

# GUAM BAR BRIEF

QUARTERLY  
NEWSLETTER

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## *Si Yu'os Ma'ase* from the Outgoing Board

It has been a busy 20 months for the 2017-2019 Board of Governors with organizing our administration, increasing continuing legal education, expanding public outreach initiatives and providing more opportunities for our members to enjoy the practice of law - island style. Rather than detail for you every situation and event in which the GBA Board has been involved, we want to tell you a little about our work behind the scenes. As each of you was going about your daily practice, so was the GBA Board - here are some of the functions we were able to improve:

- Established designated staff member to manage GBA administration;
- Digitized annual membership registrations for years 2010-2014 and 2016-2019;
- Updated and revised accounting records to distinguish between individual member payments, separate operating from restricted funds, reassign expense accounts, and create non-revenue accounts;
- Re-established national networking and resource relationships with the National Conference of Bar Presidents and the American Bar Association;
- Collaborated with the American Bar Association and the Judiciary of Guam in reviewing proposed amendments to lawyer regulation, disciplinary and disability matters;
- Launched the Senior Law Clinic, an educational workshop on estates, probates and wills with pro bono presentations provided by our membership;
- Introduced publication of the Guam Bar Brief, our quarterly newsletter;
- Issued GBA Membership IDs including new discount benefits from IP&E for active members;
- Connected with legal malpractice carriers to discuss coverage for our membership.

In the next term, we hope to improve and expand on services for our membership by growing what has already been established by those who served before us, and by creating opportunities that were not previously envisioned. We have not forgotten our commitment to find a permanent home for the GBA; our efforts continue but seem to be taking longer than we anticipated. As we forge ahead, we encourage all members to become involved in the GBA and help improve the benefits and services for our membership together.

## *Congratulations to the 2019-2021 Board of Governors!*

President:	Jacqueline T. Terlaje, Esq.
Vice President:	Minakshi V. Hemlani, Esq.
Secretary:	Janice M. Camacho, Esq.
Treasurer:	John C. Terlaje, Esq.
Member at Large:	Joaquin (Jay) C. Arriola, Jr., Esq.
Member at Large:	Joseph (Jojo) A. Perez, Esq.



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# 2018 GBA Holiday Party & 40th Anniversary Celebration

On December 14, 2018, the GBA celebrated its 40th Anniversary, as a public body corporate, in conjunction with the holiday festivities. In attendance was Joseph F. Ada, former Senator and Governor of Guam, and proud father of GBA member Tricia Ada, the original sponsor of the legislation to create the GBA. Over 150 GBA members and guests enjoyed the delicious food prepared by Executive Chef, Mirko Agostini, at the Hyatt Regency Guam, and live music provided by Krystal Paco and her band, Monster Squad.







# Subpoena Register

## ABA Consultation re Professional Discipline

The American Bar Association Discipline System Consultation Team were in Guam from January 7 through 10, 2019. The purpose of the ABA consultation was to assist the Judiciary of Guam and the GBA in reviewing the current rules of disciplinary procedure, rules of professional conduct, and proposed changes to the rules which will affect the discipline and regulation of attorneys in Guam. The ABA Consultation Team has not yet issued their report.

## GBA Comments to Proposed Disciplinary Rules

In response to the Supreme Court of Guam Subcommittee on Attorney Discipline's request for comments to the Proposed Guam Rules for Lawyer Disciplinary Enforcement and Disability Proceedings, GBA members submitted comments on April 2, 2019. Submitted comments may be reviewed at <https://guambar.org/comments-to-proposed-grlde-and-disability-proceedings>

## Legalization of Medical & Recreational Marijuana

The passage of the Guam Cannabis Industry Act of 2019 (Guam PL 35-5) legalizing recreational marijuana, and the Joaquin Concepcion Compassionate Cannabis Use Act of 2013 legalizing medical marijuana, has created an ethical dilemma for Guam practitioners. Because the sale and use of marijuana is illegal under federal law, an attorney advising a client regarding marijuana businesses is arguably aiding and abetting the perpetuation of a known federal offense.

