# Constitution
## of the
## Commonwealth of the Northern Mariana Islands

**(Through 12/31/10)**

## ARTICLE I: PERSONAL RIGHTS

. . .

### Section 3: Search and Seizure

. . .

b) . . .

**Case Annotations:** *Commonwealth v. Pua*, 2006 MP 19, 7 N.M.I. 350 (2006).

**Case Annotations: . . .**

**Generally**

. . .

**Fundamental Rights**

**– Generally**

The First Amendment, made applicable in the Commonwealth by section 501(a) of the Covenant, includes among its protected rights that of free expression. Similar protections are found at Article I, Section 2 of the Commonwealth Constitution, which prohibits any law abridging the freedom of speech, or of the press. With respect to defamation, the provisions of Amendment I to the U.S. Constitution are similar to the provisions of section 2, article I of the NMI Constitution. This is due to the fact that Section 2, Article 1 is drawn from the First Amendment to the United States Constitution which is made applicable to the states by the Fourteenth Amendment, which in turn is made applicable in the Northern Mariana Islands by section 501 of the Covenant. *Tan v. Younis*, 2007 MP 11 ¶ 33, 7 N.M.I. 436, 446 (2007).

**Illegal Search and Seizure**

**– Statute of Limitations**

The statutory mandate of 7 CMC § 2503 is that all tort claims, including those for violation of the right against unreasonable searches and seizures, premised on Article I, Section 3(c) of the N.M.I. Constitution, must be commenced within the two-year limitations period. 7 CMC § 2503; N.M.I. Const. art. I, § 3(c). *Zhang Gui Juan v. Commonwealth*, 2001 MP 18 ¶ 29, 6 N.M.I. 322, 330 (2001).

**Warrants**

**– Oath or Affirmation**

. . .

**— Particular Cases**

. . .

**Warrantless Searches**

**– Generally**
. . .
**– Borders**
. . .
**– Motor Vehicles**
. . .
**— Particular Cases**
. . .

## Section 4: Criminal Prosecution.

. . .

(a) . . .

**Case Annotations:**

**Counsel, Right to**

Pursuant to Article I, Section 4(a) of the Commonwealth Constitution, a person accused of a crime has the right to the assistance of counsel, and if convicted, has the right to counsel in all appeals. N.M.I. Const. art. I, § 4(a). *Commonwealth v. Suda*, 1999 MP 17 ¶ 10, 6 N.M.I. 24, 28 (1999).

The right to counsel under Sixth Amendment to the U.S. Constitution, and thus the counterpart Commonwealth Constitution Article I, Section 4(a), does not attach until the initiation of adversary judicial proceedings by formal charge, preliminary hearing, indictment, information, or arraignment. U.S. Const. amend. VI; N.M.I. Const. art. I, § 4(a). *Commonwealth v. Suda*, 1999 MP 17 ¶ 11, 6 N.M.I. 24, 28 (1999).

The right to counsel under the Commonwealth Constitution Article I, Section 4(a), attaches no earlier than the counterpart Sixth Amendment right to counsel under the U.S. Constitution. The United States Supreme Courts cases have long recognized that the Sixth Amendment right to counsel attaches only at, or after, the initiation of adversary judicial proceedings. N.M.I. Const. art. I, § 4(a); U.S. Const. amend. VI. *Commonwealth v. Suda*, 1999 MP 17 ¶ 17, 6 N.M.I. 24, 29 (1999).

While the decision whether to submit to intoxication testing may be critical for the accused in the sense that it can have serious consequences at trial, it is not critical in the constitutional sense. No right to counsel under Article I, Section 4(a) of the Commonwealth Constitution attaches prior to intoxication testing. N.M.I. Const. art. I, § 4(a). *Commonwealth v. Suda*, 1999 MP 17 ¶ 18, 6 N.M.I. 24, 29 (1999).

During a general roadside inquiry into a traffic offense, a suspect does not have a right to counsel under Article I, Section 4(a) of the Commonwealth Constitution. N.M.I. Const. art. I, § 4(a). *Commonwealth v. Suda*, 1999 MP 17 ¶ 20, 6 N.M.I. 24, 29 (1999).

While an individual placed under arrest has a right to counsel prior to questioning, such right does not arise from Article I, Section 4(a) of the Commonwealth Constitution. To invoke the right to counsel provided by Article I, Section 4(a), adversary proceedings must have commenced. N.M.I. Const. art. I, § 4(a). *Commonwealth v. Suda*,

1999 MP 17 ¶ 21, 6 N.M.I. 24, 30 (1999).

The right to counsel under N.M.I. Const. art. I, § 4(a) is not implicated when a defendant is asked to submit to intoxication testing at the police station. Rather, the right to counsel is derived from the privilege against self-incrimination under N.M.I. Const. art. I, § 4(c). Since a request to submit to intoxication testing involves no compulsion for a defendant to testify against herself, her privilege against self-incrimination is not violated. N.M.I. Const. art. I, § 4(a); N.M.I. Const. art. I, § 4(c). *Commonwealth v. Suda*, 1999 MP 17 ¶ 25, 6 N.M.I. 24, 30 (1999).

**Interpretation and Construction**

**– Counterpart Federal Provision**

Commonwealth Constitution Article I, Section 4(a) is based on the Sixth Amendment to the United States Constitution, which provides that in all criminal prosecutions, the accused has the right to the assistance of counsel for his or her defense. N.M.I. Const. art. I, § 4(a); U.S. Const. amend. VI. *Commonwealth v. Suda*, 1999 MP 17 ¶ 10, 6 N.M.I. 24, 28 (1999).

(b) . . .

**Case Annotations:**

**Confrontation Clause**

Because the C.N.M.I. Confrontation Clause, N.M.I. Const. art I, 4(b), is patterned after the U.S. Constitutions Confrontation Clause in the Sixth Amendment, C.N.M.I. courts may resort to the U.S. Supreme Court's interpretation of the federal Confrontation Clause in interpreting the C.N.M.I. Confrontation Clause. N.M.I. Const. art I, § 4(b); U.S. Const. amend. VI. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 54, 6 N.M.I. 487, 496 (2002).

**Confrontation, Right of**

**– Generally**
. . .

**– Hearsay Evidence**
. . .

**— Particular Cases**
. . .

**Interpretation and Construction**

**– Counterpart Federal Provision**

Because the Confrontation Clause at Article I, section 4(b) of the Constitution of the Northern Mariana Islands is patterned after that of the Sixth Amendment to the United States Constitution, it is appropriate to refer to the federal case law for guidance in interpreting the N.M.I. Confrontation Clause. N.M.I. Const. art. I, § 4(b); U.S. Const. amend. VI. *Commonwealth v. Attao*, 2005 MP 8 ¶ 21, 7 N.M.I. 154, 160 (2005).

**CRIMINAL PROCEDURE**

**Confrontation, Right of**

**– Hearsay Evidence**

The Confrontation Clause bars hearsay testimony in criminal cases, absent adequate indicia of reliability. N.M.I. Const. art. I, § 4(b) and U.S. Const. amend. VI. *Commonwealth v. O'Connor*, 2000 MP 11 ¶ 17, 6 N.M.I. 125, 131 (2000).

(c) . . .

**Case Annotations:** *Commonwealth v. Rabauliman*, 2004 MP 12, 7 N.M.I. 54 (2004);
. . .

**Interpretation and Construction**

**– Counterpart Federal Provision**

Article I, Section 4(c) of the Commonwealth Constitution is based directly on the Fifth Amendment to the U.S. Constitution. Accordingly, the N.M.I. Supreme Court may look to case law interpreting the Fifth Amendment to interpret the protections provided by Article I, Section 4(c). N.M.I. Const. art. I, § 4(c); U.S. Const. amend. V. *Commonwealth v. Suda*, 1999 MP 17 ¶ 22, 6 N.M.I. 24, 30 (1999).

**Self-Incrimination, Privilege Against**

The right to counsel after arrest, but prior to questioning derives from Article I, Section 4(c) of the Commonwealth Constitution, which provided that no person shall be compelled to give self-incriminating testimony. N.M.I. Const. art. I, § 4(c). *Commonwealth v. Suda*, 1999 MP 17 ¶ 22, 6 N.M.I. 24, 29 (1999).

