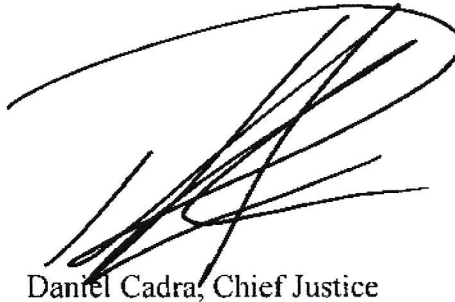


IN THE SUPREME COURT  
REPUBLIC OF THE MARSHALL ISLANDS

IN THE MATTER OF THE APPOINTMENT ) Supreme Court Case No. 2013-006  
OF COUNSEL FOR ARLEEN JACOB, )  
 )  
 )  
 )  
BEFORE Cadra, C.J.; Seabright, A.J.; and Kurren, A.J.

At oral argument on June 24, 2014, James McCaffrey withdrew his appeal in the above referenced matter. Accordingly, this appeal is Dismissed.

Dated June 25, 2014

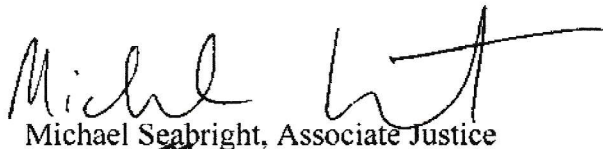


Daniel Cadra, Chief Justice

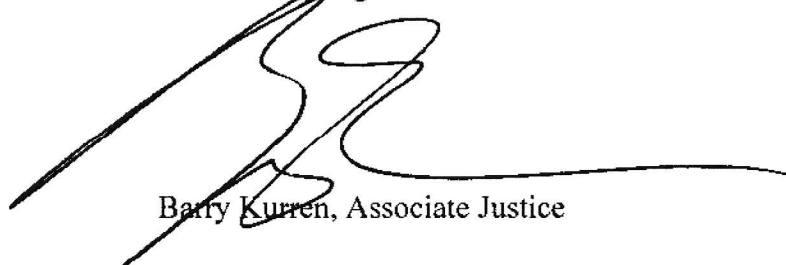
**FILED**

JUN 25 2014

  
CLERK OF COURTS  
REPUBLIC OF MARSHALL ISLANDS



Michael Seabright, Associate Justice



Barry Kurren, Associate Justice

James McCaffrey, M.I. Adm. # 103  
THE MCCAFFREY FIRM, LTD.  
RRE (Post Office) Bldg., 2nd Flr.  
P.O. Box 509  
Majuro, MH 96960, Marshall Islands  
Tel: +692-625-6000  
Fax: +692-625-5374  
James-McCaffrey@Hotmail.com

Pro se APPELLANT

FILED

JUL 19 2013

CLERK OF COURTS  
REPUBLIC OF MARSHALL ISLANDS

Appeal Case No. 2013-008

IN THE HIGH COURT  
REPUBLIC OF THE MARSHALL ISLANDS

IN THE MATTER OF THE APPOINTMENT  
OF COUNSEL FOR ARLEEN JACOB,

ATTORNEY APOINTMENT ORDER  
2013-001 CBJ

NOTICE OF APPEAL TO THE SUPREME  
COURT UNDER RULES 3 AND 4 OF  
THE MARSHALL ISLANDS SUPREME  
COURT RULES OF PROCEDURE;  
ATTACHMENTS  
A) 20 JUNE 2013 ORDER;  
B) 20 JUNE 2013 ATTORNEY  
MCCAFFREY RESPONSE;  
C) 13 JUNE 2013 ORDER;  
D) 20 FEBRUARY ORDER  
E) 25 JUNE ORDER RE JOHN SILK; and  
CERTIFICATE OF SERVICE

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that James McCaffrey ("Appellant"), hereby appeals to the Supreme Court of the Republic of the Marshall Islands from the order of the High Court entered in this matter on 20 June 2013, a copy of which is attached to this notice.