The GBA Board appointed an Ad Hoc Committee re: Cannabis Law to address the potential for disciplinary action against our membership. After researching modifications taken by over 20 U.S. State Bar Associations to their respective Rules of Professional Conduct, the Committee presented their report to the GBA Board and proposed Resolution No. 2019-001 Relative to Amending the Guam Rules of Professional Conduct, Rule 1.2(d) to Address the Ethical Implications of Advising Clients on Guam's Marijuana and Cannabis-Related Laws. Notice of the proposed resolution was published to our membership for review on April 23, 2019, and continues to be available for review online at <http://guambar.org/notice-of-resolution-no-2019-001-relative-to-amending-grpc-1-2d>

Discussion and call for vote will be made at the GBA Annual Meeting on April 30, 2019.

## 2019 ABA Malpractice Insurance Conference

The GBA President attended the 2019 Spring National Legal Malpractice Conference, discussing issues related to legal malpractice, the defense of mentally impaired attorneys, and the legal malpractice insurance markets. Potential new malpractice insurance providers were identified, and review of other small association solutions in creating insurance programs in difficult markets to mitigate risks for attorneys.

## Lawyer Referral Service

The GBA office receives an average of five (5) phone calls each day from members of the public requesting lawyer referral services. Participation in the GBA Lawyer Referral Service ("LRS") program can help build clientele and requires only that attorneys provide an initial consultation free of charge to anyone referred to their office by LRS. Interested members are requested to complete the LRS form that can be found at [www.guambar.org](http://www.guambar.org).



# Subpoena Register

## 2019 High School Mock Trial Competition

Defending Champion Okkodo High School won the 2019 Guam High School Mock Trial Competition and will represent Guam at the National High School Mock Trial Competition scheduled for May 16-18, 2019 in Athens, Georgia. The annual competition helps Guam high school students develop critical thinking and public speaking skills, while gaining knowledge of the legal practice and trial procedure. Special thanks to Okkodo attorney coach Haig Huynh, and all the GBA members who volunteered their time act as mock trial team coaches or competition judges.



## Printed Attorney Directory

The GBA is preparing to issue a hard-copy of the 2019 Legal Directory which will contain contact information for active members, inactive members, and temporary admittees of the Guam Bar. The directory also anticipates the inclusion of information for the Judiciary, Federal Bar, Attorney General's Office, Legislative and Executive Branch. Purchase price for the printed directory will be set at \$20.00 due to actual costs for printing and development. If you are interested in ordering hard-copies, please submit your request to the GBA office no later than May 17, 2019.

## Guam Bar Membership ID Cards

Membership ID cards have been issued to active members and temporary admittees of the Guam Bar. For Guam Residents only, the GBA partnered with IP&E to provide its active members with a \$0.38 discount on all types of Shell gasoline.

## BARTAB (2018 Financials)

2018 Dues Revenue	2018 Non-Dues Revenue	2018 Expenses
\$88,848.05*	\$6,589.80	\$86,715.14

\*The difference between 2017 and 2018 represents a difference of \$34,727.45, which is the result of current accounting practice to distinguish the deposit of annual dues applied to the year dues are required to be paid, as opposed to received.

## Financial position 2018 versus 2017

\$287,211.30

\$242,848.59



## 2019 Recipient of the Cristobal C. Dueñas Excellence Award

### *Frederick A. Black, Esq.*



Frederick A. Black, Esq. is the 7th recipient of the prestigious Cristobal C. Dueñas Excellence Award. The award honors the legacy of the late Retired District Court Judge Cristobal C. Dueñas by recognizing a person or entity for significantly advancing the administration of justice and the legal profession through meritorious deeds or exemplary service, especially service in the District Court of Guam.

Attorney Black has been practicing law for forty-four years. He received his Bachelor of Art Degree in Political Science from the University of California, Berkeley in 1971, and his Juris Doctorate in 1975 from the Lewis and Clark School in Portland, Oregon. Shortly after obtaining his law degree, Attorney Black was recruited to Guam in 1975 to become an Assistant Public Defender. He is "still in awe of the fiestas and warm giving nature" of Guam's people.