The privilege against self-incrimination provided by Fifth Amendment to the U.S. Constitution, and the counterpart Article I, Section 4(c) of the Commonwealth Constitution, protects an accused only from being compelled to testify against himself, or otherwise provide the State with evidence of a testimonial or communicative nature. U.S. Const. amend. V; N.M.I. Const. art. I, § 4(c). *Commonwealth v. Suda*, 1999 MP 17 ¶ 23, 6 N.M.I. 24, 30 (1999).

(d) . . .

**Case Annotations:** *Commonwealth v. Superior Ct. (Ada)*, 2004 MP 14, 7 N.M.I. 67 (2004); *Commonwealth v. Repeki*, 2003 MP 1, 6 N.M.I. 523 (2003).

(e) . . .

**Case Annotations:** *Commonwealth v. Milliondaga*, 2007 MP 6, 7 N.M.I. 422 (2007); *In re J.J.C.*, 2000 MP 8, 6 N.M.I. 102 (2000).

**Double Jeopardy**

**– Generally**

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution is replicated in Article 1, Section 4(e) of the Constitution of the Commonwealth of the Northern Mariana Islands. U. S. Const. amend. V; N.M.I. Const. art. I, § 4(e). *Commonwealth v. Atalig*, 2002 MP 20 ¶ 36, 6 N.M.I. 487, 494 (2002).

The prohibition of double jeopardy contained in Article 1, Section 4(e) of the Constitution of the Commonwealth of the Northern Mariana Islands, protects against three types of abuses: a second prosecution for the same offense after acquittal; a second prosecution for the same offense after conviction; and multiple punishments for the same offense. N.M.I. Const. art. I, 4(e). *Commonwealth v. Atalig*, 2002 MP 20 ¶ 36, 6 N.M.I. 487, 494 (2002).

Because the double jeopardy clause of the N.M.I. Constitution is patterned after the double jeopardy clause in the United States Constitution, it is appropriate to resort to federal case law to ensure that the CN.M.I. interpretation of Article I, Section 4(e) provides at least the same protection granted under the federal Constitution. N.M.I. Const. art. I, § 4(e). *Commonwealth v. Camacho*, 2002 MP 6 ¶ 47, 6 N.M.I. 382, 395 (2002).

Article I, Section 4(e) of the N.M.I. Constitution does not prohibit the subsequent prosecution of any offense related to the same underlying conduct. N.M.I. Const. art. I, § 4(e). *Commonwealth v. Camacho*, 2002 MP 6 ¶ 47, 6 N.M.I. 382, 395 (2002).

The double jeopardy clause, contained at Article I, Section 4(e) of the Constitution of the Northern Mariana Islands, bars the N.M.I. Supreme Court from entertaining an appeal of a judgment of acquittal in criminal prosecutions but does not bar consideration of an appeal of a judgment of acquittal for a traffic infraction. N.M.I. Const. art. I, 4(e). *Commonwealth v. Abuy*, 2001 MP 8 ¶ 1, 6 N.M.I. 271, 272 (2001).

. . .

**– Multiple Punishments for Same Offense**

. . .

**— Particular cases**

. . .

**Due Process**

**– Fundamental Rights**

The Double Jeopardy Clause at N.M.I. Const. art. I, § 4(e) is patterned after the Double Jeopardy Clause of the U.S. Constitution, which is made applicable to the Commonwealth through the Covenant. Federal case law which interprets the U.S. Constitution's Double Jeopardy Clause are relied upon by the N.M.I. Court's to ensure that interpretation of the Commonwealth Constitution's Double Jeopardy Clause provides at least the same protection granted defendants under the federal Double Jeopardy Clause. N.M.I. Const. art. I, § 4(e); U.S. Const. amend. V *Commonwealth v. Taisacan*, 2005 MP 9, 7 N.M.I. 162 (2005).

**CRIMINAL PROCEDURE**

**Double Jeopardy**

**– Generally**

To conduct an adult proceeding for a murder charge and a separate juvenile proceeding for a lesser included offense of the murder charge violates the Double Jeopardy Clause of the Commonwealth Constitution. N.M.I. Const. art. I, § 4(e). *Commonwealth v. Repeki*, 2004 MP 19 ¶ 15, , 7 N.M.I. 84, 88 (2004).

(j) . . .

**Case Annotations:** *In re J.J.C.*, 2000 MP 8, 6 N.M.I. 102 (2000);

**MINORS**

**Generally**

**– Constitutional Questions**

The N.M.I. Constitution expressly affords special protection to persons under eighteen years of age who are accused of committing crimes. N.M.I. Const. art. I, § 4(j). In re N.T.M., 1999 MP 24 ¶ 7, 6 N.M.I. 53, 56 (1999). See also *Nakatsukasa v. Superior Ct.*, 1999 MP 25 ¶ 15, 6 N.M.I. 59, 62 (1999).

**Juvenile Delinquency Proceedings**

**– Generally**

Section 5103(a) of Title 6 of the Commonwealth Code satisfies the language, intent and requirements of Article I, Section 4(j) of the Commonwealth Constitution, whose protection of juveniles in criminal proceedings centers on shielding them from the harsh glare of publicity, helping them to avoid the life-long stigma of a criminal record, minimizing their contact with adult criminals, and rehabilitation. Section 4(j) of Article I of the Commonwealth Constitution does not prevent the legislature from directing that certain offenders who are under the age of 18 may be tried as adults in specified circumstances. 6 CMC § 5103(a); N.M.I. Const. art. I, § 4(j). *In re J.C.C.*, 2000 MP 8 ¶ 40, 6 N.M.I. 102, 112 (2000).

Article I, Section 4(j) of the Commonwealth Constitution does not prohibit a juvenile from being tried as an adult under either 6 CMC § 5102 or 6 CMC § 5103(a). N.M.I. Const. art. I, § 4(j); 6 CMC § 5102; 6 CMC § 5103(a). *In re J.C.C.*, 2000 MP 8 ¶ 41, 6 N.M.I. 102, 112 (2000).

**– Constitutional Questions**

If the age of a person at the time of commencement of proceedings were to govern the juvenile courts jurisdiction in this Commonwealth, an offender under eighteen years of age would not receive the full benefits and protections of Article I, Section 4(j) of the N.M.I. Constitution. A vacuum would also exist in the law in that if a case, properly filed in the juvenile court, was not adjudicated or transferred before the juvenile turns eighteen, he or she would neither be subject to the jurisdiction of the juvenile court nor the adult criminal court. Clearly, such absurd results cannot be and do not reflect the intent and spirit of the constitutional and statutory protections afforded to alleged offenders under eighteen years of age in this Commonwealth. N.M.I. Const., art. I, § 4(j). *In re N.T.M.*, 1999 MP 24 ¶ 12, 6 N.M.I. 53, 58 (1999).

## Section 5: Due Process.

. . .

**Case Annotations:** *Commonwealth v. Shoiter*, 2007 MP 20, 7 N.M.I. 488 (2007); *Malite v. Tudela, et al.*, 2007 MP 3, 7 N.M.I. 407 (2007); *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26, 7 N.M.I. 388 (2006); *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17, 7 N.M.I. 334 (2006); *In re Fleming*, 2005 MP 13, 7 N.M.I. 187 (2005); *In re Estate of Roberto*, 2004 MP 7, 7 N.M.I. 39 (2004).

**Due Process**

**– Generally**

No person shall be deprived of life, liberty, or property without due process of law. N.M.I. Const., art. I, § 5. *Ferreira v. Borja*, 1999 MP 23 ¶ 8, 6 N.M.I. 50, 52 (1999).

. . .

**– Fundamental Rights**

Under N.M.I. Const. art. I, § 5, guaranteeing substantive as well as procedural due process rights, the right of personal liberty—the right to live in freedom from unwarranted interference by the state—is a fundamental right. *In re Seman*, 3 N.M.I. 57 (1992).

**– Substantive Due Process**

. . .

**ADMINISTRATIVE LAW**

**Agency Action**

**– Due Process, Generally**

In an administrative proceeding where a person's life, liberty, or property is at stake, the Commonwealth Constitution requires, at a minimum, that the person be accorded meaningful notice and a meaningful opportunity to a hearing, appropriate to the nature of the case. N.M.I. Const, art. I, § 5. *Office of the Attorney Gen. v. Estel*, 2004 MP 20 ¶ 10, 7 N.M.I. 89, 93 (2004).

