

GUAM BAR BRIEF

ISSUE 002 | AUGUST 2018



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ARE WE RELEVANT?

**** Disclaimer:** The content contained herein is the personal opinion of attorney Jacqueline Taitano Terlaje, is intended for mature audiences, and does not reflect the results of any formal studies but based on anecdotal experiences. It is not intended to be used for any other purpose but simply to invoke thought as to where the practice of law will be in twenty years, and what role, if any, does the Guam Bar Association play in the future of the legal community. If your immediate response to these first thoughts was complete apathy, this is exactly why the bar association's role is important to the future of practicing law on Guam.

Practicing law on Guam for nearly 20 years has been an interesting adventure for me. I have seen more attorneys attracted to solo practice than ever before, less woman willing to remain or join the private sector, and less attorneys willing to share their non-working time with the association. What involvement does the bar association have in these issues, and why should it have any involvement? Let's face the facts. We have a mere 310 lawyers in active practice. We have a significant number of members who are slowly reaching the inevitable retirement mode, and small number of new admittees every year. We are completely funded by our dues. Therefore, it makes absolute sense to me that my dues are spent in part to improve our administration, but also to improve the practice of law. However, we cannot simply stop there, because if the practice of law is rewarding, it would obviously invoke in every attorney gratitude for an administration that supports them, and consequently, this gratitude results in the willingness to support the administration's programs, whether it is pro bono service, education service or other programs that take up your valuable time.

Thus, the thought provoking questions – is your practice of law rewarding? If not, why not? How can the GBA help you find a rewarding practice? Do you look to the GBA to assist you to be a better more competent lawyer? If not, why not? Do you appreciate the work of the GBA? If not, do you simply refuse to be involved in the GBA because you do not feel appreciated by the GBA? Have you shared your thoughts with the GBA? We want to hear from you.

This month, as part of the efforts of our Board of Governors to bring more services to its members, I attended the National Conference of Bar Presidents and the General Assembly of the American Bar Association Annual Meeting in Chicago. I was extremely surprised to find that both organizations were filled with solo practitioners like me, who want to take their bar associations into the future. I discovered that our struggle on Guam to remain relevant is the same struggle faced by other bars. My point is we are not alone in this issue, and the best part of it all is that I was treated like a sister and best friend! Several associations are willing to share their valuable resources so stay tuned – your Board of Governors has more in store for you. We are relevant, and your rewards in the practice of law is important to us!

MEET THE ATTORNEYS 2018 ATTORNEY GENERAL CANDIDATES

The GBA is the primary sponsor of the 2018 Attorney General Candidate Forum which will take place at the Guam Museum on August 13th. The event is open to the public. In this second issue of the Bar Brief, members can review introductory excerpts prepared by each candidate about who they are and what they intend to bring to office. Pacific News Center has graciously agreed to broadcast the forum live to Fox 6 and on their PNC Facebook page.

Douglas B. MOYLAN



I offer voters one thing the other AG candidates don't, that is actual experience in the job. As your first elected AG from 2003 to 2006, I:

- (i) successfully prosecuted government corruption cases, achieving ~26 convictions from 2003–2006;
- (ii) substantially increased collection of child support over past AGs with the "Love Your Kids" program, and
- (iii) prevailed before the U.S. Supreme Court on the bond borrowing case, stopping govt. officials from ruinous borrowing.

My experience in my first 4 years affords me "lessons learned" that I will apply to improve the quality of life on Guam for each of us, moreso than before. As the "Chief Legal Officer," the AG is primarily responsible for the enforcement of laws.

Based upon past experience, mutual and better communication and cooperation with the Governor will be critical, and has not been paid sufficient attention to by my successors since I left office in 2006.

I will continue fighting for all our citizen's regardless of race, creed or ethnicity, be they Chamorro, Filipino, Asian, Caucasian, or otherwise.

Leevin T. CAMACHO



I offer a ground-up approach to practical solutions.