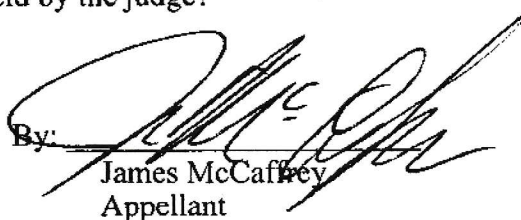
The following is a concise statement of the questions presented by the appeal:

1. Whether, as the prevailing party, is not an attorney entitled to be compensated for his reasonable time and expense in responding to an illegal and unconstitutional order of the High Court?

The following questions 2-8 are capable of repetition yet evading review. This contention is confirmed by the action of Chief Justice Carl B. Ingram in issuing a similar, if not identical, illegal order against Trial Assistant John Silk on 25 June 2013.

2. Whether the establishment of a comprehensive Legal Aid Scheme is beyond the authority of a single justice of the Supreme Court?
3. Whether the Legislature has pre-empted the area of Legal Aid?
4. Whether there is a right to counsel in civil cases?
5. Whether there is right to counsel – as Plaintiff – civil cases?
6. Whether involuntary appointments, such as in the 20 February 2013 Order, are a form of Involuntary Servitude, coerced labor, and forced labor, all in violation of Article II Section 2(2) of the Marshall Islands Constitution?
7. Whether the 20 June 2013 Order's referral to the Appellant by his surname only "McCaffrey", without title (Attorney) or honorific (Mister), as if he was a common day laborer and not an attorney of this and other courts, goes beyond discourtesy, and is a deliberate public insult and an act of judicial misconduct?
8. Whether the issuance of knowingly illegal and unconstitutional orders by a judge, a display of public temper upon being challenged on those orders, and the reissuance of those same illegal and constitutional orders against another member of the Bar are abuses inconsistent with the office held by the judge?

Dated: 19 July 2013

By:   
James McCaffrey  
Appellant

IN THE HIGH COURT  
OF THE  
REPUBLIC OF THE MARSHALL ISLANDS

IN THE MATTER OF THE  
APPOINTMENT OF COUNSEL FOR  
ARLEEN JACOB

) ATTORNEY APPOINTMENT ORDER NO.  
) 2013-001  
)  
) ORDER VACATING APPOINTMENT OF  
) JAMES McCaffrey AND REFERRING  
) MATTER TO THE SUPREME COURT  
)

TO: ARLEEN JACOB  
JAMES McCaffrey, appointed counsel for Arleen Jacob


Having considered McCaffrey's June 20, 2013 Attorney Statement in Response to Order of 13 June 2013, the Court vacates its Attorney Appointment Order No. 2013-001 and will refer the matter to the Supreme Court for consideration. Further, the Court has considered McCaffrey's request for payment for responding to the Court and denies the request. It is McCaffrey's duty to respond and not simply ignore an order with which he disagrees.

Date: June 20, 2013.

**FILED**

JUN 20 2013

  
ASST. CLERK OF COURTS  
REPUBLIC OF MARSHALL ISLANDS

  
Carl B. Ingram  
Chief Justice



James McCaffrey, M.I. Adm. # 103  
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Fax: +692-625-5374  
James-McCaffrey@Hotmail.com

**FILED**

**JUN 20 2013**

**ASST. CLERK OF COURTS  
REPUBLIC OF MARSHALL ISLANDS**

Pro se

**IN THE HIGH COURT  
REPUBLIC OF THE MARSHALL ISLANDS**

**IN THE MATTER OF THE APPOINTMENT  
OF COUNSEL FOR ARLEEN JACOB,**

**ATTORNEY APOINTMENT ORDER  
2013-001 CBJ**

**ATTORNEY STATEMENT IN RESPONSE  
TO ORDER OF 13 JUNE 2013;  
ATTACHMENT (Invoice 13463)**

**Background**

On 20 February 2013 Chief Justice Carl B. Ingram (the "Issuing Judge") issued an Order (the "First Order") attempting to appoint James McCaffrey as involuntary counsel to Arleen Jacob. For the reasons set forth below, this order exceeded the court's authority and was a nullity. On 13 June 2013, the Issuing Judge issued a further order (the "Second Order") requiring the undersigned to file a statement on or before 5:00 p.m. on 20 June 2013 showing why "he has failed and refused to represent Arleen Jacob as ordered."