. . .

## Section 6: Equal Protection.

. . .

**Case Annotations:** *Office of the Attorney Gen. v. Estel*, 2004 MP 20, 7 N.M.I. 89 (2004).

**– Fundamental Rights**

. . .

**– Generally**

In the Commonwealth, the equal protection of the laws is guaranteed under Article I, Section 6 of the Commonwealth Constitution, which is applied using the same analysis as for the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Government of the Northern Mariana Islands is to be considered a State government for the purpose of applying the Equal Protection Clause. The Equal Protection Clause applies to aliens and United States citizens alike. N.M.I. Const. art. I, § 6; U.S. Const. amend. XIV. *Commonwealth v. Attao*, 2005 MP 8 ¶ 16, 7 N.M.I. 154, 159 (2005).

The Equal Protection Clause contained at Article I, Section 6 of the Commonwealth Constitution, creates no substantive rights, and is not susceptible of exact delimitation. No definite rule, which automatically will solve the question of whether equal protection has been violated in specific instances, can be formulated, rather, the clause embodies a general rule that the Commonwealth must treat like cases alike but may treat unlike cases accordingly. *Commonwealth v. Attao*, 2005 MP 8 ¶ 16, 7 N.M.I. 154, 159 (2005).

. . .

**ADMINISTRATIVE LAW**

**Agency Action**

**– Appeals, Administrative, Generally**

An administrative hearing decision that requires a department to appoint a former employee to a new position in which he would not interact with female employees is without legal basis as it violates both Title VII of the Civil Right Act of 1964, as amended, 42 U.S.C. §§ 2000e, et seq. and Article 1, Section 6 of the CNMI Constitution, which provides protections to all employees, including current and prospective female employees, from unequal treatment including different treatment based on gender in the workplace. 42 U.S.C. §§ 2000e, et seq.; N.M.I. Const. art. I, § 6. *Dept. Pub. Safety v. Civil Svc. Comm'n (Chong)*, 2005 MP 6 ¶ 22, 7 N.M.I. 140, 145 (2005).

**– Judicial Review**

**— Standard of Review, Generally**

Judicial review of an administrative decision was proper where a department suffered a legal wrong and the trial court was concerned that the administrative decision violated Title VII of the Civil Right Act of 1964, as amended, 42 U.S.C. §§ 2000e, et seq. and Article 1, Section 6 of the Commonwealth Constitution. 42 U.S.C. §§ 2000e, et seq.; N.M.I. Const. art. I, § 6. *Dept. Pub. Safety v. Civil Svc. Comm'n (Chong)*, 2005 MP 6 ¶ 24 7 N.M.I. 140, 145 (2005).

## Section 8: Trial by Jury.

. . .

**Case Annotations:** *Commonwealth v. Blas*, 2004 MP 26, 7 N.M.I. 118 (2004).

**Generally**

. . .

**Federal Statutory Actions**

. . .

**Jury Trial, Right to**

The limited right to a jury trial in the Commonwealth is provided by legislative enactment and has withstood constitutional scrutiny. N.M.I. Const., art. I, § 8. *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 14, 6 N.M.I. 361, 365 (2002).

**Multiple Charges**

. . .

**U.S. Constitutional Challenge**

. . .

## Section 11: Victims of Crime.

. . .

**Case Annotations:** *Commonwealth v. Rabauliman*, 2004 MP 16, 7 N.M.I. 73 (2004).

**CRIMINAL LAW**

**Motor Vehicles Traffic Offenses, Generally**

**– Restitution**

Article I, Section 11 of the Constitution of the Northern Mariana Islands, which provides that restitution to the crime victim shall be a condition of probation and parole, pertains only to the person or entity against whom a crime was committed, the direct target of the criminal activity. N.M.I. Const. art. I, § 11. *Commonwealth v. Saburo*, 2002 MP 3 ¶ 15, 6 N.M.I. 355, 358 (2002).

Absent any legislative intent to the contrary, only direct victims of traffic offenses are entitled to restitution under Article I, Section 11 of the Constitution of the Commonwealth of the Northern Mariana Islands. This does not preclude third-parties the freedom to seek a remedy by civil tort action. N.M.I. Const. art. I, § 11. *Commonwealth v. Saburo*, 2002 MP 3 ¶ 22, 6 N.M.I. 355, 359 (2002).

**REMEDIES**

**Restitution**

**– Generally**

Restitution, under section 11 of Article I of the N.M.I. Constitution serves to let victims know that their rights are respected in the criminal justice system, and to make aggrieved parties whole without forcing them to pursue burdensome civil actions. In addition, restitution serves the Commonwealths interests in rehabilitation and punishment, and promotes the efficient use of judicial resources. N.M.I. Const. art. I, § 11. *Commonwealth v. Saburo*, 2002 MP 3 ¶ 30, 6 N.M.I. 355, 360-1 (2002).

**STATUTES**

**Particular Terms**

**– Crime Victim**

The plain meaning of crime victim is one who is the immediate and direct object of a crime. N.M.I. Const. art. I, § 11. *Commonwealth v. Saburo*, 2002 MP 3 ¶ 15, 6 N.M.I. 355, 358 (2002).

. . .

# ARTICLE II: LEGISLATIVE BRANCH

. . .

## Section 3: Composition of the House of Representatives.

. . .

**Case Annotations:** *In re Pangelinan*, 2007 MP 14 ¶ 3, 7 N.M.I. 461, 463 (2007).

## Section 4: Reapportionment and Redistricting.

(a) . . .

**Case Annotations: . . .**

**Interpretation and Construction**

**– Generally**

Article II, Section 4 of the Constitution of the Northern Mariana Islands requires the house of representatives be reapportioned or redistricted at least every ten years to compensate for population changes. *In re Pangelinan*, 2007 MP 14 ¶ 3, 7 N.M.I. 461, 463 (2007).

The term nonresident worker is an immigration status bearing no direct relationship with legislative apportionment. For purposes of reapportionment or redistricting, 'residents' may mean persons who are counted in a census or other enumeration made by the government. This language is permissive, leaving some degree of discretion to the legislature. Article II, Section 4(a) does not, by its own language, exclude nonresident workers. Evidence indicates the legislature considered total population as reported by the United States Census in both reapportionments since our Constitution's drafting. *In re Pangelinan*, 2007 MP 14 ¶ 11, 7 N.M.I. 461, 464 (2007).

Article II, Section 4(a) does not require, and the legislature has not relied upon, figures other than total population. *In re Pangelinan*, 2007 MP 14 ¶ 12, 7 N.M.I. 461, 465 (2007).

(b) . . .

**Case Annotations: . . .**

**Interpretation and Construction**

**– Generally**

The Commonwealth Supreme Court has original and exclusive jurisdiction to review a reapportionment or redistricting plan and to amend it to comply with the requirements of the Constitution or to establish a plan if the legislature and governor fail to act within time prescribed in the Constitution. N.M.I. Const. art. II, § 4(b). *In re Pangelinan*, 2007 MP 14 ¶ 3, 7 N.M.I. 461 (2007).

. . .

# ARTICLE III: EXECUTIVE BRANCH

. . .

**Section 4: Joint Election of the Governor and Lieutenant Governor.** The governor and lieutenant governor shall be elected at large within the Commonwealth for a term of office of four years. The governor and lieutenant governor shall be elected jointly with each voter casting a single vote applicable to both offices. After the Commonwealth Election Commission certifies the results of a general election and if no candidates receive more than one half of the total votes cast and counted for the offices of the governor and lieutenant governor, on the fourteenth day thereafter, a runoff election shall be held between the candidates for governor and the lieutenant governor receiving the highest and second highest number of votes cast and counted for those offices. Runoff election procedures shall be provided by law. No person may be elected governor more than twice.

**Source:** Original provision (ratified 1977, effective 1978); amended by Second Const. Conv. Amend. 12 (1985); amended by House Legislative Initiative 15-16 (2007).

**Commission Comment:** House Legislative Initiative 15-16 added the third and fourth sentences of this section.

. . .

