but we have been overseas for 7 years and have no home state. Can we divorce in Guam without residency? We have already settled the financial and custody aspects. We only need to file the divorce.

Can you help us? Thanks!

Tim Farey

From: [REDACTED]
Date: 06/07/05 14:14:37
To: 'EXPATDIVORCES'
Subject: RE: HELP SAVE GUAM DIVORCES

Ron

You can tell them that I was literally in "no mans land" as China has no divorce laws for foreigners and one must live in the USA to be divorced there. Without the Guam option my ex-wife and I would have had an extremely difficult time finalizing our divorce. This was the only option available that met our needs and allowed us to amicably separate.

Tim Farey

From: Doug Christian
Date: 06/07/05 14:39:19
To: EXPATDIVORCES
Subject: Re: HELP SAVE GUAM DIVORCES

To Whom It May Concern,

I strongly urge the Guam Legislature to not change the current law allowing non-resident divorces and to continue allowing non-residents to process divorce proceedings through the Guam court system. I am a United States expat that has lived in South Korea for almost 20 years, serving the US Army both as a soldier and now as a US government contractor. I filed for divorce through the Guam court system in 2004. If not for the current law allowing my ex-spouse and I to use the Guam courts, I would have had to file for divorce through the Korean court system because I did not meet the residency requirements to file for divorce in the United States. The Korean court system is not friendly to non-Korean citizens, is only conducted in Korean language, and I would have still had to undergo the long process to have my divorce filed in the U.S. and recognized by the U.S. court system. Due to the language issues of all documents being issued in Korean, I was not comfortable that my rights were properly being protected nor that my best interest was being considered by my legal representation. Filing my divorce through Guam allowed me to have all court documents in English and the courts decision was fully recognized by the U.S. court system so there were no issues of validity of the divorce, settlement, and child custody decisions.

Sincerely,

Douglas S. Christian

From: Mary Pryor
Date: 06/07/05 18:05:16
To: EXPATDIVORCES
Subject: Re: HELP SAVE GUAM DIVORCES

Guam Legislature

Please be advised that the Guam Divorces for NON-Residents provides a much needed service for many who live overseas and find it impossible to get back to the states for a court date. I am active duty military and many times it is hard to get leave approved to take care of personal matters. With Guam divorces I was able to do everything through the mail in a very short period of time without leaving my job and my children in the care of others. Please do not take this option away for the many who don't have the means or time to get back to the state they reside. Sincerely, Mary R. Pryor

From: Coady Shannon M SSgt 52 CS/SCSVG
Date: 06/08/05 19:08:04
To: EXPATDIVORCES
Subject: RE: HELP SAVE GUAM DIVORCES

Hello! I would like to say a few words in hopes that this convenient and reliable service that your company provides continues it's services to the military members like myself have benefited from.

Already going through trauma and discomfort of a divorce, your company provided me with assured assistance of an expedited divorce. Being stationed overseas as a military member, the timely process of the foreign courts is hard to deal with concerning the language barrier and ensuring that the right concerns are voiced through translators.

I found Guam divorces online and having them tailor to military members stationed abroad was what I needed to deal with my situation. Because I was able to overcome to the hardship of divorce, I enabled my paperwork, marriage status, and peace of mind to move forward without humiliation and awkwardness of my status.

Again, I want to thank you and your representatives for all that you do for us military members and thank you for easing the discomfort of my marriage dissolution. I have and will continue to recommend your company to others that may need the assistance your company provides.

//SIGNED//

SSgt Shannon Coady, USAF
52 CS Multimedia


From: De Gay, Jean-David CNTR USFK J2 ISD (SETA)
Date: 06/07/05 14:02:28
To: kaikai@guam.net
Subject: RE: HELP SAVE GUAM DIVORCES

DO NOT CHANGE WHAT IS NOT BROKEN!!!

As many of us have heard in the past, the old adage of "If it ain't broke, don't fix it." applies to the way Guam handles divorces under the rules for divorce. If one were to look closely at the numbers and the locations of the clients that use Guam for divorce it is very obvious that Guam is doing something right. I used Guam for my divorce and it was an experience that was more akin to advice from a wise parent than the brutal shark-lawyer, court room mauling that many have had during a very unpleasant experience they were enduring already. The population of expats working overseas has few alternatives to the "Guam Solution". As many of us represent our country, companies, and the American people at large, we are not afforded many of the legal avenues that are provided to Americans based in the continental United States. Guam is our only hope for things like divorce. Please be advised - DO NOT CHANGE THAT OR TAKE IT AWAY FROM US WORKING OVERSEAS!