Arleen Jacob seeks to be a *plaintiff* in a *civil* land matter.

**I. Arleen Jacob has never been my client**

I have never met or spoken to Arleen Jacob. I have never entered into an attorney-client relationship with him or her. As he or she has never been my client, it is impossible for me to fail to represent them.

**II. There is no Civil Gideon**

**A. A Single Supreme Court justice can not establish a Legal Aid scheme**

The 20 February 2013 order relies upon a Supreme Court Order of 13 November 2000 issued by then Chief Justice Allen P. Fields. This order was signed only by then Chief Justice Fields and not by any other justice of the Supreme Court.

The Supreme Court is a body comprised of three (3) members: a Chief Justice and two (2) associate judges, 27 MIRC § 206(2). 27 MIRC § 217(1) allows the Supreme Court, defined as three (3) members by 27 MIRC § 206(2), to make rules of court.

A single judge has only limited authority to act on his own. A single judge “may make all necessary orders concerning any appeal prior to the hearing and determination thereof...”, 27 MIRC § 206(2). Rule 27(c) of the Supreme Court Rules of Procedure allows a single justice to entertain motions, subject to rehearing, vacation, or modification. Clearly, the power of a single justice is limited by statute and rule.

Establishing a comprehensive Legal Aid Scheme, setting criteria for participation coercing attorneys to work in it, and providing paltry and inadequate compensation, are substantive acts well beyond the power of a single justice. Assuming it can be done by court rule at all (see below), it would need to be done by all three justices, i.e. by the Supreme Court itself.

**B. The Legislature has Pre-empted the provision of Legal Aid**

The Republic of the Marshall Islands Legal Aid Office is established by statute, 5 MIRC

8. Its purpose includes just such as matter as that of Arleen Jacob:

The duties of the Republic of the Marshall Islands Legal Aid Office shall be as follows:

(a) to furnish, to the extent of its ability, legal services to any Marshallese citizen who it finds unable to afford legal services, or unable to find a lawyer or other qualified counsel to represent him or her. Such legal services shall include legal advice and counseling, drafting of documents and civil court actions or defense thereof, and other acts normally performed by legal aid offices. 5 MIRC § 805(a).

At various times, the RMI Legal Aid Office has operated. At the moment it is not operating as the Nitijela has not funded it. Nevertheless, the legislature has acted in this area, knows how to act in the area, but has made a political choice to not fund public legal aid for plaintiffs such as Arleen Jacob. Any citizen objecting to such a policy may petition the Members of the Nitijela for a change.

**C. There is no right to counsel in a Civil case**

Although it is always difficult to prove a negative, it is well known that there is no Civil *Gideon* despite the ardent wishes of proponents. A quick Google search will confirm the non-existence of any type of Civil *Gideon*<sup>1</sup>.

Some U.S. States will provide counsel to *defendants* in cases involving physical liberty, such as mental commitment proceedings, or in termination of parental rights. Here, we have an alleged landowner who wants to become a *plaintiff* to pursue a claim at public expense and at the substantial expense of the coerced attorney.

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<sup>1</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963) re a criminal defendant's right to counsel.

**D. Involuntary Appointments are a form of Involuntary Servitude**

Article II Section 2 (2) The Marshall Islands Constitution prohibits involuntary servitude and forced or compulsory labor. I did not consent to the involuntary appointment and I do not consent now. I have a lifelong moral and philosophical abhorrence of this type of compulsion and forced labor and those who would employ it against me.