**Section 9: Executive Functions.**

a) The governor shall submit to the legislature a proposed annual balanced budget for the following fiscal year. The proposed balanced budget shall describe anticipated revenues of the Commonwealth and recommend expenditures of Commonwealth funds. The anticipated revenues may not be increased by the legislature without the consent of the governor. In preparing the proposed balanced budget, the governor shall consider submissions made by the mayors of Rota, Saipan, Tinian and Aguiguan, and the islands north of Saipan as to the budgetary needs of those islands and by the executive assistant appointed under section 18 of this article. The governor's submission to the legislature with respect to the budget shall state the governor's disposition of the budgetary requests contained in these submissions and may include recommended legislation with respect to taxation. If a balanced budget is approved by the

legislature, the governor may not reallocate appropriated funds except as provided by law. If a balanced budget is not approved before the first day of the fiscal year, no money shall be drawn from the General Fund, provided that certain government services and employees shall remain available as provided by law in order to deliver services essential to the health, safety, and welfare of the people of the Commonwealth and to protect against damage to and destruction of property; provided further, that if the governor does not submit a detailed and balanced budget to the legislature by April 1st, the governor's salary shall be suspended until such time that detailed and balanced budget is submitted to the legislature, and if the legislature does not pass a balanced budget by October 1st , the legislators' salaries shall be suspended until such time that a balanced budget is passed by the legislature.

b) - c) [unchanged]

**Source:** Original provision (ratified 1977, effective 1978); amended by Second Const. Conv. Amend. 14 (1985); subsection (a) amended by House Legislative Initiative 16-11 (2009).

**Commission Comment:** House Legislative Initiative 16-11 amended the last sentence of subsection (a).

**Case Annotations:**

**Government Budget**

Because Article III, Section 9(a) of the Commonwealth Constitution provides that if a balanced budget is not approved before the first day of the fiscal year, appropriations for government operations and obligations shall be at the level for the previous fiscal year, a law which purports to allow expenditures in excess of the previous fiscal year is unconstitutional. N.M.I. Const. art. III, 9(a). Rayphand v. Tenorio, 2003 MP 12 ¶ 59, 6 N.M.I. 575, 591 (2003). During a year in which no balanced budget has been enacted by the legislature, a governor who expends amounts in excess of the total appropriation from the last enacted budget violates the Commonwealth Constitution. N.M.I. Const. art. III, 9(a). *Rayphand v. Tenorio*, 2003 MP 12 ¶ 68, 6 N.M.I. 575, 593 (2003).

Article III, Section 9(a) of the Commonwealth Constitution is facially ambiguous, for it is unclear whether this provision confines expenditures, in a fiscal year for which no budget was passed, to those which mirror the individual appropriation levels of the previously passed budget or whether the governor has plenary expenditure authority subject only to the overall total of the previously passed budget. N.M.I. Const. art. III, 9(a). *Rayphand v. Tenorio*, 2003 MP 12 ¶ 69, 6 N.M.I. 575, 594 (2003).

Article III, Section 9(a) of the Commonwealth Constitution is properly interpreted as requiring the governor to expend public funds in the same manner as if the legislature had passed an omnibus appropriation bill containing the same figures as those of all the appropriation bills that passed in the previous year. The governor does not have plenary expenditure authority for the period of time when a balanced budget has not been passed. N.M.I. Const. art. III, § 9(a). *Rayphand v. Tenorio*, 2003 MP 12 ¶ 72, 6 N.M.I. 575, 594 (2003).

For the purposes of invoking qualified immunity, a competent public official is expected to know the law governing his conduct so far as it may be clearly established. Because Article III, Section 9(a) of the Commonwealth Constitution was facially ambiguous and had not been interpreted by the N.M.I. Supreme Court, the law governing how much and in what manner a governor could expend funds in a year in which no budget had been enacted was

not clearly established, such that the governor was obligated to act in accordance with its provisions. N.M.I. Const. art III, § 9(a). *Rayphand v. Tenorio*, 2003 MP 12 ¶ 77, 6 N.M.I. 575, 595 (2003).

. . .

### Section 11: Attorney General.

. . .

**Case Annotations:** *Liu v. Commonwealth*, 2006 MP 5, 7 N.M.I. 262 (2006); *Commonwealth v. Superior Ct. (Ada)*, 2004 MP 14, 7 N.M.I. 67 (2004); *Commonwealth v. Repeki*, 2004 MP 8, 7 N.M.I. 40 (2004).

**JURISDICTION**

**Superior Court**

**– Particular Cases**

Even if the Acting Attorney General's appointment was not made in conformance with Article III, Section 11 of the N.M.I. Constitution, the appointment would not deprive the trial court of jurisdiction to decide a criminal case. N.M.I. Const. art. III, § 11. *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 41, 6 N.M.I. 361, 372 (2002).

. . .

## ARTICLE IV: JUDICIAL BRANCH

. . .

### Section 2: Commonwealth Superior Court.

. . .

**Case Annotations:** . . .

**JURISDICTION**

**Superior Court**

**– Criminal and Juvenile Cases**

Under the N.M.I. Constitution, as amended in 1997 by House Legislative Initiative 10-3, the Superior Court has original jurisdiction over criminal and juvenile cases in the Northern Mariana Islands. N.M.I. Const., art. IV, § 2. *Nakatsukasa v. Superior Ct.*, 1999 MP 25 ¶ 15, 6 N.M.I. 59, 62 (1999).

### Section 3: Commonwealth Supreme Court.

. . .