From: Robert McGovern
Date: 06/09/05 11:14:21
To: kaikai@guam.net
Subject: RE: HELP SAVE GUAM DIVORCES

To Guam Legislature,

June 9, 2005

I found that the Nonresidence Divorce policy in Guam to be extremely helpfull in gaining my divorce in 1994. I am a retired military officer residing overseas. At the time my exwife and I agreed to a divorce I was living overseas. For her to file for divorce in Hawaii where she resides would have caused her financial hardship. When I became aware of the nonresidence divorce policy in Guam I took advantage of it and we received a divorce through Guam. Both my exwife and I mutually agreed to an uncontested divorce and the service provided in Guam helped both of us. I feel that if the Guam divorce policy changes it will negatively affect many people who greatly need this service provided in Guam.

Sincerely,

Robert E McGovern

From: Bob Sinclair
Date: 06/07/05 23:42:20
To: EXPATDIVORCES
Subject: Re: HELP SAVE GUAM DIVORCES

Ron -

I am happy to support the Guam divorce law as is stands now. It was very helpful to me to be able to get out a bad marriage quickly when I used your office last year to facilitate my divorce. I have always thought it was crazy that most states require long waiting periods for uncontested divorces when no children are involved. In my particular case, I was in love (and am now married) to a wonderful woman from Colombia. We of course could not even apply for a fiance visa for her to come to the US until my divorce was final. Thanks to Guam, I was able to get divorced quickly, and get on with my life. I hope for others sake, that the law is not changed.

Bob Sinclair

From: William Bremer
Date: 06/07/05 20:53:10
To: kaikai@guam.net
Subject: RE: HELP SAVE GUAM DIVORCES

I used the service and I will tell you it is the best service I ever used. It would have been impossible to get a divorce any other way from my wife. I would have had to quit my job in Korea, move back to the United States for a year to meet the residency requirements then get divorced. Without this service I would have been basically dead. This way instead of wasting my money on the other way, I was able to give my ex-wife more money so the transition would run more smoothly for her. Please don't vote yes on this Bill, it will make a lot of ExPats suffer.

Sincerely,
William F. Bremer Jr.

From: [REDACTED]
Date: 06/07/05 14:56:03
To: EXPATDIVORCES
Subject: Re: HELP SAVE GUAM DIVORCES

To Whom It May Concern,

In response to this letter and my own forth coming divorce settlement, I fully support the initiative to not change current Guam non-resident laws.

In our own case, We have both suffered from extreme mental depression for several years due to unreconcilable differences in our current spousal relationship. During the past five years her and I have especially both suffered physically and emotionally with no blame to each other. Divorce for folks working for the government and living overseas for many years is almost impossible.

With the current law, we now both have an opportunity to go on to a new life for ourselves and to be able to not feel the pain and anguish we have both felt for so many years. Sadly, at the time we married, we both were in a state of loneliness and need without regard to the meaning of real love and shared responsibilities at the time.

I implore the government of Guam to please wisely not to make the decision to afford the opportunity for non-residents to be freely granted a divorce, especially those working for our government in overseas places.

Yours Truly and God Bless Guam,

Danny Cimo

From: [REDACTED]
Date: 06/13/05 23:35:50
To: EXPATDIVORCES
Subject: Re: HELP SAVE GUAM DIVORCES

Dear Sirs Or Madams

Though my divorce has not come through yet, it will shortly. I cannot thank enough the people of Guam Divorces. If it wasn't for them it would be far too difficult to get divorced. Neither I nor my husband meet the requirements of any state to get divorced. And though we have been separated longer than we have been married, we had to remain married because of the difficulties the law provides us.

As I am sure you are aware, each US state has a different law regarding how two people can get divorced. We lived in two different states from the one we married in, each ones making it difficult to get divorced. Then I found Guam Divorces. I was so pleased that I didn't have to live in Guam to get my divorce from there. There is no way I could afford to fly out there, meet the residency requirements, pay for my divorce, and fly back. But thankfully, through them, I can successfully get my divorced and move on with my life, along with my husband who can move on with his.

I am sure mine is just one story out of many of people who have been helped by Guam Divorces. People who under their current circumstances could find no way of getting divorced where they were living. I am eternally grateful for the service they provide, and I truly do hope that many more people in the years to come can use their service WITHOUT the hindrance of a residency policy.

I thank you for listening to my story, and the stories of others and hope that you will understand that without Guam Divorces I had no hope of every moving on, but now I can look forward to a bright and happy future.

Thank you and Kind Regards,

Jaime Hoffman

From: Koslosky, Donald F. CONT DIV INF 2 HQ G6
Date: 06/07/05 14:33:18
To: EXPATDIVORCES
Cc: Judy Shimizu
Subject: HELP SAVE GUAM DIVORCES

Ron/Judy,

Here are my comments:

I used the divorce service because even though I am a resident of Texas, I did not meet the requirements for a divorce there (the last six months physically present). So I had to wait two years until I found the Guam divorce service before I could move on with my life. The only other option was to let my Korea wife take me to a KOREAN court, where I surely would have been a big loser.