Article II, Section 18 allows me, a citizen of the Republic of the Marshall Islands, to invoke the Bill of Rights against any violation, such as the two orders in question. I do so now and demand that two orders be revoked forthwith.

**III. Practicalities & Why a Court should not be running a Legal Aid Scheme**

**A. The Marshall Islands Land Litigation Process is Broken**

The litigation of a land case is so lengthy and tedious that it is no longer economic for private lawyers or trial assistants to undertake such cases. Micronesian Legal Services Corporation appears to have come to the same conclusion as they appear to have stopped taking such cases. In my opinion, there are a variety of reasons for this and everyone can share the blame:

- 1) The High Court proceeds most cautiously and deliberately. It can take up to eighteen months to get all the required parties into an action.
- 2) The former panel of the Traditional Rights Court ("TRC") proceeded slowly. Many times their opinions were incomplete or inadequate requiring the High Court to return them for revisions, often multiple times.
- 3) The Supreme Court has treated matters of customary law as matters of fact rather than law. That, and treating an appeal from the High Court as more of an appeal of an appeal from the TRC than an appeal from the trial court has limited the development of land case law. We



thus end up with decisions deciding factual questions in a particular case but not enunciating a rule of law of general applicability.

4) The Nitijela has not acted to either clarify or codify "customary law and traditional practice" thus making this a very uncertain area of law.

5) By the nature of Marshallese customary law, one does not become a land interest holder until one's predecessors have passed. This means the litigants are elderly and frequently do not survive the litigation themselves requiring a substitution of parties and the consequent delays.

6) In addition, land litigants are particularly intransigent and do not settle land cases thus requiring the cases' full presentation before the TRC and High Court. It is not uncommon for second or even third generations of litigants to try to reopen settled cases or ignore previous judgments.

7) And counsel, either because of frustration or because clients can not afford such a protracted process, are sometimes slow in processing these cases.

**B. A Taking of Tens of Thousands Dollars from an Attorney is at issue**

The \$50 per hour compensation offered is grossly inadequate. The cost of living in the Marshalls Islands is approximately twice that of the United States meaning that the purchasing power of that compensation would be the equivalent of \$25 per hour in the United States. No attorney can work for such amount.

\$225 per billable hour is my local rate. For reference, in 1992 upon entering Marshall Islands private practice, I charged \$150 per billable hour in Majuro.



In corporate matters, where I have particular expertise<sup>2</sup> due to my Big Firm corporate experience, my USC MBA in finance, and 28 years of practice, I charge substantially more.

The cost to me of an involuntary appointment is the difference between my hourly rate(s) and the court rate. The right-most column shows the cost to me of this servitude and represents the transfer of wealth from me to the plaintiff.

	\$50	\$225	
Hours	Court	Local	Cost to Attorney
50	\$2,500	\$11,250	\$8,750
100	\$5,000	\$22,500	\$17,500
	Capped		
200	\$5,000	\$45,000	\$40,000
300	\$5,000	\$67,500	\$62,500

One hundred billable hours is lot of time, especially to those of us who are experienced and "have a sharp pencil." Nevertheless, one hundred hours<sup>3</sup> is probably a minimum for even a small land case, such as the one in question, and it could be much higher. I have been involved in one land case since 1998 which is more than half of my professional career.

**C. Foreigners skim the cream; local counsel to be involuntary Legal Aid?**

I am the Vice President of the Marshall Islands Law Society. To the best of my knowledge, the High Court has never solicited applications for voluntary appointments from the local bar. I know that I have not been asked. While uneconomical for experienced attorneys, a

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<sup>2</sup> I am the author of the Marshall Islands chapter of *World's Leading Financial and Trust Centres* (2010), published by Sweet & Maxwell.