In 1978, Attorney Black became an Assistant United States Attorney in Guam and the CNMI. He returned to Portland, Oregon in 1981 to work as Deputy Chief with the Federal Defender. Attorney Black has been with the United States Attorney's Office from 1984 to the present. He "strongly believe that conscientious defense attorneys are essential to preserving our basic freedoms and human rights. Equally important are fair and vigorous prosecutors who protect crime victims and help to insure that the government functions with integrity."

An avid water polo and swim enthusiast since his youth, Attorney Black still enjoys competing in water polo competitions in international locations. He will compete this August 2019 as part of a 70+ team at the World Masters Water Polo Championships in Gwangju, Korea. Attorney Black has also represented Guam in spear fishing competitions in the South Pacific games in New Caledonia and Tahiti.

Attorney Black married his wife, Katie, in 1976. Katie has a successful career in the airline industry. They have three children: Shane F.T. Black, Esq., an active GBA member; Shanthini Black Watson, who works with the U.S. State Department; and Sheena Black, a successful business woman. They also have six grandchildren.

## *Be Kind to Lawyers Day*

This unofficial holiday was created by Steve Hughes, an American communication expert, as National Be Kind To Lawyers Day in 2008. He chose to celebrate the holiday on the second Tuesday of April because it falls between April Fool's Day and Tax Day in the United States. April 10 was officially declared as International Be Kind to Lawyers Day in 2017. The holiday encourages people to be kind to all those who practice law and raises awareness about the constructive and important role lawyers lay in ensuring that society functions smoothly.





# *Celebracion Famalao'an*

On March 21, 2019, the GBA launched its first Women's History Month celebration at the Outrigger Hotel Tasi Terrace. Celebracion Famalao'an paid tribute to the many women who have dedicated their time and efforts towards the advancement of Guam in all three branches of government: Executive, Legislative and Judicial. GBA members enjoyed island style relaxation while appreciating another amazing Tumon sunset.





# Mes Chamoru

On March 13, 2019, the GBA partnered with the District Court of Guam to celebrate Guam Heritage Day with friends and family of the Court by enjoying local tastes and entertainment by Guma' Irensian Taotao Tano.



Free CLE ~ Free Lunch

## LUNCH & LEARN SERIES 2019

Thursday, April 11, 2019  
11:30 a.m. - 1 p.m.  
Dept. of Labor, Suite 301,  
Bell Tower Plaza, Hagåtña

## VEVRAA

Sponsored by the GBA, this session will cover an overview of the Office of Federal Contract Compliance Program's mission (OFCCP) with a focus on the Vietnam Era Veteran's Readjustment Assistance Act regulations (VEVRAA).





## Hustisia Award Winner

Congratulations to the Guam Chamber of Commerce, winner of the 2019 Hustisia Award!

Since 2008, the Hustisia Award has been presented by the Judiciary of Guam as part of its annual Law Week celebrations in recognition of a person or organization that has contributed to improving the administration of justice and good government.

The Guam Chamber exists to advance the general welfare of its members by promoting the economic, social, and environmental well-being of the island. For the past 15 years, the Guam Chamber has worked to grow the skills sets of island citizens with substance abuse difficulties through the Judiciary of Guam's Drug Court Programs. The Guam Chamber has provided financial and mentoring support to nearly 400 individuals in the Adult Drug Court, and over 100 individuals in the Juvenile Drug Court since the partnership began in 2004.

Guam's Adult Drug Court integrates a systemic and coordinated approach to the management of non-violent offenders with substance abuse difficulties by combining treatment and incentives in judicially supervised rehabilitation programs. Representatives from the Guam Chamber are always present at Adult Drug Court graduation ceremonies to encourage participants and graduates towards healthier lifestyles and social responsibility. Their collective advocacy of the implementation and successful completion of drug court programs is now being replicated by Chambers of Commerce across the United States and all across the Asia Pacific Region - thanks in large part to the Guam Chamber introducing these programs to their colleagues beyond our shores.

## Upcoming Law Week Events

The annual Law Day Fair took place at the Judiciary of Guam this past Saturday, April 27, 2019, but the celebrations continue! Some of the upcoming law week events are listed below. Please contact the GBA office for additional information.