Given the fact that the agreement has to be amicable, and be notarized by a US notary, I do not see any problems or fraud with the service. Guam has only enhanced it's image as a place that cares about veterans, and those American serving overseas. I am a veteran, and also a DoD contractor, and without this service, I would be leading a miserable existence. I would be unable to carry on with my future unless I gave up my job to moved back to the US to just to get a divorce.

Being divorced has taken away a lot of stress from myself and my ex. We can both move on, and just be friends and take care of our child's needs. Because of the divorce there was no longer a need to fight about money, conduct, or any other subject. And without Guam, who knows what would have finally happened.

Thanks,

Donald F. Koslosky

2ID VTC Team Leader

NORTHROP GRUMMAN

From: [REDACTED]
Date: 06/07/05 15:24:43
To: kaikai@guam.net
Subject: SAVING GUAM DIVORCES

Dear Ron Moroni and staff at Expat Divorces

I am writing to express my sincerest appreciation for your assistance in obtaining a Guam Divorce for me. Divorce is a very difficult emotional process and people like myself should have the option of being able to obtain a divorce in a most expedient and painless manner, I would like to say that the Guam divorce plays a very essential role in allowing people to divorce in a dignified painless manner.

Again I thank you for your assistance and hope that the Guam Legislature will allow you to continue this very much needed service.

Sincerely,

Howard Lelethal
New York, USA

From: [REDACTED]
Date: 06/10/05 02:49:42
To: kaikai@guam.net
Subject: RE: HELP SAVE GUAM DIVORCES

dear Ron,

i would like to thank you for helping me in my time of need. you and your team were so efficient, my over seas divorce only took about three months. i was preparing myself for an ordeal i thought would take about a year or so, worth tens of thousands of dollars. but this was not the case. i do not believe there is another more efficient divorce service in the world. again thank you for your help, and i wish you and your office the best of luck with this matter.

very respectfully,

Willie d. fisher USN

From: [REDACTED]
Date: 06/10/05 07:52:43
To: kaikai@guam.net
Subject: Re: HELP SAVE GUAM DIVORCES

Ron,
I don't know if this will be of any help to you, but the following is the situation I was in where my Guam Divorce helped. I recently got married in Las Vegas but my husband and I lived in Baltimore, MD. Shortly after we were married, he began physically abusing me. After filing a police report, I fled the state with the help of my family. I needed to get out of the dangerous situation. If I had used the Maryland court system for my divorce, I would still be married to him. They have a one-year cooling down period. I did not want to wait for a full year to rid him from my life, especially since we were only married for a total of 2 months before I left. Additionally, I also did not want to have to travel all the way back to Maryland to go to court (if that had been necessary). Since the marriage was so short, I wanted nothing but what I took into the marriage, as did he. Also, I did not mind the terms of the divorce being "irreconcilable differences" since the documentation of abusive incidences were already on record at the local police station. I simply wanted out of the marriage and wanted to get on with my life. With the Guam Divorce, this is exactly what I was able to do.

You may call me with questions or if any other information might be helpful.

[REDACTED]

***I would like to remain anonymous if this is used in any way. Thank you!

Sincerely,

Ashley Vale

From: [REDACTED]
Date: 06/09/05 06:11:39
To: kaikai@guam.net
Subject: Re: HELP SAVE GUAM DIVORCES

To Whom It May Concern:

I recently was divorced with a Guam divorce. I am the victim of domestic violence, resulting in my former husband having misdemeanor and felony charges placed on him.

This attack was sudden and violent. There was no way for my healing process to start as long as the divorce proceeding hung over my head. I researched and found the law firm in Guam who handled my divorce quickly. I can not tell you what having that done quickly did for me. Please leave the law as it currently is, allowing residency and time limits to be as they are presently.

Thank you for your time.
Debbie Edwards
Morehead City, NC

From: joseph.mcguigan
Date: 06/08/05 00:27:25
To: kaikai@guam.net
Subject: RE: HELP SAVE GUAM DIVORCES

To Whom It May Concern:

My former wife and myself knew that our marriage needed to end. We had come to the realization that we had to divorce quickly to preserve at least a friendship. There was no arguments of who got what and how the split would work. And we wanted to expedite it so we could both get on with our lives.

After checking numerous avenues, I contacted Expatdivorces in Guam. After talking with Ron Moroni, we knew that this was the place to have our divorce.

Our situation was that I was on active duty Army in the midwest and my former spouse fell into depression due to the change of my pace of work and her inability to feel comfortable in a new place. We knew that a quick divorce, processed by Expatdivorces, could allow us quickly, and painlessly separate without having to fulfill time periods that required us to be separated or return to the state where the marriage to divorce.