<sup>3</sup> The Fields one judge order caps the amount of compensation for land cases at \$5,000, which at \$50 per hour, is one hundred hours. At one hundred hours the cost to me is \$17,500.

young attorney or retired attorney might be interested at the court rate. It is odd that the High Court has failed to even ask for voluntary appointments.

The recent involuntary appointments are controversial and detested by the local bar<sup>4</sup>. I have yet to hear of a non-resident lawyer being burdened with one. Some of these non-resident lawyers conduct an active law practice in the Marshall Islands while others just advise on corporate and maritime matters from outside the Marshall Islands. This unequal treatment results in a preference and competitive advantage to the non-resident lawyers who are not burdened by involuntary appointments.

**D. Who would Screen these Cases?**

A further reason why the High Court should not be attempting to run a Legal Aid system is because there is no provision for screening of cases. If a lawyer is involuntarily appointed to case, what does he do if he discovers it has no merit? He can not file a complaint as his signature on the complaint constitutes a certificate of merit. He can not reject the client because he has been involuntarily appointed. Does he then approach the appointing judge and disclose the case has no merit? Does not this prejudice the "client" in the event another attorney feels differently?

**E. Financial Distress imposed on the Attorney by the Court**

I am reluctant to discuss my personal financial situation in what will become a publicly available document. I was off-island from 26 March to 17 May taking care of business, personal matters, and family property. This resulted in an interruption of two months income. On the date of Second Order, I had \$41.99 in my Bank of Guam Business account and \$21.13 in my Personal account.

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<sup>4</sup> When discussing this matter with other local attorneys I was warned that I might be subject to retaliation if I challenged these involuntary appointments.

I have been working diligently since my return but I need work at my corporate rate or even my local rate<sup>5</sup>. The court rate would impoverish me and my family.

**F. Existing clients of the Attorney will be harmed**

I am currently fully booked and I work six days a week. Coincidentally, I had turned down a paying case on the day of the Second Order, 13 June.

I have no extra legal time available. There are only so many hours in the day. You can't make a rope longer by cutting off one end and tying it onto the other. Adding one more car to a crowded freeway can bring it to a stop. If Arlen Jacobs or someone similar is foisted upon me, it will impact my current clients.

I have a number of cases on a delayed payment or contingency basis. One case involves the family and orphaned children of a father killed by a drunk driver. Do I withdraw from that case so Arlen Jacobs can pursue her case at the public – and my – expense?

**G. Pro bono is Aspirational not Mandatory**

The court rate is so low we may regard the work being done as *pro bono publico* rather than for compensation.

While certain proponents would like to make *pro bono* mandatory it remains aspirational. It is up to the individual attorney's conscience and judgment to decide how much *pro bono* work to do (see below for my *pro bono*). Mandatory *pro bono* or involuntary appointments result in a redistribution of wealth from the attorney to the recipient. It is easy to be charitable when it is someone else's time, energy, and money that is being given away.

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<sup>5</sup> There is substantial "administrative overhead" of simply living in Majuro and trying to get something done here. Many days I am happy to get 2-3 billable hours.



Collectivist proponents of *pro bono* waive their hands and utter vague phrases about an attorney's role in society and the State's interest in such. There are Government interests in ensuring attorney competence and ethical conduct but not in extracting free services. Formosa supermarket is not compelled to give free food to the poor, Dr. Pinano is not compelled to give free medical help to the poor, and CoOp School is not compelled to give free education to the poor. If they choose to do so, fine, just as I do voluntary *pro bono*.

#### **H. Crowding out of Voluntary *pro bono***

In my *pro bono*:

- 1) Without charge, I was second chair to David Lowe in a murder case;
- 2) Without charge, I represented a Marshallese woman who was the victim of a wrongful prosecution initiated by a trial assistant in the Attorney-General's office after substantial pressure by a low level employee of U.S. Embassy (who improperly implied U.S. Embassy pressure);
- 3) Without charge, I represented a person who was picked up by the police on a Saturday on a District Court bench warrant due to the District Court's error in not crediting his payment of a fine;
- 4) I accepted a criminal *Gideon* appointment without complaint or compensation; and
- 5) I provide substantial amounts of free advice during initial consultations as I never charge for these.