**Case Annotations:** *Commonwealth v. Appleby*, 2007 MP 19, 7 N.M.I. 485 (2007); *Tudela, et al. v. Superior Ct.*, 2007 MP 18, 7 N.M.I. 461 (2007); *Estate of Muna v. Commonwealth*, 2007 MP 16, 7 N.M.I. 473 (2007); *Commonwealth v. Castro*, 2007 MP 9, 7 N.M.I. 432 (2007); *Bank of Saipan v. Martens*, 2007 MP 5, 7 N.M.I. 419 (2007); *Chen's Corp. v. Hambros*, 2007 MP 4, 7 N.M.I. 417 (2007); *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26, 7 N.M.I. 388 (2006); *Matsunaga v. Matsunaga*, 2006 MP 25, 7 N.M.I. 379 (2006); *Commonwealth v. Perez*, 2006 MP 24, 7 N.M.I. 372 (2006); *Tenorio Enterprises, Inc. v. Uddin*, 2006 MP 22, 7 N.M.I. 365 (2006); *Villagomez v. MICO*, 2006 MP 21, 7 N.M.I. 3763 (2006); *Commonwealth v. Kumagai*, 2006 MP 20, 7 N.M.I. 357 (2006); *Indalecio v. Yarofalir*, 2006 MP 18, 7 N.M.I. 341 (2006); *Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17, 7 N.M.I. 334 (2006); *Waibel v. Farber*, 2006 MP 15, 7 N.M.I. 322 (2006); *Commonwealth v. Chen*, 2006 MP 14, 7 N.M.I. 318 (2006); *Aplus Co. Ltd. v. Niizeki Int'l Saipan Co. Ltd.*, 2006 MP 13, 7 N.M.I. 313 (2006); *Sullivan v. Tarope*, 2006 MP 11, 7 N.M.I. 303 (2006); *Century Ins. Co. Ltd. v. TAC Int'l Constructors, Inc.*, 2006 MP 10, 7 N.M.I. 297 (2006); *Sattler v. Mathis*, 2006 MP 6, 7 N.M.I. 270 (2006); *Kevin Int'l Corp. v. Superior Ct.*, 2006 MP 3, 7 N.M.I. 251 (2006); *In Sik Chang v. Estate of Norita*, 2006 MP 2, 7 N.M.I. 240 (2006); *Commonwealth v. Taitano*, 2005 MP 20, 7 N.M.I. 227 (2005); *Commonwealth v. Jong Hun Lee*, 2005 MP 19, 7 N.M.I. 221 (2005); *Commonwealth v. Crisostimo*, 2005 MP 18 , 7 N.M.I. 216 (2005); *Commonwealth v. Manila*, 2005 MP 17, 7 N.M.I. 209 (2005); *Villanueva v. Tinian Shipping and Transp., Inc.*, 2005 MP 12, 7 N.M.I. 182 (2005); *Merci Corp v. World Int'l Corp.*, 2005 MP 10, 7 N.M.I. 170 (2005); *Falcon v. McCue*, 2005 MP 7, 7 N.M.I. 149 (2005); *Dept. Pub. Safety v. Civil Svc. Comm'n (Chong)*, 2005 MP 6, 7 N.M.I. 140 (2005); *Santos v. STS Enters., Inc.*, 2005 MP 4, 7 N.M.I. 131 (2005); *Bank of Saipan v. Atalig*, 2005 MP 3, 7 N.M.I. 126 (2005); *Mendiola v. Commonwealth Utils. Corp.*, 2005 MP 2, 7 N.M.I. 121 (2005); *Health Prof'l Corp. v. Superior Ct.*, 2004 MP 25, 7 N.M.I. 114 (2004); *Commonwealth v. Palacios*, 2004 MP 23, 7 N.M.I. 105 (2004); *Comm. Dev. Auth. v. Tenorio*, 2004 MP 22, 7 N.M.I. 97 (2004); *Office of the Attorney Gen. v. Estel*, 2004 MP 20, 7 N.M.I. 89 (2004); *Commonwealth v. Repeki*, 2004 MP 19, 7 N.M.I. 84 (2004); *Teregeyo v. Fejeran*, 2004 MP 18, 7 N.M.I. 80 (2004); *Manglona v. Tenorio*, 2004 MP 77 (2004); *Commonwealth v. Mundo*, 2004 MP 13, 7 N.M.I. 64 (2004); *Commonwealth v. Rabauliman*, 2004 MP 12, 7 N.M.I. 54 (2004) *Flores v. Commonwealth*, 2004 MP 9, 7 N.M.I. 45 (2004) *Commonwealth v. Repeki*, 2004 MP 8, 7 N.M.I. 40 (2004); *Commonwealth v. Jai Hoon Yao*, 2004 MP 5, 7 N.M.I. 30 (2004); *Island Leisure Corp. v. Rasa*, 2004 MP 4, 7 N.M.I. 27 (2004); *Commonwealth v. Deleon Guerrero*, 2004 MP 3, 7 N.M.I. 26 (2004); *KTT Corp. v. Tomokane*, 2003 MP 17, 6 N.M.I. 627 (2003); *Commonwealth v. Deleon Guerrerro*, 2003 MP 15, 6 N.M.I. 615 (2003); *Oden v. Northern Marianas College*, 2003 MP 13, 6 N.M.I. 601 (2003); *Rayphand v. Tenorio*, 2003 MP 12, 6 N.M.I. 575 (2003); *In re Macaranas*, 2003 MP 11, 6 N.M.I. 571 (2003); *Commonwealth v. Lucas*, 2003 MP 9, 6 N.M.I. 564 (2003); *Iglesias v. Realty Trust Corp.*, 2003 MP 7, 6 N.M.I. 554 (2003); *Commonwealth v. Palacios*, 2003 MP 6, 6 N.M.I. 546 (2003); *Highsmith & O'Mallan, P.C. v. Leon Guerrero*, 2003 MP 4, 6 N.M.I. 539 (2003); *Qiong He v. Commonwealth*, 2003 MP 3, 6 N.M.I. 535 (2003); *Town House, Inc. v. Saburo*, 2003 MP 2, 6 N.M.I. 529 (2003); *Commonwealth v. Repeki*, 2003 MP 1, 6 N.M.I. 523 (2003); *Ramos v. Magusa, Inc.*, 2002 MP 25, 6 N.M.I. 520 (2002); *Young Jo Cho v. Min Wan Cho*, 2002 MP 24, 6 N.M.I. 516 (2002); *In re Estate of Roberto*, 2002 MP 23, 6 N.M.I. 508 (2002); *Commonwealth v. Camacho*, 2002 MP 22, 6 N.M.I. 505 (2002); *Commonwealth v. Camacho*, 2002 MP 21, 6 N.M.I. 498 (2002); *Commonwealth v. Atalig*, 2002 MP 20, 6 N.M.I. 487 (2002); *Bisom v. Commonwealth*, 2002 MP 19, 6 N.M.I. 475 (2002); *PAC United Corp. (CNMI) v. Guam Concrete Builders*, 2002 MP 15, 6 N.M.I. 446 (2002); *Commonwealth v. Castro*, 2002 MP 13, 6 N.M.I. 434 (2002); *Santos v. Public Sch. Sys.*, 2002 MP 12, 6 N.M.I. 422 (2002); *Triple J Saipan, Inc. v. Agulto*, 2002 MP 11, 6 N.M.I. 419 (2002); *In re Estate of Lairopi*, 2002 MP 10, 6 N.M.I. 417 (2002); *Commonwealth v. Sibetang*, 2002 MP 9, 6 N.M.I. 414 (2002); *Manglona v. Commonwealth*, 2002 MP 7, 6 N.M.I. 407 (2002); *Commonwealth v. Camacho*, 2002 MP 6, 6 N.M.I. 382 (2002); *Furuoka v. Dai-Ichi Hotel (Saipan) Inc.*, 2002 MP 5, 6 N.M.I. 374 (2002); *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4, 6 N.M.I. 361 (2002); *Commonwealth v. Saburo*, 2002 MP 3, 6 N.M.I. 355 (2002); *Villanueva v. City Trust Bank*, 2002 MP 1, 6 N.M.I. 346 (2002); *In re Estate of Yong Kyun Kim*, 2001 MP 22, 6 N.M.I. 343 (2001); *Isla Fin. Servs. v. Sablan*, 2001 MP 21, 6 N.M.I. 338