All things said and done, our divorce was took just under 3 weeks and completed. I was happy that the divorce did not cause any further difficulties that one usually entails. She was free to move back to her parents hometown, get her maiden name back, and get on with her life. I was free of the burden of having an unhappy spouse and since she did not want financial support I was free to easily regroup financially.

I have also reunited with my high school sweetheart after 7 years and plan to marry her soon. The divorce provide by Expatdivorces allowed me not to put myself in any situation that could result in regulation violations of the military if I was only separated.

My former spouse and myself are only one of thousands of stories that have been helped with the stigma of divorce. I am very satisfied with the handling of my case and can only hope that thousands that have to go through the divorce process can have Guam based attorneys ease their decisions.

Joseph W. McGuigan

From: Jim Kirk
Date: 06/07/05 23:48:20
To: EXPATDIVORCES
Subject: RE: HELP SAVE GUAM DIVORCES

To Whom It May Concern,

I want to take a moment to write and say what an important facility the non resident divorces offered by Guam courts are. There may be an assumption that this facility is being used only by those looking to circumvent the constraints of other jurisdictions, but there are many U.S. citizens, like myself, for whom there are no other alternatives. Having been married in New York, but I left the United States 20 years ago and have been living abroad in Ireland, England, France, Switzerland, Jamaica and now Trinidad, it is impossible to qualify for residency requirements in any U.S. jurisdiction, and placing yourself at the mercy of another countries divorce laws can be problematic to say the least.

In my case, the Guam option was the only one that allowed me the proper closure of my first marriage (with my first wife's consent) and allowed me to remarry and start a new life. Without this lifeline I was in a limbo unable to either leave the past behind or start a new future. My current wife would have been with me even without this feature, but as we look to start a new family, neither she nor our future children would have had the protection in law they are entitled to expect as my family.

Before anyone looks to remove this facility from Guam law, I would strongly advise that the use to which this facility is being put be carefully examined. Like every facility there is almost certainly people looking to abuse it, but please believe me when I tell you that there are many of us for whom this is the only option that allowed a divorce in the same American court jurisdiction as our marriages. Without this facility, the only alternative would be weekend flights to somewhere like Haiti with results that are of dubious legality and simply not accepted in many foreign jurisdictions.

In your deliberations, please take account of the many American citizens for whom you are not the last hope, but in fact the only one. My life has been infinitely improved by the availability of this feature of Guam law and I am only too happy to add my voice to the debate as to the future of this important facility.

Regards,

Jim Kirk

Head of IT
Digicel Trinidad



From: Amanda Ralph
Date: 06/09/05 03:36:47
To: EXPATDIVORCES
Subject: Re: HELP SAVE GUAM DIVORCES

I am completely in favor of keeping the door open for non-residents to get divorces in Guam. My situation was a frustrating one, as we were married in Japan while both stationed in the military. Although we did live for a time in the States, we never registered our marriage, as we weren't residents of the state we were stationed in. Now in Germany, the divorce situation proved a sticky one. The circumstances for divorce were amicable and agreed upon, but the process of trying to get a divorce meant either 1) going back to our home state, registering our marriage, then filing for divorce (which was more complicated with my now-ex husband still in the military) or 2) getting a divorce in Germany, which is not only long, but expensive. Having the option to get a divorce granted in Guam was a god-send to us. We didn't have to worry about any waiting times (after all, we're adults, and knew we wanted to end the marriage), residency requirements (hard to establish when you've spent so much time overseas), or traveling an ocean away to file (hard on the wallet). A divorce in Guam is not a backdoor way for a divorce, in my eyes. It's a greatly valued option to those few who fall into odd situations regarding their marriages. I am very grateful I had this choice, and would recommend it to anyone in a similar situation. I hope that the Guam legislature decides to keep the opportunity to help people alive.

Sincerely,
Amanda Ralph
Schwedelbach, Germany

From: X Z
Date: 06/07/05 20:44:07
To: kaikai@guam.net
Subject: RE: HELP SAVE GUAM DIVORCES

Dear Sirs,

I have lived overseas for about 20 years in 8 different countries. It is almost impossible for many expats to get divorced because most states require a long period of residence. This is a financial burden that is added on top of the already overstressed emotional side of a divorce.

Guam provides expats with a reasonable way to end an unhappy situation with the least amount of stress. You should be aware that there are other options such a suicide that are often considered.

Please keep the current divorce laws. We expats need all the help we can get.

Sincerely,

Marc Richter

From: Patton, Dennis H.
Date: 06/08/05 03:54:38
To: EXPATDIVORCES
Subject: RE: HELP SAVE GUAM DIVORCES

As there are no other alternatives for Military members or those associated with the Military, who live transient lifestyles, it would be quite regretful to put forth legislation ending peoples' ability to file for divorce through the Guam courts.