The Office of Attorney General has a broad range of responsibilities. Regardless of the area of law we practice, we all can agree that the Office of the Attorney General can be more efficient. As Attorney General, I would start by mapping out the way services are provided from beginning to end. I would then work with staff to determine where practical, low cost solutions can be implemented.

Based on the current budget proposals, the next Attorney General will have to find a way to do more with less. Properly applied, technology could improve efficiency, consistency and communication in cases ranging from child support to guiding government agencies in the performance of their duties. One example would be developing materials on the Open Government Law and making it available in an electronic format. A guide and Frequently Asked Questions sheet could be circulated and used to educate current and future directors, board members and the community at large.

Technology is a powerful tool, but people are what make the Office of the Attorney General run. As Attorney General, I would prioritize the recruitment, retention and development of staff. Having a staff that shares in my vision, passion and principles would be the only way to succeed.

I attended John F. Kennedy High School and the University of Washington. After graduating from Boston University School of Law in 2005, I clerked for the Supreme Court of Guam before entering private practice. I started my solo practice in 2011.

I live in the village of Yigo with my wife, Jennifer Crisostomo Camacho, and our two rowdy sons, Tanom and Matua.

I am #3 on the ballot.

Gary **W.F. GUMATAOTAO**

UNLEASH JUSTICE NOW!

Corruption in our government is a rot that has metastasized to all levels. It threatens the island's economic development and the ability of our government to provide for the basic needs of our People. That ends now. With us. If the People give me the opportunity to serve them as attorney General of Guam, I will work to clean our house of corruption, waste, fraud and abuse.

I served in the US Army Reserve, as State Chair for Employer Support of the Guard and Reserve and as a Commodore in the US Coast Guard Auxiliary. I was Executive VP for the Schnitzer Group dba Island Equipment for 13 years.

I served as the Business Department Chair at the Guam Community College for 4 years. I was a hotel manager for Hilton and Holiday Inn corporate. After 45 combined years of practicing a wide range of law and managing business and organizations, working with the government and private sector, my experience gives me a unique insight into problems that must be addressed within the Government of Guam. I've drafted a strategic plan for the AG office that is ready for the collaboration of the staff and its professionals. It includes improved services to the public in child support, veterans services, EEO compliance, executive branch management training to improve employer/employee relations, cultural affairs with emphasis on protection of our resources and outreach that bridges the needs of immigrants into our society. These are deliverables.



I am ready to start work if elected.

Bryan Stevenson

Congratulations to the 2018 American Bar Association (ABA) Medal recipient, Bryan Stevenson. On August 4, 2018, Stevenson gave an awe-inspiring speech. "We have to be willing to do things that are uncomfortable and inconvenient, because justice doesn't come when you only do the things that are comfortable and convenientWe advance justice only when we're willing to do things that are uncomfortable." The executive director the Equal Justice Initiative in Montgomery, Ala., Stevenson received the ABA Medal, the ABA's highest honor. Stevenson graduated from Harvard Law School, and recently won a historic ruling that mandatory life-without-parole sentences for children 17 and younger are unconstitutional. Stevenson, in a room of hundreds of lawyers, urged attorneys to work for justice by (i) finding new ways to create justice; (ii) changing the narrative; (iii) staying hopeful despite setbacks; and (iv) be willing to do things that are uncomfortable.



Stevenson has spent his career fighting for the relief or release for more than 125 wrongly condemned prisoners on death row. "My work with the poor and the incarcerated has persuaded me that the opposite of poverty is not wealth; the opposite of poverty is justice." An exemplary attorney, who joins the ranks of justices of the U.S. Supreme Court, including Oliver Wendell Holmes, Felix Frankfurter, Thurgood Marshall, William J. Brennan Jr. and Sandra Day O'Connor; other recipients include Watergate Special Prosecutor Leon Jaworski; human rights activist Father Robert Drinan; co-chair of the Bill and Melinda Gates Foundation, William H. Gates Sr.; former U.S. Senator and Secretary of State Hillary Clinton; and prominent attorneys David Boies and Theodore Olson.