(2001); *Commonwealth v. Seman*, 2001 MP 20, 6 N.M.I. 334 (2001); *Cabrera v. Young*, 2001 MP 19, 6 N.M.I. 330 (2001); *Zhang Gui Juan v. Commonwealth*, 2001 MP 18, 6 N.M.I. 322 (2001); *Olupomar v. Mahora*, 2001 MP 17, 6 N.M.I. 318 (2001); *Commonwealth v. Reyes*, 2001 MP 14, 6 N.M.I. 305 (2001); *Milne v. Lee Po Tin*, 2001 MP 16, 6 N.M.I. 208 (2001); *Reyes v. Reyes*, 2001 MP 13, 6 N.M.I. 299 (2001); *Santos v. Santos*, 2001 MP 12, 6 N.M.I. 295 (2001); *Matsunaga v. Matsunaga*, 2001 MP 11, 6 N.M.I. 285 (2001); *Fitial v. Kim Kyung Duk*, 2001 MP 9, 6 N.M.I. 276 (2001); *Commonwealth v. Abuy*, 2001 MP 8, 6 N.M.I. 271 (2001); *Bank of Saipan v. Superior Ct. (Carlsmith)*, 2001 MP 7, 6 N.M.I. 264 (2001); *Commonwealth v. Caja*, 2001 MP 6, 6 N.M.I. 255 (2001); *Bank of Saipan v. Superior Ct (Attorney's Liab. Assurance Soc'y, Inc.)*, 2001 MP 5, 6 N.M.I. 242 (2001); *Aguon v. Marianas Pub. Land Corp.*, 2001 MP 4, 6 N.M.I. 233 (2001); *Del Rosario v. Camacho*, 2001 MP 3, 6 N.M.I. 213 (2001); *Saipan Lau Lau Dev., Inc. v. Superior Ct. (San Nicolas)*, 2000 MP 18, 6 N.M.I. 171 (2000); *Bank of Saipan v. Superior Ct. (Connell)*, 2001 MP 1, 6 N.M.I. 179 (2001); *Wabol v. Villacrusis*, 2000 MP 18, 6 N.M.I. 171 (2000); *Angello v. Louis Vuitton Saipan, Inc.*, 2000 MP 17, 6 N.M.I. 165 (2000); *Saipan Lau Lau Dev., Inc. v. Superior Ct. (San Nicolas)*, 2000 MP 16, 6 N.M.I. 158 (2000); *Pacific Saipan Technical Contractors v. Rahman*, 2000 MP 14, 6 N.M.I. 146 (2000); *Benavente v. Marianas Pub. Land Corp.*, 2000 MP 13, 6 N.M.I. 136 (2000); *Commonwealth v. O'Connor*, 2000 MP 11, 6 N.M.I. 125 (2000); *Pille v. Sanders*, 2000 MP 10, 6 N.M.I. 119 (2000); *Santos v. Santos*, 2000 MP 9, 6 N.M.I. 113 (2000); *In re J.J.C.*, 2000 MP 8, 6 N.M.I. 102 (2000); *Cushnie v. Arriola*, 2000 MP 7, 6 N.M.I. 97 (2000); *Yang Jae Oh v. Angel Ent., Inc.*, 2000 MP 6, 6 N.M.I. 92 (2000); *Commonwealth v. Martinez*, 2000 MP 5, 6 N.M.I. 85 (2000); *Commonwealth v. Scragg*, 2000 MP 4, 6 N.M.I. 80 (2000); *Piteg v. Piteg*, 2000 MP 3, 6 N.M.I. 74 (2000); *Estate of Muna v. Commonwealth*, 2000 MP 2, 6 N.M.I. 71 (2000); *In re Estate of De Leon Guerrero v. Quitugua*, 2000 MP 1, 6 N.M.I. 67 (2000); *Francis v. Welly*, 1999 MP 26, 6 N.M.I. 64 (1999); *Nakatsukasa v. Superior Ct.*, 1999 MP 25, 6 N.M.I. 59 (1999); *In re N.T.M.*, 1999 MP 24, 6 N.M.I. 53 (1999); *Ferreira v. Borja*, 1999 MP 23, 6 N.M.I. 50 (1999); *Commonwealth v. Cabrera*, 1999 MP 22, 6 N.M.I. 47 (1999); *Sekisui House v. Superior Ct. (Hiraga)*, 1999 MP 21, 6 N.M.I. 44 (1999); *Bank of Saipan v. Carlsmith Ball Wichman Case & Ichiki*, 1999 MP 20, 6 N.M.I. 40 (1999); *Office of the Attorney Gen. v. Sagun*, 1999 MP 19, 6 N.M.I. 36 (1999); *Hemley v. Hemley*, 1999 MP 18, 6 N.M.I. 33 (1999); *Commonwealth v. Suda*, 1999 MP 17, 6 N.M.I. 24 (1999); *Commonwealth v. Ge Ai Ping*, 1999 MP 16, 6 N.M.I. 20 (1999); *Pacific Am. Title Ins. & Escrow (CNMI) v. Anderson*, 1999 MP 15, 6 N.M.I. 15 (1999); *Office of the Attorney Gen. v. Superior Ct., (Fabricante)*, 1999 MP 14, 6 N.M.I. 7 (1999); *Arriola v. Arriola*, 1999 MP 13, 6 N.M.I. 1 (1999); . . .

. . .

## Section 9: Rulemaking and Administration.

. . .

**Case Annotations:** *Commonwealth v. Camacho*, 2002 MP 14, 6 N.M.I. 440 (2002).

. . .

## Section 11: Certified Legal Questions.

. . .

**Case Annotations:**

**COURTS**

**Certified Questions**

**– Public Officers and Employees**

When a dispute arises between or among officials regarding the exercise of their powers or responsibilities under the Constitution or statute, the parties may certify to the Supreme Court the legal question raised. However, failure to do so does not render an official's actions unreasonable if the official relies instead on the opinion of the Attorney General. N.M.I. Const. art. IV, § 11. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 80, 6 N.M.I. 575, 595 (2003).

. . .

# ARTICLE VI: LOCAL GOVERNMENT

. . .

## Section 2: Election of Mayor.

. . .

**Case Annotations:** *United States v. Borja*, 2003 MP 8, 6 N.M.I. 558 (2003).

## Section 3: Responsibilities and Duties of the Mayor.

. . .

**Case Annotations:** *United States v. Borja*, 2003 MP 8, 6 N.M.I. 558 (2003).

## Section 4: Compensation.

. . .

**Case Annotations:** *United States v. Borja*, 2003 MP 8, 6 N.M.I. 558 (2003).

. . .

## Section 6: Municipal Councils.

. . .

**Case Annotations:** *United States v. Borja*, 2003 MP 8, 6 N.M.I. 558 (2003).

## Section 7: Powers, Meetings and Compensations.

. . .

**Case Annotations:** *United States v. Borja*, 2003 MP 8, 6 N.M.I. 558 (2003).

**Section 8: Agencies of Local Government.**

. . .

**Case Annotations:**

**Interpretation and Construction**

**– Particular Provisions**

Section 8 of Article VI of the Commonwealth Constitution is self-executing, in that it chartered Rota and Tinian and Aguiguan into municipalities. Nothing is committed to the legislature to do at a later date to bring the municipalities into existence. On November 3, 1985, the date of the ratification of Constitutional Amendment 25, portions of which became Section 8 of Article VI, Rota and Tinian and Aguiguan became chartered municipalities. N.M.I. Const. art. VI, § 8. *United States v. Borja*, 2003 MP 8 ¶ 11, 6 N.M.I. 558, 562 (2003).

**GOVERNMENT (CNMI)**

**Municipal Corporations**

When read as a whole, the Commonwealth Constitution is more than adequate as a chartering document for the municipalities of Tinian and Aguiguan and Rota. Section 8 of Article VI of the Commonwealth Constitution serves as the creative act while Sections 2- 7 of Article VI define the powers of the Municipality of Tinian and Aguiguan and regulate their mode of exercise. N.M.I. Const. art. VI, § 8. *United States v. Borja*, 2003 MP 8 ¶ 15, 6 N.M.I. 558, 563 (2003).

. . .

# ARTICLE VIII: ELECTIONS

**Case Annotations:** *Bolalin v. Guam Publications, Inc.*, 4 N.M.I. 176--181.

**Section 1: Regular General Election.** The regular general election of the Commonwealth shall be held the Tuesday next after the first Monday in November in even-numbered years.

**Source:** Original provision (ratified 1977, effective 1978); amended by Second Const. Conv. Amend. 26 (1985); amended by Senate Legislative Initiative 16-11 (2009).

. . .

# ARTICLE IX: INITIATIVE, REFERENDUM AND RECALL

. . .

**Section 3: Recall.**

. . .

**Case Annotations:** *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26, 7 N.M.I. 388 (2006); *Commonwealth v. Crisostimo*, 2005 MP 18, 7 N.M.I. 216 (2005).

# ARTICLE X: TAXATION AND PUBLIC FINANCE

. . .

## Section 8: Control of Public Finance.

. . .

**Case Annotations:** *Tudela v. Superior Ct.*, 2006 MP 7, 7 N.M.I. 279 (2006).

## Section 9: Taxpayer's Right of Action.

. . .

**Case Annotations:** *Pacific Amusement v. Villanueva III*, 2006 MP 8, 7 N.M.I. 286 (2006).

**Interpretation and Construction**

**– Generally**

The extent of the public benefit conferred by a suit brought by a taxpayer, pursuant to Article X, section 9 of the Commonwealth Constitution, is a question relevant to the damage calculation, not liability determination. N.M.I. Const. Art. X, § 9. *Pacific Amusement v. Villanueva*, 2005 MP 11 ¶ 10, 7 N.M.I. 178, 180 (2005).

**APPEAL AND ERROR**

**Remand**

**– Particular Cases**

In decision reversing ruling that party lacked standing to bring action challenging Superior Court judge's right to hold office of Presiding Judge (on basis that judge was never appointed and confirmed to the office) as a taxpayer suit pursuant to N.M.I. Const. art. X, § 9, NMI Supreme Court would not remand for ruling on the merits because: (1) the material facts were not in dispute; (2) the question depended wholly on the construction of statutes; and (3) the trial court had already implicitly ruled on the merits and dismissed the action with prejudice. *Mafnas v. Commonwealth*, 2 N.M.I. 248 (1991).

**COURTS**

**Justiciability**

**– Political Questions**

Because Article X, Section 9 of the Commonwealth Constitution specifically grants taxpayers the right to maintain an action to enjoin the misspending of public funds, there is a presumption that the alleged misspending of public funds by a public official presents a justiciable matter. The public official should expect to justify his or her actions in court pursuant to the Commonwealth Constitution. N.M.I. Const. art. X, § 9. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 44, 6 N.M.I. 575, 589 (2003).