My ex-wife and I found the ability to file our divorce through the Guam courts, a service to be the only option for us. Were we not able to deal with our divorce the way we did (through Expatdivorces), it would have caused us both even more hardships on top of dealing with the divorce to begin with. We were divorcing as I was PCSing out of my Military assignment in Japan and she and I were to return to two States that couldn't have been farther apart - MA and CA - both of which had divorce laws which required residency.

If we were not able to have accomplished our divorce the way we did, it would have driven one or both of us to measures that would have caused greater problems for us down the line.

Dennis Patton

From: Mikel Matto
Date: 06/10/05 04:16:25
To: EXPATDIVORCES
Cc: moroni@guam.net
Subject: Re: HELP SAVE GUAM DIVORCES

Folks:

Please feel free to use the email below. Please do not identify me by name, however, in any documents. I'd rather not have my name come up in any Google searches related to divorce.

Cheers,
Mikel

Mr. Moroni et al:

I understand that the Guam Legislature is considering making divorce inaccessible to non residents. This is very unfortunate.

Guam and its courts are enabling my wife and I, with your firm's assistance, to end our marriage in a way that is affordable and timely.

My wife and I have been separated for many years and she is a non-U.S. citizen living in Europe. As a California resident, the waiting period for a divorce is over 6 months. With one of the spouses as a non-resident alien, the potential for complications is greater.

The current laws in Guam and companies such as Tarpley & Moroni have allowed two consenting but incompatible adults to end their marriage with the minimum amount of cost and inconvenience. I sincerely hope this does not change.

With respect,
Mikel Matto

From: Stephen G Cooper
Date: 06/07/05 15:28:35
To: EXPATDIVORCES
Subject: Re: HELP SAVE GUAM DIVORCES

By all means Ron, my ex-wife and I, who get along extremely well and are the best of friends, thanks in at least some part to the expidicious handling of our affairs by you and you ever helpful staff, gratefully acknowledge the availability of the Guam Divorce and that it may be for that very type and expedientcy that we are still great friends now, over one year later.

Sincerely

Stephen G. Cooper

From: Mike King
Date: 06/13/05 21:52:09
To: EXPATDIVORCES
Subject: Re: HELP SAVE GUAM DIVORCES

To whom it may concern,

The ability to have access to the non resident divorce in Guam is extremely important to expats. In my case, if it had not been available my divorce most likely would have taken years or worst I would have had to completely ruin my life and hers to get the divorce.

My story is as follows: I am retired military living and working in Korea. My ex-wife and I agreed to a divorce; however there were conditions she demanded that prevented us from getting a divorce in Korea. She demanded that she split my military retirement income as community property. To do that you have to have a divorce in a US court or one recognized by US court system such as Guam. I was in agreement with the split so we chose to go through the Guam non resident divorce process. Had that not been available to us, I would have had to quit my job and hopefully find equitable employment in a state that I could quickly have resident status for divorce. Additionally, my ex-wife had no desire to leave Korea as she in a citizen of Korea. This would have created much more turmoil and an enormous amount of stress and strain on finances.

There are many similar situations I know of in my local expat community. It is important that the laws of Guam remain the same in regards to the non resident divorce statutes.

Mike King

Date: 06/07/05 13:57:02
To: EXPATDIVORCES
Subject: RE: HELP SAVE GUAM DIVORCES

Ron,

Hope my words help.

I used the EXPAT Divorce due to being a military member stationed overseas for 15 years. My official home of record being Michigan, I found it costly and time consuming to obtain services from that state. The EXPAT Divorce service enabled me to complete the necessary paperwork in a timely manner and obtain results quicker than I would if I used a home of record attorney.

I would recommend this service to any overseas military member whom requires a service that is definitely customer centered. Thanks again.

///SIGNED///
MARTY W. BLACKMER, TSgt, USAF
PACAF SF Regional Training Center
Osan Air Base, Republic of Korea
DSN: [REDACTED]
FAX: [REDACTED]
COMM: [REDACTED]

07 June 2005

To Whom It May Concern:

RE: Expatriate Divorces from Guam

I am writing to relate my experience in divorcing outside my own country, and to say how much I appreciate the assistance I have received from the courts in Guam.

I am a Canadian citizen, my ex-wife is a British subject, and we were married in Canada in 1973. We both moved together to The Hague, Netherlands, in 1998 when I took a job with the war crimes tribunal for the former Yugoslavia. In June 2001, while we still lived in the Netherlands, my wife filed for a divorce under the Dutch system and retained a Dutch attorney. In 2002 I was transferred to the Tribunal's field office in Bosnia, where I remained until October 2004. Meanwhile, the Dutch attorney was making little or no progress on processing the divorce.

I should note that there were no items of dispute between my wife and me. We had divided our belongings and property, our children were grown and living on their own, and I made and still make provision for her financial support. Still, the Dutch attorney could not get the divorce processed through the local courts, because neither of us were citizens, I was not a resident and my wife was only a temporary resident. Of course, this did not prevent the Dutch attorney from billing 5,000 Euro for her work.

