

THE MARSHALL ISLANDS LEGAL AID FUND
(SUMMARY)

Prior to the establishment of the Legal Aid Fund (the Fund), there were 3 offices or entities that provided free legal services to residents of the Marshall Islands who were unable to meet the costs of legal representation. These offices were the Public Defenders Office and the Legal Aid Office (both statutory offices wholly funded by the RMI Government) and Micronesian Legal Services Corporation (MLSC), a non-government, not for profit corporation, primarily funded by the United States Legal Services Corporation with annual contributions from the Marshall Islands Government. Due to the de-funding of the Legal Aid Office for audit issues the Nitijela appropriated and established the Legal Aid Fund to address the gap created by the closure of the Legal Aid Office. The Fund was given to the Judiciary to administer and consisted of an annual appropriation of \$50,000 which was to be used to compensate attorneys who are appointed to represent clients who cannot afford the costs of legal representation or who did not qualify for the services of the Public Defenders Office or MLSC. The vesting of responsibility to the Judiciary to administer the Fund led to Supreme Court Order 2000-5 the precursor to the February 15, 2016 Order for the Implementation and Use of the Legal Aid Fund (the Order).

Initially, use of the Fund was based on requests from attorneys for the Fund to cover their costs of representing litigants who could not afford to pay for legal costs. Upon approval, there was no limit to the amount they could incur in a single case. After several years administering the Fund, it became obvious that the Fund was insufficient to meet the legal aid needs of the public and that increases in the annual appropriations to the Fund was not likely. The Court was thus confronted with devising a sustainable system for use of the Fund. Following consultations with the Marshall Islands Law Society (a voluntary membership organization) and the resident and non-resident private members of the bar, the Supreme Court issued the Order which was formulated to provide a means whereby the meager resources of the Republic may be utilized to the greatest extent possible to benefit the greatest segment of the public that requires legal aid. (The Legal Aid Fund Order was amended in September 20, 2020. A copy attached to this summary). The Order integrates the free legal services provided by the Public Defenders Office and MLSC with the statutory and rule based obligation of all attorneys and trial assistants admitted to the practice of law in the Marshall Islands to provide pro bono or reduced fee legal services to residents who are unable to meet the costs of legal representation or do not qualify for free legal services. A unique feature of the Order is the option for attorneys or trial assistants to opt out of providing pro bono or reduced fee services under the order by paying into the Fund the annual sum of \$1,500. When first implemented in 2016, the Fund realized approximately \$13,000 in its introductory year. The annual receipts from this “opt out” has steadily increased to its present amount this year of an amount in excess of \$50,000. The amount generated by the “opt out” clause has enabled the Judiciary to request a decrease in the appropriations from the Nitijela for the Fund. This financial year the amount appropriated has been decreased to \$15,000.

The legal framework underlying the RMI Judiciary’s Order is premised on Article II, Section 14, of the RMI Constitution, wherein the Government of the Republic of the Marshall Islands recognizes the right of the people to legal services and its obligation to take every step

reasonable and necessary steps to provide such services. The RMI Government takes this responsibility seriously and has provided for the Fund to complement existing and available institutions for delivery of legal aid service in the Republic of the Marshall Islands. Section 219(a) of the Judiciary Act, provides that the Chief Justice of Supreme Court with the concurrence of the Chief Justice of the High Court shall adopt rules which regulate the admission of attorneys to the practice of law including, amongst other issues, the provision of pro bono or reduced-fee work residents of the Marshall Islands who cannot afford legal counsel or obtain free legal counsel. The RMI Judiciary has adopted and made applicable to attorneys and trial assistants the American Bar Association's Model Rules of Professional Conduct. Rule 6.1 of these rules require each member of the bar to provide of an annual minimum of 50 hours pro bono or reduced fee service to people unable meet the costs of legal representation or qualify for free legal representation.

In 2013, High Court Chief Justice Carl B. Ingram appointed a private attorney to represent a person unable meet the cost of an attorney and who did not qualify for the services of the Public Defender's Office or Micronesian Legal Services Corporation. The attorney appointed refused to comply with his appointing order and an order to show cause issued. The attorney responded with citing various constitutional and legal issues including, amongst others: involuntary servitude; provision of legal aid was pre-empted by the Nitijela through the establishment of the Fund; there is no right to counsel in civil cases, etc. As a result, Chief Justice Ingram vacated the attorney's appointment and the attorney was allowed to file an appeal challenging the Court's authority to appoint attorneys under the Supreme Court Order 2000-5 to provide legal services on a reduced fee basis. At oral arguments before the Supreme Court, the attorney, after pointed questions from the Supreme Court, withdrew his the appeal and the Supreme Court dismissed the appeal following the withdrawal. (I mistakenly stated that the Supreme Court issued an opinion when, in fact the case was dismissed). There has been no further challenges to the Order and the attorney who appealed the case proceeded to accept later appointments to provide legal representation to clients assigned to him under the 2000-5 Supreme Court Order and, subsequently, the Order). Thus far, the Order achieves the purposes for which it was issued. The only issue of concern relating to the Order is the limited number of attorneys and trial assistant s available for appointment under the Order. Attached hereto are the relevant pages of the appeal as discussed.

Hopefully the above is sufficient for the stated purposes.