VICE SPEAKER

Therese M. Tertlaj



In my first term as Senator and Vice Speaker, I focused on promoting transparency in the government and pursuing justice. Bills include:

- Mandating Supreme and Superior Court opinions be published online and searchable
- Ensuring a public hearing is held before default adoption of Rules and Regulations
- Mandating the fiscal impact of Rules and Regulations be published before adoption
- Establishing Adult Reentry Court to reduce recidivism
- Limiting parole requests if rejected for two consecutive years
- Clarifying family violence laws following Supreme Court decision finding previous statute unconstitutionally vague
- Clarifying that Executive Orders are effective only upon delivery to Legislature and Compiler
- Clarifying short-term rental law to pursue immediate tax collection
- At the request of the DWI Task Force, enacting complex revisions to DWI laws to decrease recidivism (Safe Streets Act of 2018)

As chairperson for the Committee on Culture and Justice, I held numerous hearings for public engagement and transparency on environmental issues, firearms, and more. I collaborated with the women of the Legislature to address the complex issue of homelessness, prioritizing homeless children vulnerable to abuse. I focused on updating the veteran registry to increase services, supported Medal of Honor upgrades for our Distinguished Service Cross recipients, pushed to include Guam in the federal Radiation Exposure Compensation Act, and I continue to pursue the truth about Agent Orange in Guam.

I attended all session, most hearings, and opposed special interest legislation. I humbly ask for your continued trust and support.



NEW ADMITTEES

Brendlynn Odilang Joseph



Brendlynn Odilang Joseph was born and raised in Koror, Palau. She is the daughter of late Benita Isida and was raised by her grandparents, late Isida Tamakong and late Kerengel James. She is married to Waylen Joseph and has two (2) sons; Aryan Yousefzadeh and Jahrell Omkar Joseph.

She obtained her Bachelors of Law at University of South Pacific in the island of Vanuatu, and later earned a Masters of Law and a Juris Doctor from William S. Richardson School of Law at the University of Hawaii.

Brendlynn moved from Palau to Guam in 2010 and considers Guam her home. She is currently working at the Office of the Attorney General of Guam, Prosecution Division.

Nathan Ho



Nathan Ho is a 27 year old Vietnamese-American, who was born and raised in Orange County, California. He received his English degree from the University of California, Santa Barbara in 2014.

He attended and graduated from Dale E. Fowler School of Law at Chapman University in 2017.

In September 2017, Attorney Ho moved to Guam to be with a lovely island girl, Miss Chloe Babauta. In November 2017, he passed the California Bar.

In March of this year, he was temporarily admitted into the Guam Bar. He is currently employed as an Assistant Public Defender at Public Defender Service Corporation.

Synoptic Briefs

RECENT SUPREME COURT OPINIONS

Special thanks to our Staff Attorneys and Law Clerks of the Supreme Court of Guam for their contribution to the Synoptic Briefs.



PORT AUTH. OF GUAM V. CIVIL SERV. COMM'N (GUEVARA), 2018 GUAM 1

The Port appealed the Superior Court's findings that (1) the Civil Service Commission had jurisdiction over Real-Party-in-Interest Guevara's adverse action appeal and (2) the Port violated the 60-day notice rule for adverse actions. The Supreme Court held that the CSC had jurisdiction because Guevara was a classified employee based on how the Port treated him, and it found that the violation of the 60-day rule was supported by substantial evidence. The Supreme Court affirmed the orders of the Superior Court.



GOV'T OF GUAM V. O'KEEFE EX REL. HEIRS OF J.M. TORRES ESTATE 2018 GUAM 4

Finding no abuse of discretion, the Supreme Court affirmed the trial court's dismissal with prejudice of a quiet title action due to the Government of Guam's failure to timely substitute a defendant within 90 days after the death of the original administrator of the estate.