In October 2004, I changed jobs, which required me to work mostly in Baghdad, Iraq, but some of the time in New York, USA. My wife remained in The Hague, Netherlands.

We had tried to process our divorce through many court systems and jurisdictions – Canadian, British, American - but because we were not permanent residents anywhere, we could not have it done. After four years apart, my wife was trying to move on with her life and was anxious to finalize the divorce. She discovered the website which explained divorces available in Guam, and within a month, our divorce was processed.

I must say, divorce in this manner should not be for everyone – but for those of us who, because of resident status technicalities, cannot have a divorce processed in local courts it has been a Godsend. The legal process was very well explained by the Guam attorney I retained and the cost was very much below what I had paid the Dutch attorney (for no results.)

Without the assistance of the courts in Guam, my wife and I would still be in legal limbo, neither of us able to really move from our “separation” status for years to come.

Regards,

Barry Hogan

Law Offices of
GORMAN & GAVRAS

A Professional Corporation
2nd Floor, J & R Building
208 Route 4
Hagåtña, Guam 96910

Telephone: (671) 472-2302
Facsimile: (671) 472-2342
legaleagle@netpci.com

A. Alexander Gorman*
William L. Gavras**

*Also admitted in CA, MO & CNMI
**Also admitted in MO & CNMI

VIA HAND DELIVERY

June 20, 2005

Senator Robert Klitzkie
Chairman
Committee on Judiciary, Governmental Operations & Reorganization
28th Guam Legislature
Hagatna, Guam

Re: Bill 138

Dear Chairman Klitzkie:

I am writing regarding Bill 138 which is presently before the committee. The bill will radically and without justification alter the present residency requirements for uncontested divorces granted in Guam. I strongly urge the Legislature not to pass Bill 138.

There are a number of policy and financial reasons for you to leave the existing law alone.

First, Guam is the only U.S. jurisdiction that provides for these types of consent to jurisdiction divorces. There are many military people stationed overseas and expats living in foreign countries who cannot meet the residency requirements of any US state or territory. These are the primary people who have been divorcing in Guam under Guam's current unique provision.

Second, there were almost 1900 cases filed in the Superior Court of Guam in 2004. Divorce filings produced revenues for the courts in the amount of approximately \$300,000.00. This money is used by the court to hire counsel for indigent criminal defendants. If the court did not have these funds, the legislature would need to appropriate this money. Most of this money comes from off-island.

Third, there are at least 5 Guam law firms that I know of that have already invested time, effort and especially money into promoting this law in the worldwide

community. Several of my colleagues have indicated that if Bill 138 is signed into law, they will have to fire some of their personnel immediately. Moreover, the loss of this line of business to the firms will result in lower monthly GRT payments to the Government of Guam. Once again, the money used to pay the extra personnel and the higher GRT's is all coming from an off-island client base.

Furthermore, Bill 138 appears to have been drafted in haste. I fear that there will be many unintended consequences if it is passed in its present form. Among other things, it will allow jurisdiction in divorces to be challenged by "any interested party." This will undoubtedly lead to endless litigation. If this law passes, a Guam divorce can be subject, even years later to a contest by a creditor, a subsequent spouse, an heir, or just about anyone else. I know of no other jurisdiction that allows third parties to attack the jurisdiction of a court in a divorce proceeding, or any other type of proceeding.

Finally, this Bill contains no transitional provision. In reading the Bill, it is unclear whether it will apply to the divorces that are pending on the day it becomes law. It would not allow the hundreds of people that have started the process to complete their divorce. Whatever the policy differences regarding the bill, we should all agree that there is no reason to punish the hundreds of people that have relied in good faith on Guam's existing laws. Anyone that has started the process and retained an attorney should be given time to complete their divorce. We do not want Guam to gain a reputation as a place with an unstable legal system where laws change sporadically.

In summary, Bill 138, would eliminate Guam jobs, reduce Superior Court operating revenues and the Government of Guam tax revenues if signed into law and would unnecessarily punish many people that have started, but not completed, their Guam divorce. Finally, Bill 138 would eliminate the only option United States citizens living abroad have to obtain a US divorce.

For the foregoing reasons, I respectfully urge the legislature not to pass Bill 138. Thank you very much for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Alexander Gorman', with a long, wavy horizontal line extending to the right.