Wednesday, May 1 10 a.m.	<b>State of the Judiciary</b> Guam Congress Building
Thursday, May 2 9 a.m.	<b>Law Day Naturalization Ceremony</b> District Court of Guam
Thursday, May 2 5:30 p.m.	<b>Presidential Lecture Series</b> University of Guam
Friday, May 3 5 - 9 p.m.	<b>GBA Law Day Freedom Mixer</b> Latte of Freedom & Hall of Governors
Wednesday, May 1 Wednesday, May 8 Thursday, May 9 6 - 7 p.m.	<b>Mock Trial Plays</b> Judiciary of Guam
Saturday, May 11 6 a.m.	<b>5k Race Judicata - Carabao Run</b>
Friday, May 17 4 - 6 p.m.	<b>Jump for Justice</b> Agana Heights Gym
Saturday, May 18 7 - 11 a.m.	<b>Haggan Games Tactical Obstacle Course Challenge</b> District Court of Guam
Saturday, May 18 1 - 4 p.m.	<b>Girl Scouts Justice Day</b> District Court of Guam





# Micronesian Legal Services Corporation Guam

MLSC has been increasing access to justice in Micronesia for 45 years. MLSC Guam opened its doors on January 31, 2019. MLSC is a nonprofit organization, governed by a 9-member board of directors, with at least one director representing each of the regions in which we have offices. MLSC has offices throughout Micronesia, including Palau, the CNMI (Saipan), in each of the four states of the Federated States of Micronesia (Yap, Chuuk, Pohnpei, and Kosrae), and in the Marshall Islands (Majuro and Ebeye). Our central administrative office is located on Saipan.

MLSC's mission is to promote equal access to justice and to provide high quality civil legal assistance to low income people. MLSC improves the lives of the people of Micronesia by helping them solve important legal problems; and strengthens communities through advocacy.

Persons are eligible for free legal assistance from MLSC if their household income is below 125% of the U.S. Federal Poverty Guidelines for Hawaii and whose assets do not exceed specified amounts.

Since we opened our doors on Guam, we have been assisting clients in various civil cases including divorce, child custody and visitation, adoption, legal guardianship, and name change.

MLSC is open Monday through Friday from 8 a.m. to 5 p.m. and closed on weekends and holidays. MLSC is located at Suite 902, DNA Building, 238 Archbishop Flores Street in Hagatna. For more information, contact MLSC Guam at (671) 969-5504 or check out our website at [www.micronesianlegal.org](http://www.micronesianlegal.org).

## Online Legal Research Tools

There is a growing debate about whether lawyers should pay for legal research. There are more free legal materials, including case law and statutes, available on the Internet than ever before. But whether it's possible to completely replace LexisNexis or Westlaw with one or more of these free to low cost online legal research options depends on your practice areas and the frequency with which you use different types of legal resources. The bottom line is that 21st century lawyers have lots of options when it comes to legal research. The GBA has listed some of those options for our membership below.