If forced to take involuntary appointments, I will need to reduce my voluntary *pro bono* for the reasons stated in III.F. above.

#### **I. Voluntary Alternatives Exist to Involuntary Appointments**

As mentioned in II.B, the democratic process can be used and the Nitijela asked to fund the RMI Legal Aid Office.

As mentioned in III.C, the Court could seek attorneys who wish voluntary appointments for Legal Aid Fund work.

A third alternative would be to ask the Marshall Islands Law Society to administer a program. The Law Society might:

- 1) Establish a committee to screen cases, thus removing judges from this process and its inherent conflicts;
- 2) Establish a panel of voluntary attorneys who seek such work, thus eliminating the numerous legal and constitutional problems outlined here; and
- 3) Review the billings of the panel attorneys before submittal to the Legal Aid Fund, thus removing judges from potential fee disputes with attorneys.

#### **IV. Conclusion**

The First Order was illegal and unconstitutional:

- 1) A single Supreme Court justice lacks authority to establish a court-run Legal Aid scheme;
- 2) The Legislative has pre-empted the provision of Legal Aid and even the entire Supreme Court is precluded from acting in this area;
- 3) Even the most ardent proponents of a civil *Gideon* have not attempted to propose involuntary appointments to represent plaintiffs; and
- 4) Such involuntary appointments are a form of involuntary servitude or coerced labor and are prohibited by the Marshall Islands Constitution.



This is all fairly straightforward and the Issuing Judge should have known that his First Order was illegal and unconstitutional<sup>6</sup>. As a result of the Second Order, I have had to spend 10.7 billable hours preparing this Statement at a cost of \$2,407.50. I deserve and am entitled to be made whole for my lost time in having to respond to the illegal orders. Further, my role in having these orders revoked confers a public benefit as the now enlightened court can resume acting legally.

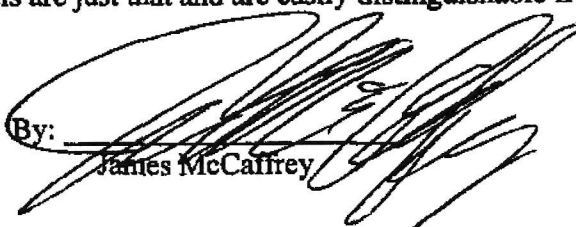
WHEREFORE, the undersigned requests that the Court:

1. Immediately revoke the First and Second Order; and
2. Reimburse the undersigned attorney for his lost time and expense in the amount of \$2,407.50.

I declare under the penalty of perjury that the facts stated above are true.

The opinions and legal analysis are just that and are easily distinguishable from the facts.

Dated: 20 June 2013

By:   
James McCaffrey

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<sup>6</sup> I filed no response to the First Order for a number of reasons. The Order was so blatantly illegal and unconstitutional that no response was required, just as if the Issuing Judge had ordered me to stick my pen in my eye. No one needs to file an Appeal from such nullities. Further, filing a Response, as I have been forced to do here, would have required a substantial expenditure of time and expense. While I expect compensation for that time and expense, in matters involving the RMI Government, I have found it is best not to assume anything.

**IN THE HIGH COURT  
OF THE  
REPUBLIC OF THE MARSHALL ISLANDS**

IN THE MATTER OF THE  
APPOINTMENT OF COUNSEL FOR  
ARLEEN JACOB

) ATTORNEY APPOINTMENT ORDER NO.  
) 2013-001  
)  
) **ORDER FOR STATEMENT SHOWING**  
) **CAUSE WHY ATTORNEY HAS FAILED**  
) **TO REPRESENT ARLEEN JACOB**

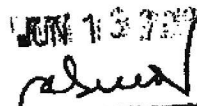
TO: ARLEEN JACOB  
JAMES McCaffrey, appointed counsel for Arleen Jacob

Further to the Court's February 20, 2013 Order appointing James McCaffrey to be counsel for Arleen Jacob pursuant to the Supreme Court's November 13, 2000 Order for Implementation and Use of the Legal Aid Fund ("Supreme Court Order") and High Court Standing Order 2000-005, attorney James McCaffrey is ordered to file with the Court and serve on Arleen Jacob on or before 5:00 p.m. on June 20, 2013, a statement showing cause why he has failed and refused to represent Arleen Jacob as ordered.