ALLEN V. RICHARDSON 2018 GUAM 2

The parties cross-petitioned the Supreme Court seeking interlocutory review of the Superior Court's Decision and Order allowing the Plaintiff to make limited use of previously expunged criminal records at trial for impeachment purposes and other restrictions. Allen petitioned for unfettered use, while Richardson opposed against allowing any use of expunged records. The Supreme Court reversed and held that the person holding the expungement right may waive it



PEOPLE V. HILL 2018 GUAM 3

Hill appealed to the Supreme Court seeking reversal of his First and Second Degree Criminal Sexual Conduct convictions for plain error. He argued that the victim's age was an essential element of the crime, and the trial court improperly stated the victim's age to the jury as fact.

The Supreme Court found the instruction regarding the victim's age to be error, but determined that it did not affect Hill's substantial rights as the error would not have affected the outcome of the case. The Supreme Court affirmed the convictions.



PEOPLE V. MARTIN 2018 GUAM 7

Martin appealed his conviction of multiple counts of First Degree Criminal Sexual Conduct. The Supreme Court affirmed, finding that Martin waived his challenge to the allegedly multiplicitous nature of the indictment and that consecutive sentences were permitted for separate acts of penetration. The court determined there was sufficient evidence to support multiple instances of penetration based on the defendant's testimony, and it found no error in the trial court's evidentiary rulings.



TELEGUAM HOLDINGS LLC V. GUAM, 2018 GUAM 5

Based on a Petition for Review filed by Teleguam Holdings LLC, the Superior Court cancelled a ten-part Invitation for Bids (IFB) for comprehensive telecommunications for the executive branch because the procurement record reviewed by the Public Auditor was incomplete. Pacific Data Systems, the initial bid awardee, sought review of the cancellation, arguing that the Superior Court may only sit in an appellate capacity over appeals from the Public Auditor. The Supreme Court concluded that PDS had appellate standing and also found the Guam Rules of Civil Procedure apply to review of procurement disputes. The court reversed the cancellation of nine parts of the IFB because Teleguam did not timely challenge those parts, but affirmed the cancellation of the tenth part because the procurement record was materially incomplete.



CALVO V. I MINA' TRENTAI KUÁTTRO NA LIHESLATURAN GUÁHAN 2018 GUAM 6

Governor Calvo petitioned the Supreme Court for a writ of mandamus directed against the Guam Legislature to "transmit and present Bill 1(1-S) as it was passed" without delay to the Governor of Guam. The Legislature moved to dismiss on jurisdictional and justiciability grounds. The Supreme Court found the issue to be a nonjusticiable political question and dismissed the petition with prejudice.



IN RE GUARDIANSHIP OF MOYLAN, 2018 GUAM 8

Appellant, who was successful in restoring property back to his ward-parents and preventing unjust enrichment of his sibling-guardians of the wards, appealed the denial of attorney's fees for these efforts. The Supreme Court found that Appellant was entitled to attorney's fees under the "substantial benefit" doctrine and remanded to the trial court to calculate the amount.



PORT AUTH. OF GUAM V. CIVIL SERV. COMM'N (JAVELOSA), 2018 GUAM 9

The Supreme Court affirmed the Superior Court's remand of Javelosa's adverse action appeal to the Civil Service Commission. The CSC erred in applying a clear-and-convincing standard of proof, when cases involving charges which could be a crime require only substantial evidence. On remand, the CSC must first determine whether the allegations against Javelosa could constitute a crime.



Tax Reforms

by Attorney Jacqueline Taitano Terlaje
LLM in Taxation

EMPLOYER CREDIT FOR PAID FAMILY AND MEDICAL LEAVE UNDER 2017 TAX CUTS AND JOBS ACT

Although the Government of Guam is seeing a very different impact of the 2017 Tax Cuts and Jobs Act from the perspective of government operations, Law Firm Employers should be aware of IRC Section 45S, which provided an incentive for employers to grant their qualified employees paid family and medical leave in the form of a tax credit. This tax credit is applicable even if an employer is not subject to the FMLA (if it meets the minimum qualifications) for all wages paid under the FMLA starting December 31, 2017, and expires at the end of December 31, 2019, unless extended.