**PARTIES**

**Standing**

**– Constitutional Questions**

Actions to redress public wrongs or breaches of public duty ordinarily cannot be brought by private individuals, but in the Commonwealth, the right of taxpayers to challenge allegedly illegal expenditures of public funds is expressly granted by our Constitution. Article X, Section 9 of the NMI Constitution recognizes the right of Commonwealth taxpayers to call their government to account in matters pertaining to expenditures of public funds. It is remedial in nature and should be liberally construed. N.M.I. Const. art. X, § 9. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 23, 6 N.M.I. 575, 584 (2003).

**PUBLIC OFFICERS AND EMPLOYEES**

**Misconduct in Office**

**– Breach of Fiduciary Duty**

The Governor of the Commonwealth, as the trustee of the Treasury, owes a fiduciary duty to the people of the Commonwealth to lawfully expend and disburse public funds. A trust relationship exists between a public official with the power to expend public funds and each taxpayer, as the owner of the public funds. A public authority is the trustee of public funds and a taxpayer has standing to sue for a trustee's misapplication of those funds. The Governor is the trustee of the public funds of the Commonwealth. If the Governor breaches his or her duties as trustee of the public funds for the people of the Commonwealth, he or she would be liable for any loss or depreciation in value of the trust estate resulting from the breach of trust. Thus, money damages are recoverable in an action for breach of fiduciary duty under Article X, Section 9 of the Commonwealth Constitution. N.M.I. Const. art. X, 9. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 36, 6 N.M.I. 575, 587 (2003).

Article X, Section 9 of the Commonwealth Constitution allows a post hoc action for a breach of fiduciary duty, however, a public officials liability for a breach of fiduciary duty is subject to questions of justicability and, among others, the defense of qualified immunity. N.M.I. Const. art. X, 9. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 37, 6 N.M.I. 575, 587-8 (2003).

**TAXES**

**Taxpayer Actions**

**– Particular Cases**

Article X, Section 9 of the Commonwealth Constitution not only authorizes an action against the government or one of its instrumentalities in order to enjoin the expenditure of public funds for other than public purposes, it also

authorizes a taxpayer to maintain an action against the government or one of its instrumentalities for a breach of fiduciary duty. N.M.I. Const. art. X, § 9. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 33, 6 N.M.I. 575, 586 (2003).

**– Remedies**

In the Commonwealth, a taxpayer, in a suit to enjoin the expenditure of public funds for other than public purposes, has standing to sue to recover public monies already misspent by a government official pursuant to Article X, Section 9 of the Commonwealth Constitution. N.M.I. Const. art. X, § 9. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 32, 6 N.M.I. 575, 586 (2003).

. . .

# ARTICLE XI: PUBLIC LANDS

. . .

## Section 5: Fundamental Policies.

. . .

a) . . .

**Case Annotations:** *Aguon v. Marianas Pub. Land Corp.*, 2001 MP 4, 6 N.M.I. 233 (2001); . . .

. . .

# ARTICLE XII: RESTRICTIONS ON ALIENATION OF LAND

. . .

**Case Annotations**: *Matsunaga v. Matsunaga*, 2006 MP 25, 7 N.M.I. 379 (2006); *In re Estate of Roberto*, 2004 MP 7, 7 N.M.I. 39 (2004); . . .

## Section 1: Alienation of Land.

. . .

**Case Annotations: . . .**

**LAND ALIENATION RESTRICTION**

**Generally**

Whether a person or corporation is a person of Northern Marianas Descent, as defined in Article XII of the Commonwealth Constitution is a question of law. N.M.I. Const. art. XII. *Iglesias v. Realty Trust Corp.*, 2003 MP 7 ¶ 7, 6 N.M.I. 554, 556 (2003).

Any land transaction involving a transfer to a person not of Northern Marianas descent must be carefully probed to determine whether the transaction would result in the acquisition of a long-term interest in land by a non-NMD in violation of the Northern Marianas Islands Constitution, Article XII, Sections 1 and 6, or in having NMI land pass out of the hands of NMD persons, in violation of the purpose of Article XII. N.M.I. Const. art. XII, §§ 1 and 6. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 13, 6 N.M.I. 308, 312 (2001).

Where a person not of Northern Marianas descent acquires a permanent or long-term interest in violation of Section 1 of Article XII of the N.M.I. Constitution, the transaction is void ab initio and completely without force and effect. N.M.I. Const. art. XII, 1 and 6. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 11, 6 N.M.I. 308, 312 (2001).

Any land transaction involving a transfer to a person not of Northern Marianas descent must be carefully probed to determine whether the transaction would result in the acquisition of a long-term interest in land by a non-NMD in violation of the Northern Marianas Islands Constitution, Article XII, Sections 1 and 6, or in having NMI land pass out of the hands of NMD persons, in violation of the purpose of Article XII. N.M.I. Const. art. XII, 1 and 6. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 13, 6 N.M.I. 308, 313 (2001).

**Acquisition of Restricted Interest**

At the time of a land purchase made in violation of Article XII of the Constitution, the purchaser who is not of Northern Marianas Descent does not acquire ownership of the land but acquires a bare right of possession. The purchaser would have a right to eject squatters, but this right of possession is subordinate to the grantors right of recovery and to the Governments right of confiscation, if the purchaser is not a natural person. N.M.I. Const. art. XII. *In re Estate of Roberto*, 2003 MP 16 ¶ 25, 6 N.M.I. 618, 622-3 (2003).

Sales of land to a person not of Northern Marianas Descent are constitutionally void ab initio and must be returned upon challenge to the original granter. If the original granter is the CNMI Government, there is no statute of limitations. If the original granter is other than the CNMI Government, then the statute of limitations on Article XII claims, 2 CMC § 4991, would apply and the action would be barred if brought more than six years after the plaintiff last had possession of the property. N.M.I. Const. art. XII, 2 CMC § 4991. *In re Estate of Roberto*, 2003 MP 16 ¶ 25, 6 N.M.I. 618, 622-3 (2003).

After six years of possession, a person not of Northern Marianas Descent who purchased land in the CNMI in violation of Article XII of the Constitution, becomes not only the only person with the apparent right to possess the land, but also the sole person (with the possible exception of the government, if the government was the original grantor) who could assert such a right. N.M.I. Const. art. XII. *In re Estate of Roberto*, 2003 MP 16 ¶ 26, 6 N.M.I. 618, 623 (2003).

From the time of a land purchase, a purchaser, who is not a person of Northern Marianas Descent, as defined in Article XII of the Constitution, has a right of possession superior to that of any other person or entity except the grantor and possibly the government. This right of possession becomes superior even to the rights of the grantor after the statute of limitations has run. N.M.I. Const. art. XII. *In re Estate of Roberto*, 2003 MP 16 ¶ 27, 6 N.M.I. 618, 623 (2003).

A purchaser of land in the Commonwealth who is not of Northern Marianas Descent, as defined by Article XII of the Constitution, with a right of possession based on an apparent fee simple interest, may pass good, fee- simple title to any person or entity legally capable of owning such an interest in the Commonwealth. The transaction may take any valid form, including by sale, by gift, through a will, or by operation of the laws governing intestate succession. However, passing title from a person not of Northern Marianas Descent to a person of Northern Marianas Descent does not cut off the right of the original grantor to seek return of the land under Article XII, so long as the statutory

period for bringing such an action has not run. N.M.I. Const. art. XII. *In re Estate of Roberto*, 2003 MP 16 ¶ 30, 6 N.M.I. 618, 623 (2003).

A lease which requires a lessor to return all of the consideration because title did not transfer to the non-Northern Marianas descent lessee during the lease term is repugnant to Article XII of the N.M.I. Constitution. N.M.I. Const. art. XII. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 15, 6 N.M.I. 308, 313 (2001).

Where parties separately execute a contract and a lease it would be inappropriate for the court to treat them as a single transaction for determining an Article XII violation. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 14, 6 N.M.I. 308, 313 (2001).