Program	Link	Notes
Google Scholar	<a href="http://www.scholar.google.com">www.scholar.google.com</a>	<ul style="list-style-type: none"> <li>• Free</li> <li>• Case law library includes states cases from 1950; federal appellate, tax, and bankruptcy cases from 1923; and U.S. Supreme Court opinions from 1791.</li> <li>• Cases cited within the opinions are usually hyperlinked for easy navigation.</li> <li>• Case treatment can be explored by clicking on "How cited".</li> <li>• Saves cases to user library.</li> </ul>
Casemaker	<a href="http://www.public.casemaker.legal.net">www.public.casemaker.legal.net</a>	<ul style="list-style-type: none"> <li>• Low cost; sometimes free</li> <li>• Checks if caselaw is still good; provides daily updates; saves research trails.</li> <li>• Mobile app available.</li> </ul>
Case Listener	<a href="http://www.courtlistener.com">www.courtlistener.com</a>	<ul style="list-style-type: none"> <li>• Free</li> <li>• Opinions can be searched by case name, topic, or citation.</li> </ul>
Legal Information Institute	<a href="http://www.law.cornell.edu">www.law.cornell.edu</a>	<ul style="list-style-type: none"> <li>• Free</li> <li>• Library of federal, constitutional, most state, and uniform laws.</li> </ul>
Fastcase	<a href="http://www.fastcase.com">www.fastcase.com</a>	<ul style="list-style-type: none"> <li>• Mostly free</li> <li>• Docket tracking and analytics.</li> <li>• Has secondary sources and extensive treatise.</li> <li>• Mobile app available.</li> </ul>
Recap	<a href="http://free.law/recap">free.law/recap</a>	<ul style="list-style-type: none"> <li>• Once installed, every docket or PDF purchased on PACER will be added to RECAP Archive. Anything added to the archive by another member will be available to the user for free, in PACER.</li> </ul>
Casetext/CARA (Case Analysis Research Assistant)	<a href="http://casetext.com/features">casetext.com/features</a>	<ul style="list-style-type: none"> <li>• Case Analysis Research Assistant (CARA) utilizes machine learning and Artificial Intelligence. The program is able to analyze various legal documents and conduct research. The user can run a brief through the program and the program will find weakness in the case law presented.</li> </ul>
Ross	<a href="http://rossintelligence.com">rossintelligence.com</a>	<ul style="list-style-type: none"> <li>• Program can automatically track legal issues and notify user with new developments.</li> <li>• Able to provide legal memo if the user types a legal question in prose.</li> </ul>
Ravel	<a href="http://ravellaw.com">ravellaw.com</a>	<ul style="list-style-type: none"> <li>• Advanced legal tools available. For example, "page by page citation analytics" allows the user to leap to authority that interpreted specific language in an opinion.</li> </ul>





The Guam Bar Association Presents:

# Senior Law Clinic

An Informational Workshop on:  
Probates, Trusts, POAs, Wills & Deeds

## Community Outreach: Senior Law Clinic

The Senior Law Clinic launched by the GBA in November of 2018, as part of its commitment to community outreach and providing opportunities for members to provide Pro Bono services to the community, presented an educational workshop about probates, wills, and estates at the Sinajana senior center.

Since beginning this program to educate our Manamko, approximately 500 seniors have attended presentations held in Dededo, Tamuning, Santa Rita, Agat, Mangilao, and Talafofo. The next session is set to take place in the farthest southern point of Guam in Merizo during the Law Month festivities. We are looking for a Member(s) willing to travel to Merizo! Attorneys who wish to participate and volunteer to present at an upcoming workshop should contact GBA Administrative Assistant, Edgar Dumlao at [info@guambar.org](mailto:info@guambar.org).

The GBA extends its thanks to the Mayors Council of Guam for their continued support in providing a venue to present these workshops, and to the many generous Members who give of their time and talent to our Manamko. Si Yu'os Ma'ase to the Office of the United States Attorney who also provided a segment on elderly fraud with the help of GBA member and Assistant U.S. Attorney Belinda Alcantara.





# Synoptic Briefs



## **People v. Aldan, 2018 Guam 19**

The Supreme Court found plain error in Defendant Aldan's criminal trial when the trial court gave the "weaker or less satisfactory evidence" instruction applicable to all parties. The court concluded that the error was compounded when the prosecutor highlighted the instruction and commented on Aldan's failure to present any evidence or call any witnesses in his defense.



## **Barrett-Anderson v. Camacho, 2018 Guam 20**

On interlocutory review of the ongoing litigation over gaming device regulations, the Supreme Court concluded that the Attorney General's Office was not disqualified in a suit against the government brought under its common law powers because its participation in the suit did not violate or significantly risk violating the Guam Rules of Professional Conduct. The court also concluded that the Attorney General has no obligation to pay for the Department of Revenue and Taxation's independent counsel because the legislature has authorized DRT to hire a Territorial Income Tax Attorney, and 5 GCA § 30102 requires an agency to reimburse the Attorney General for legal services when the law permits it to retain other counsel.



## **Portis Int'l, LLC v. Marquardt, 2018 Guam 22**

After a judgment was filed, the plaintiff filed a notice of appeal seeking review of an order dismissing for failure to state a claim and awarding attorney's fees and costs and a separate order determining the amount of fees and costs. The Supreme Court dismissed for lack of jurisdiction because the initial order, which disposed of all the claims, became final 150 days after it was entered, and the order specifying the amount of attorney's fees was immediately final and appealable, but the plaintiff did not file his notice of appeal until more than 30 days after each order became final.