What is the effective date?

EFFECTIVE DATE: Employer tax years beginning December 31, 2017
EXPIRATION DATE: Not available after December 31, 2019, unless extended

What are the minimum qualifications for an Employer to qualify?

An Employer must adopt a written policy allowing full-time qualified employees at least two weeks of annual paid family and medical leave, and permit part-time qualifying employees to receive a commensurate amount of leave on a prorated basis. Employers not subject to the FMLA must have a written policy of non-interference, restraint or denial of the employee's right to exercise leave under the policy.

Who are qualified employees?

Qualified Employees are defined by 26 USC § 45S(c)(1) and the Fair Labor Standards Act (FLSA)(29 USC § 203(e)). An employee must have been employed by Employer for one (1) year or more, AND the employee's compensation for the prior year was not in excess of 60% of the compensation paid for highly compensated employees. IRS-Notice 2017-64 instructs that a qualified employee cannot have earned in 2017 more than \$72,000.00; the same maximum compensation is applicable for 2018.

Tax Disclaimer, IRS Circular 230:

The information contained herein is general in nature and based on authorities that are subject to change. The GBA guarantees neither the accuracy nor completeness of any information and is not responsible for any errors or omissions, or for results obtained by others as a result of reliance upon such information. The GBA assumes no obligation to inform the reader of any changes in tax laws or other factors that could affect information contained herein. This publication does not, and is not intended to, provide legal, tax or accounting advice, and readers should consult their tax advisors concerning the application of tax laws to their particular situations.

Attorneys are welcome to submit articles
for consideration to info@guambar.org

COMMUNITY EVENTS

The 2018 Law Day Theme Separation of Powers: Framework for Freedom was celebrated in Guam as Law Month. Our GBA members, in collaboration with the Judiciary of Guam and District Court of Guam, participated in numerous events which could not have been successful without everyone's participation. Here are some of the photo highlights:

Mock Trials | April 30 - May 3

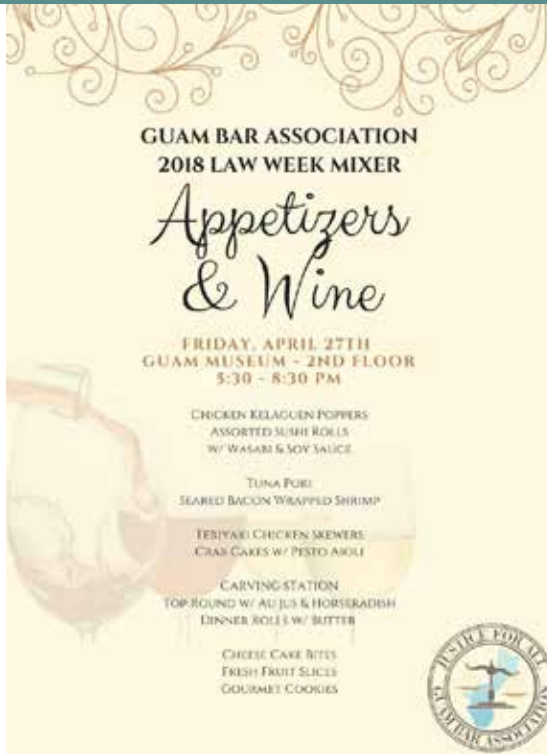


Law Week Street Fair | April 26, 2018, Guam Congress Building and Guam Museum



GBA MIXER

On Friday, April 27, 2018, approximately 100 Guam Bar Members enjoyed an evening of appetizers, wine, and collegiality at the Guam Museum's 2nd floor outdoor atrium. All wine was generously donated by the following sponsors: Island Wine & Spirits, ANZ Wines Guam, ST Corporation, Lorea Industries, Inc., Titan Imports, Inc. Law Office of Vanessa L. Williams, P.C., and Law Offices of Minakshi V. Hemlani, P.C.