Date: June 13, 2013.

**FILED**

  
Carl B. Ingram  
Chief Justice

JUN 13 2013  
  
CLERK OF COURTS  
REPUBLIC OF MARSHALL ISLANDS

**FILED**

**IN THE HIGH COURT  
OF THE  
REPUBLIC OF THE MARSHALL ISLANDS**

**FEB 20 2013**  
*Seen*  
**CLERK OF COURTS  
REPUBLIC OF MARSHALL ISLANDS**

IN THE MATTER OF THE )  
APPOINTMENT OF COUNSEL FOR )  
ARLEEN JACOB )  
 )  
 ) **ATTORNEY APPOINTMENT ORDER NO.**  
 ) **2013-001**  
 )  
 ) **ORDER APPOINTING JAMES**  
 ) **McCAFFREY ATTORNEY FOR ARLEEN**  
 ) **JACOB (CORRECTED)**  
 )

**TO: ARLEEN JACOB**  
**JAMES McCaffrey, appointed counsel for Arleen Jacob**

Further to Arleen Jacob's February 18, 2013, application for appointment of counsel in a proposed action against Ami Kaious and Jukien Kaious, the Court appoints attorney James McCaffrey to be Jacob's counsel in the matter, pursuant to the Supreme Court's November 13, 2000 Order for Implementation and Use of the Legal Aid Fund ("Supreme Court Order") and High Court Standing Order 2000-005.

As set forth in Section 1 of the Supreme Court Order: "It is the civic responsibility of attorneys and trial assistants and their duty as officers of the Court to provide legal representation to all citizens of the Marshall Islands. In the event that the litigants are unable to pay for these services, it is the duty of attorneys and trial assistants to provide these services pro-bono or at a rate less than their normal charges."

Further, Section 5 of the Supreme Court Order provides for reimbursement for legal fees. "The attorney shall keep accurate and detailed records of all times spent on the preparation and trial of the case." The maximum hourly rate is \$50.00 per hour. "In setting the fees the Court

shall have the discretion to deny part of the fee request if it determines the time is unreasonable or not warranted under the circumstances, or if it determines that funds will not be available for pending cases remaining." In order to retain funds for potential pending cases, the Court may cap the amount paid in any case. For land cases, that cap will presumptively be \$5,000 per case, subject to review in exceptional circumstances.

Section 7 of the Supreme Court Order sets out the process for appointment. "The Court shall maintain an alphabetical list of all attorneys and trial assistants residing in the Marshall Islands with a local office address. Upon application of client for the appointment of counsel, the court shall select the top name on the list and thereafter the next name in making an appointment. The counsel shall accept the appointment. In the event of a conflict or other unusual circumstance justifying not accepting the case, the attorney shall set forth in a declaration the reasons for declining. The Court shall issue an Order either refusing or granting the request and set forth the reason for making the Order."

Further, High Court Standing Order 2000-005 provides for appointment of counsel where a party cannot afford counsel and cannot secure the services of MLSC or the Office of the Public Defender. In this connection, the Court has reviewed Jacob's application and finds she qualifies for appointment of counsel. MLSC and the Office of the Public Defender are not available to Jacob due to MLSC having a client conflict and Jacob being a prospective plaintiff, not a defendant.

Accordingly, it is hereby ORDERED as follows:

1. James McCaffrey is appointed to represent Arleen Jacob in the above-referenced matter; and