## **In re Guardianship of Moylan, 2018 Guam 21**

The Supreme Court held that a pending appeal in a guardianship action divests the Superior Court of jurisdiction over only the subject matter of the appeal. The court, strictly construing guardianship statutes, also reversed the appointment of a temporary guardian because the hearing was conducted on only four days' notice, when the statute required five.



## **People v. Taisacan, 2018 Guam 23**

The Supreme Court affirmed Defendant Taisacan's convictions for burglary, felony vehicle identification, and theft of property. The court found that Taisacan waived his challenge to a handwritten interlineation on the superseding indictment because he failed to object before trial. The court also found sufficient evidence to support several convictions under the accomplice liability statute. The court held that the addition of an element in both the superseding indictment and the jury instructions did not prejudice the defendant because it increased the People's burden, which would have inured to Taisacan's benefit. There was also no material variance because the evidence at trial was not in direct conflict with the indictment. Finally, the defendant's substantial rights were not violated when the jury instructions incorrectly used the word "promising" instead of "promoting," because the defendant failed to meet his burden in proving prejudice.



## **People v. Manila, 2018 Guam 24**

On remand for resentencing after the Supreme Court vacated several convictions, the Superior Court imposed an identical sentence. The Supreme Court found no abuse of discretion because the Superior Court sufficiently articulated valid reasons for imposing the identical sentence, and the sentence fell within the statutory range.



# Synoptic Briefs



## **Perez v. Civil Serv. Comm'n (Guam Dep't of Educ.), 2018 Guam 25**

The Supreme Court found that the Civil Service Commission's decision upholding the demotion of a principal was supported by substantial evidence. The principal failed to fulfill her prescribed duty of facilitating processes and engaging in activities ensuring that a safe, secure, and clean school environment is created and maintained. The Department of Education also complied with its own internal procedures in providing a reasonable opportunity to take corrective action. The court also found that the inclusion of facts related to a prior incident—that was the subject of discipline—was not error, and there was no evidence that the CSC was personally prejudiced despite some allegedly argumentative comments.



## **People v. Faisao, 2018 Guam 26**

The Supreme Court found that Defendant Faisao, who in a plea agreement waived his right to appeal his convictions, did not waive his right to appeal a post-judgment restitution order. The court also determined that while a majority of the restitution order was valid, the Superior Court wrongly ordered the defendant to pay restitution for damages to a school, which was not part of the plea agreement. There was also no error when the Superior Court did not independently review the defendant's ability to pay restitution, because the defendant agreed to pay restitution in the plea agreement.



## **Lujan v. Calvo Fisher & Jacob LLP, 2018 Guam 27**

Reviewing a dismissal for failure to state a claim in a legal malpractice action, the Supreme Court reversed and remanded because the Superior Court failed to consider the malpractice claim in contract. Guam law recognizes legal malpractice both as a tort claim and as a contract action.



## **People v. Bezon, 2018 Guam 28**

The Supreme Court affirmed Defendant Bezon's conviction for third degree criminal sexual conduct because it found that statements in the pre-sentence investigation report did not show that counsel, by admitting sexual intercourse, violated the defendant's autonomy rights under *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018). However, the court remanded for resentencing because the Superior Court clearly erred in failing to provide the defendant an opportunity for allocution.



## **Cristobal v. Siegel, 2018 Guam 29**

The Superior Court did not clearly err when it found that the Plaintiffs waived and prevented a condition precedent under a settlement agreement by failing to make and record a subdivision map. The finding was unaltered by the agreement's continuing waiver provision. Since the condition was waived, the rest of the settlement could be enforced.



## **People v. Corpuz, 2019 Guam 1**

The Supreme Court affirmed the Superior Court's refusal to dismiss an indictment with prejudice for a statutory speedy trial violation stemming from an administrative error and where the defendant suffered no actual prejudice. The trial court also did not err in permitting the People to amend the indictment where the indictment included no new factual allegations or statutory offenses. The Supreme Court also affirmed the defendant's mandatory minimum sentence because 9 GCA § 80.39.1's "safety valve" provision did not apply, but did remand for resentencing to give credit for time previously detained under 9 GCA § 80.46.