11th Annual Race Judicata 5K Run/Walk: The Carabao Run | May 12, 2018, Hagatna







Jump for Justice and Guam Girl Scouts Justice Patch | May 26, 2018, Hagatna Heights





CLE EVENTS

The GBA in cooperation with the Judiciary of Guam, the United States District Court and the OFCCP brought multiple CLE opportunities to its members.

FREE CLE

Federal compliance review for attorneys. A GBA Sponsored CLE for expanding your understanding of government contractor and subcontractor compliance.

YOU ASKED AND WE LISTENED

LUNCH & LEARN SERIES

THURSDAY, APRIL 5, 2018
GBA OFFICE 12:00 - 1:00 PM

RSVP Required. info@guambar.org
671.989.4227



OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS
U.S. DEPARTMENT OF LABOR

Only 20 seats available. Free Lunch.



US Constitutional Rights in the Territories presented by Chief Judge Gustavo A. Gelpi, Jr.,
United States District Court, District of Puerto Rico | July 2, 2018



Subpoena Registrar

Pro Bono Clinic – Committee members John Richard B. Bell, Rebecca M. Perez, Seth L. Forman, and Ray C. Haddock have been working hard to make this GBA project a reality. Efforts continue to find a location for the clinic, coordinate partnerships with student interns and volunteers, and develop a scope of services that can be provided to our island community. In addition, the committee is researching the possibility of legislation that would immunize attorneys volunteering services with the Guam Pro Bono Clinic from malpractice suits. If you have suggestions or would like to offer your assistance, please contact Vice-President Minakshi V. Hemlani who is spear heading this project.

Proposed Rules On Discipline.

The Board of Governors with the assistance of the American Bar Association and numerous bar members have been working diligently on reviewing the proposed rules which will effect a major change to our regulatory system. The comments period has been extended and the Board looks forward to meeting with the Judiciary of Guam to assess the proposed rules effects on our membership.

Entity Clarification. Senator and Attorney Therese Terlaje has received the GBA's proposed legislation to clarify the nature of our entity i.e., what it means to be a "public body corporate." Attorneys should contact their senators!

Senior Citizens Law.

Attorney Pablo Aglublat has agreed to assist with the launch of this worth while project. The goal is to bring an educational component to the Manamko at our Senior Centers. All attorneys who speak a second language or who are interested in elderly law are welcome to participate.

procaffeinating

(n.) The tendancy to not start anything until you've had a cup of coffee.



Upcoming Events

- ◆ NOMINATIONS FOR BOARD OF GOVERNORS 2019
- ◆ CONTINUED OFCCP COMPLIANCE CLE OFFERINGS
- ◆ *The Guam Bar Association will celebrate Constitution Day and Citizenship Day at a special event on Friday, September 14, 2018 in partnership with the District Court of Guam and the Judiciary of Guam. Details are forthcoming. Constitution Day and Citizenship Day is a combined event which takes place on September 17th of each year, commemorating the formation and signing of the U.S. Constitution on September 17, 1787.*
- ◆ 2018 GENERAL ELECTION
- ◆ 2019 ANNUAL REGISTRATION



MEET EDGAR

Originally from southern Guam, Edgar Dumlaog has been living in the mainland after leaving home at the age of 10 to continue his studies in Washington State. He then moved to Austin, Texas continuing his career at GE Healthcare. Edgar returns home to Guam to continue on the legacy of his family's small business. As of August 2018, he is also our new addition to the administrative arm for the Guam Bar Association and the Board of Governors. He is the direct liaison for the Lawyer Referral Service, providing information on the Guam Bar Association, and directing the public to available legal resources. He is also responsible for maintaining all GBA member information including all email communication members receive from the GBA.

SPECIAL THANKS



LOREA INDUSTRIES, INC.