A. Alexander Gorman
AAG/pc

June 13, 2005

VIA HAND DELIVERY

Senator Robert Klitzkie
197 Hernan Cortez
Hagatna, Guam 96910

RE: WRITTEN TESTIMONY ON BILL 138

Dear Chairman Klitzkie:

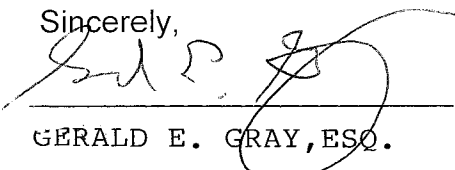
I am writing to voice my concerns regarding Bill 138 which would attempt to prevent non residents of Guam from obtaining a divorce in the Superior Court, even when both parties consent to the divorce. As you know, I am an attorney practicing in Guam, specializing in Family Law. It has been my experience, that such non resident divorces, are primarily provided to U.S. Military living overseas. In most instances, these military people have no other place where they may obtain a divorce. I believe that this is a very useful service, and has no detrimental effect on Guam.

I have heard that the sponsors of the Bill are concerned that these procedures are being used by people to avoid child support or other obligations. There is no reason that child support obligations cannot be made part of the Guam Divorce and often are. Further, the obligation to pay child support exists independent of the right to obtain a divorce. A spouse, that obtains a divorce, that made no mention of spousal support, would still have that obligation, which could be enforced in a separate proceeding.

I have also heard that there is a concern that the Guam courts should not handle divorces where the parties do not live here, because witnesses will not be located in Guam. Yet, the present law allows the court to grant divorces to non residents only when they are completely uncontested. In uncontested divorces, there are normally no witnesses. This is the case even where both parties live on Guam and the divorce is uncontested. Any information that the court may need, is usually provided through affidavits or documentary evidence. This is the case in an uncontested divorce even when the parties are located in Guam. Further, under the existing law, if the court feels it necessary, the court may require testimony of the parties either telephonically or live before granting the divorce. However, as I explained, in an uncontested divorce such testimony is rarely needed.

In some, I strongly encourage the Legislature, to maintain the existing divorce statutes, and not pass Bill 138. The law provides a vital service for Americans stationed overseas and thereby enhances the image of Guam.

Sincerely,



GERALD E. GRAY, ESQ.

Lewis W. Littlepage
P.O. Box 7808, MOU-1
Agana Heights, Guam 96919

TO: The Honorable Mark Forbes, Speaker
The Honorable Joanne M.S. Brown, Vice Speaker
Members of the Twenty Eighth Guam Legislature

RE: Bill 138

Dear Sirs/Madams:

I have recently reviewed Bill 138, an Act to Amend Section 8319 of Chapter 8, Article 3 of Title 19 of the Guam Code Annotated to Court Findings as to the Residency of Any Party to a Divorce or Dissolution of Marriage. As a retired military officer, I feel that I must oppose this bill. Guam represents to military personnel stationed in the Far East and throughout the Pacific, a piece of America to which they may turn in times of trouble. Divorces in foreign countries, under different laws, work against U.S. servicemen and women and can cause undue hardship, affecting their financial status and even their military careers. Allowing uncontested divorces for U.S. military personnel serving in Korea, Japan, Afghanistan, or wherever our troops are stationed ensures that their rights are fully protected. In many cases these U.S. citizens have no other option but to wait, possibly years, or to submit to the decision of a court that offers unequal treatment to foreign nationals. In Guam, with its procedures set up to ensure that the case is truly uncontested, American soldiers and sailors are assured a fair hearing.

I would urge members of the Guam Legislature to support our troops and vote against Bill 138.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lewis W. Littlepage", with a stylized flourish at the end.

Lewis W. Littlepage
USAF, Major/Ret.

James S. Brooks

34 Acho Circle, Piti, Guam 96915

Phone (671) 477-2880; Fax (671) 477-5297; email guambrooks@yahoo.com

June 17, 2005

Honorable Robert Klitzkie
Chairman, Committee on Judiciary, Governmental
Operations and Reorganization
28th Guam Legislature
Hagåtña, Guam 96910

Dear Senator:

Reference Bill 138:

Before Bill 138 is enacted, please consider the negative economic impact the legislation would have. The proposed amendment of 19 GCA § 8319 would end the ability of consenting nonresidents to obtain an uncontested divorce in Guam.

The 27th Guam Legislature sought to ban nonresident divorces with the enactment of Public Law 27-129, which amended 19 GCA § 8318. The sponsors of that measure overlooked, however, that 19 GCA § 8319, as it stands, prohibits the Superior Court from questioning its jurisdiction in any case in which the defendant has consented to the court's jurisdiction.

Because of the oversight by the 27th Guam Legislature, the Superior Court continues to grant divorces to consenting nonresidents. A Google search of the Internet shows 917,000 returns for the query "Guam divorce." A copy of the Google search page is enclosed.

The minimum court cost for a nonresident divorce is \$160, comprised of the \$150 filing fee and the \$10 fee for a motion to shorten the interlocutory period. If the court would establish an expedited process for the handling of the nonresident divorces, litigants would willingly pay an additional \$40 to \$50.