A land lease and a subsequently executed lease amendment should not be treated as a single transaction under Article XII of the N.M.I. Constitution scrutiny, where the original lease is not a transaction which triggers the enforcement power of Article XII, Section 6. N.M.I. Const. art. XII, 6. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 15, 6 N.M.I. 308, 313 (2001).

A lease which requires a lessor to return all of the consideration because title did not transfer to the non-Northern Marianas descent lessee during the lease term is repugnant to Article XII of the N.M.I. Constitution. N.M.I. Const. art. XII. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 18, 6 N.M.I. 308, 313 (2001).

**– Transactions**

A land lease and a subsequently executed lease amendment should not be treated as a single transaction under Article XII of the N.M.I. Constitution scrutiny, where the original lease is not a transaction which triggers the enforcement power of Article XII, Section 6. N.M.I. Const. art. XII, 6. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 15, 6 N.M.I. 308, 313 (2001).

. . .

## Section 3: Permanent and Long-Term Interests in Real Property.

. . .

**Case Annotations: . . .**

**Restricted Interests**

**– Renewal Rights**

The term renewal rights, as used in Article XII, Section 3 of the N.M.I. Constitution, shall be construed broadly as inclusive of any right, conditional or unconditional, that a non-Northern Marianas descent person could exercise to acquire leasehold interest in land exceeding the permissible period. N.M.I. Const. art XII, § 3. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 17, 6 N.M.I. 308, 313 (2001).

The term renewal rights, as used in Article XII, Section 3 of the N.M.I. Constitution, shall be construed broadly as inclusive of any right, conditional or unconditional, that a non-Northern Marianas descent person could exercise to acquire leasehold interest in land exceeding the permissible period. N.M.I. Const. art XII, 3. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 17, 6 N.M.I. 308, 313 (2001).

. . .

## Section 4: Persons of Northern Marianas Descent.

**Case Annotations: . . .**

**PROBATE**

**Executor's Duties**

An executor's role is solely to argue for the proper inclusion and distribution of property in the estate of a deceased, once it becomes clear that the estate cannot hold particular property, such as land in the Commonwealth because the deceased was not a person of Northern Marianas Descent as defined in Article XII of the Commonwealth Constitution, the estate has no voice in deciding who does hold it. N.M.I. Const. art. XII. *In re Estate of Roberto*, 2003 MP 16 ¶ 24, 6 N.M.I. 618, 622 (2003).

## Section 6: Enforcement.

. . .

**Case Annotations: . . .**

**– Operation and Effect**

The NMI courts will not set aside real estate transactions merely because a person not of Northern Marianas Descent, as defined in Article XII of the Commonwealth Constitution, has furnished money for an otherwise valid transaction, nor will it set aside a real estate transaction where the corporation purchasing land meets the definition of Northern Marianas Descent, but such corporation is alleged to be the alter ego of an individual not of Northern Marianas Descent. N.M.I. Const. art. XII. *Iglesias v. Realty Trust Corp*., 2003 MP 7 ¶ 11, 6 N.M.I. 554, 556 (2003).

A person who is not of Northern Marianas Descent, as defined in Article XII of the Commonwealth Constitution, may lawfully fund the purchase of land by a person of Northern Marianas Descent without acquiring an unlawful fee interest in the land that would violate Article XII of the Commonwealth Constitution. N.M.I. Const. art. XII. *Iglesias v. Realty Trust Corp.*, 2003 MP 7 ¶ 11, 6 N.M.I. 554, 556 (2003).

Where a person not of Northern Marianas descent acquires a permanent or long-term interest in violation of Section 1 of Article XII of the N.M.I. Constitution, the transaction is void ab initio and completely without force and effect. N.M.I. Const. art. XII, §§ 1 and 6. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 11, 6 N.M.I. 308, 312 (2001).

A land lease and a subsequently executed lease amendment should not be treated as a single transaction under Article XII of the N.M.I. Constitution scrutiny, where the original lease is not a transaction which triggers the enforcement power of Article XII, Section 6. N.M.I. Const. art. XII, 6. *Milne v. Lee Po Tin*, 2001 MP 16 ¶ 15, 6 N.M.I. 308, 313 (2001).

# ARTICLE XV: EDUCATION

**Section 1: Elementary and Secondary Education.**

a) - b) [unchanged]

c) The board of education shall have five members, elected at large on a non-partisan basis as follows: one from the first senatorial district, one from the second senatorial district and three from the third senatorial district. Elected members of the board of education shall serve terms of four years except that the terms of the first members elected shall be determined by drawing of lots with three members serving a term of four years and two members serving a term of two years. The governor shall appoint three nonvoting ex-officio members to the board of education: one member shall be a high school student attending a public school; one member shall be a representative of nonpublic schools; and one member selected by the teachers within the Public School System. The selection process of a public school teacher representative shall be established by law. Elected members of the board shall serve commencing on the second Monday of January in the year following the regular general election at which they were elected. The elected board members shall be limited to two terms.

d) [unchanged]

e) The public elementary and secondary education system shall be guaranteed an annual budget of not less than fifteen percent of the general revenues of the Commonwealth through an annual appropriation. The budgetary appropriation may not be reprogrammed for other purposes, and any unencumbered fund balance at the end of a fiscal year shall be available for reappropriation.

**Source:** Original provision (ratified 1977, effective 1978); amended by Second Const. Conv. Amend. 38 (ratified 1985, effective 1988); ; subsections (c) and (e) amended by House Legislative Initiative 15-3 (2009).

**Commission Comment:** House Legislative Initiative 15-3 amended subsection (c) as follows: adding “high school” before student; removing “an exclusive bargaining representative of;” changing “Department of Education” to “Public School System;” and adding the last sentence regarding limited terms. House Legislative Initiative 15-3 changed subsection (e) by adding “through an annual appropriation” to the first sentence.

**Section 2: Higher and Adult Continuing Education.**

a) The legislature shall establish by law a Northern Marianas College that shall be headed by a president. The president of the college shall be appointed by a representative board of regents. The board of regents shall be appointed to staggered terms by the governor and shall have autonomy in the administration of its affairs. The composition of the board of regents and other matters pertaining to its operations and duties shall be provided by law. The licensing authority of post secondary educational

institutions in the Commonwealth of the Northern Mariana islands shall be the Higher Education Commission which shall be established by law.

b) - c) [unchanged]

**Source:** Second Const. Conv. Amend. 38 (1985); subsection (a) amended by House Legislative Initiative 15-1 (2007).

**Commission Comment:** House Legislative Initiative 15-1 amended subsection (a) of this section by removing "and shall formulate policy relating to the higher education needs of the Commonwealth of the Northern Mariana Islands" from the third sentence and adding the last sentence.

**Case Annotations:**

**Interpretation and Construction**

**– Plain Meaning**

In (NMI Constitution) Article XV, Section 2(a), the use of the term shall is mandatory and has the effect of creating a duty. The word shall is unambiguous and means must. *N. Marianas Coll. v. Civ. Serv. Cmm'n II*, 2007 MP 8 ¶ 9, 7 N.M.I. 429, 430 (2007).

. . .

# ARTICLE XIX: CODE OF ETHICS

## Section 1: Code of Ethics.

. . .

**Case Annotations:** *United States v. Borja*, 2003 MP 8, 6 N.M.I. 558 (2003).

# ARTICLE XX: CIVIL SERVICE COMMISSION

## Section 1: Civil Service.

. . .

**Case Annotations:** *N. Marianas Coll. v. Civ. Serv. Cmm'n II*, 2007 MP 8, 7 N.M.I. 429 (2007); *United States v. Borja*, 2003 MP 8, 6 N.M.I. 558 (2003).

# ARTICLE XXI: GAMBLING

### Section 1: Prohibition.

. . .

**Case Annotations:** *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26, 7 N.M.I. 388 (2006).

## ARTICLE XXII: OFFICIAL SEAL, FLAG AND LANGUAGES

. . .

### Section 3: Official Languages.

. . .

**Case Annotations:**

Article XXII, Section 3 of the Commonwealth Constitution, in designating three official languages in the Commonwealth, gives litigants a constitutional right to speak Chamorro in judicial proceedings. N.M.I. Const. art. XXII, § 3. *Commonwealth v. Deleon Guerrerro*, 2003 MP 15 ¶ 1, 6 N.M.I. 615 (2003).

. . .