As of June 17, 2005, 974 divorce cases have been filed, generating revenue of \$155,840. This sum is low compared to last year because the nonresident divorce process was thrown into chaos in December by the enactment of Public Law 27-129. It was only after Judge Steven S. Unpingco granted a divorce this year in a test case brought by attorney Ron Moronic on the basis of 19 GCA § 8319 that the flow of nonresident cases resumed.

If 19 GCA § 8318 is reinstated to its prior form and if 19 GCA 8319 is left unchanged, it is realistic to expect that the number of nonresident divorces would rapidly spiral upward and that within a year's time the court would derive annual revenue of \$1 million or more from this single source.

An argument raised against nonresident divorces last year was that they were prohibited by a decision of the Supreme Court of the United States. In an unreported decision, §§ 8318 and 8319 [Sections 128 and 129 of the Guam's former Civil Code] were declared to be contrary to the Organic Act of Guam. *McAllister v. McAllister*, Domestic Action 1263-87 (Superior Court, 1988). The judge stated that these two sections were not laws of "local application" under *Granville-Smith v. Granville-Smith*, 349 U.S. 1, 75 S. Ct. 553 (1955). Rather, the judge held, these sections went beyond matters of "local application", seeking to encourage persons not residents of Guam to obtain divorces in Guam.¹

The rationale for that Superior Court decision was vitiated when Congress amended 48 USCA § 1423a in 1998 by striking out the words "of local application."² The *Granville-Smith* decision—the precedent upon which the *McAllister* decision rested—was based on the premise that the divorce laws of the Virgin Islands were invalid because they were designed to facilitate quick divorces for "sojourners, mere transients in the Islands" and that such laws were not of "local application." 75 S. Ct. at 559.

Congress has moved far from the *Granville-Smith* court's position in subsequent legislation. It not only struck out the "local application" language from the Guam Organic Act, but did the same with the Organic Act of the Virgin Islands in 1958.³ Congress also repealed a law that forbade territories to pass "local" or "special" divorce laws.⁴ Thus the prohibitions that Congress had once placed on territorial legislatures regarding laws pertaining to the dissolution of marriage no longer exist.

Because of the complexity of obtaining a divorce in many American jurisdictions, more and more people have turned to the Superior Court to resolve uncontested cases expeditiously. The nonresidents who file in Guam do so under the irreconcilable differences cause established by 19 GCA § 8219; they apply to the Superior Court voluntarily and without duress of any kind. The ability of nonresidents to obtain divorces in Guam has been of particular benefit to members of the Armed Forces and other persons whose jobs keep them abroad and do not allow them to accrue the necessary period of residence to obtain a divorce in the place where they may be.

I can think of no logical reason why Guam would want to spurn this source of income and the job opportunities created for local persons in law firms that process these cases. There is no sound legal argument to support the proposition that an individual may not submit him- or herself to the jurisdiction of a particular court. While the reported cases are rife with instances in which a defendant has disputed a court's jurisdiction because the person was not a resident or did not do business within the court's domain, there are no cases where a judgment has been vacated because an individual or business voluntarily submitted to the jurisdiction of the court.

¹ A decision of the Superior Court has no binding precedential affect in Guam's hierarchy of law except as the law of the case within the particular matter in which the decision has been issued. 1 GCA § 100.

² Public Law 105-291, § 4.

³ Public Law 85-851, § 2.

⁴ Formerly 48 USCA § 1471, repealed by Public Law 98-213, § 16(w), Dec. 8, 1983, 97 Stat. 1463.

Historically, physical presence, actual consent, and domicile were the bases for courts to obtain jurisdiction over an individual. Because of the increasing complexity of modern society, particularly because of the volume of interstate trade and travel by individuals and businesses, legislatures and courts collaborated in fashioning long-arm jurisdiction that permitted the courts of one state to make the resident of another state respond because of the contacts that the business or individual had with the plaintiff's jurisdiction. See Wright & Miller, 4 Fed. Prac. & Proc. Civ. 3d § 1065. But the long-arm statutes have not displaced the concept of consent to a court's jurisdiction; actual consent, in addition to implied consent, is still a valid basis for a court to enter judgment against an individual.

I earnestly implore you and Senator B. J. Cruz, co-sponsor of Bill 138, to facilitate rather than frustrate and abolish nonresident divorces in Guam.

Thank you for your consideration of this request.

Respectfully,



James S. Brooks

Encl.


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The parties may conclusively waive any objections which they may have as to the jurisdiction of the court to grant a divorce or dissolution of marriage to either one or both parties, which waiver shall conclusively bar any future attack upon the jurisdiction of the court to grant a divorce or dissolution of marriage to the parties pursuant to the provisions of the codes of Guam, and the court shall grant a divorce or dissolution of marriage based upon the consent of the Defendant regardless of whether either of the parties meet any of the foregoing residency requirements, and shall grant a divorce or dissolution of marriage even if neither party is a resident of Guam upon the consent of the Defendant.

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