

# GUAM BAR BRIEF

JULY 2020  
ISSUE NO. 7

QUARTERLY  
NEWSLETTER

## *From the Desk of the President:*

On December 31, 2019, many of us were counting down to 2020 and celebrating the excitement of a new year. Little did we suspect that 2020 would require our businesses to shut down, our kids to abandon their classrooms, the courts to close, and everyone running around disinfecting everything in sight. To say the least, we got the amazingly different year we were hoping for. But despite the difficulties we are facing, with businesses closing, tourism on the brink of extinction, and many of our law firms taking austerity measures, as attorneys we can appreciate and tackle the massive learning curve we are being asked to embark upon.

You must have all heard by now that Zoom videoconference platform is the required means of communication with the Courts – and our clients. If you do not know how to use this online program, now is the time to learn a new trick! Call the GBA office if you need assistance.

The excitement of 2020 is not at an end; changes will extend into January 1, 2021, when the Judiciary of Guam makes effective a new set of disciplinary enforcement rules. We have yet to flatten the 2020 learning curve! While the Board of Governors may not agree with the Courts on the need to overhaul attorney discipline in a manner that imposes another layer of bureaucracy for the Judicial Branch to oversee and taxpayers to fund, this moment of time in our legal community requires us simply to learn, to adapt, and to make positive of the practice of law in Guam. With all the changes happening around us, it is only fitting that changes to the practice of law were bound to happen.

While the change of law is always expected, we can always count on our colleagues to honor the practice of law in a way that only lawyers can understand. Let us look to these changes as a challenge, and where things do not work to our liking or understanding, let us offer our expertise and wisdom to those who create the change around us.

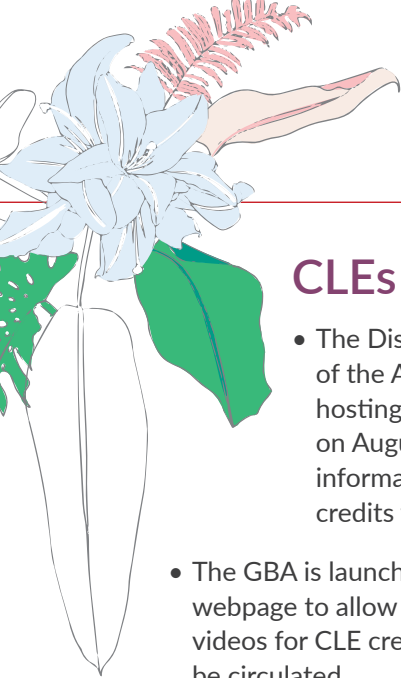
As we continue to adapt to the new normal, your Board of Governors is here to support you - from our website, to the Guam Bar Brief, and soon, online video CLEs. We will move forward with the rest of our community and continue to support our members in any way we can.



## *What's Inside*

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- Senior Law Clinic
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# Subpoena Register

## CLEs

- The District Court of Guam, Office of the Attorney General, and GBA is hosting a Power Act Summit via Zoom on August 12, 2020. Registration information will be circulated. 1.5 CLE credits will be available.
- The GBA is launching a video platform on its webpage to allow members to view uploaded videos for CLE credits. Additional information will be circulated.
- Registration is open for the ABA Virtual Annual Meeting – Convening for Justice (July 29 to August 2020). Visit <https://www.americanbar.org> for more information.

## 2019 Outstanding Law Day Activity Award

On February 14, 2020, the Guam Bar Association, Judiciary of Guam, and District Court of Guam was presented with American Bar Association 2019 Outstanding Law Day Activity Award in Austin, Texas.



Pictured accepting the award (L to R): Jacqueline Terlaje for the GBA, Stacy McDonald Flores for the District Court of Guam, and Justice Robert J. Torres, Jr. for the Judiciary of Guam

## Lawyer Referral Service

The current listing of attorneys enrolled in the GBA Lawyer Referral Service (“LRS”) Program requires updating. Please contact the GBA office to confirm your enrollment. Participation in the LRS program can help build clientele and requires only that the attorneys provide an initial consultation free of charge to anyone referred to their office by the LRS program. Interested members are requested to complete the LRS form that can be found on the GBA webpage at [ww.guambar.org](http://ww.guambar.org).

## Guam Rules of Lawyer Disciplinary Enforcement & Disability Proceedings

A virtual hearing to adopt these proposed rules was held on July 20, 2020 via Zoom. The proposed rules are posted to the Judiciary of Guam’s webpage and, if approved, will be effective January 1, 2021. The deadline to submit comments is Friday, July 24, 2020.

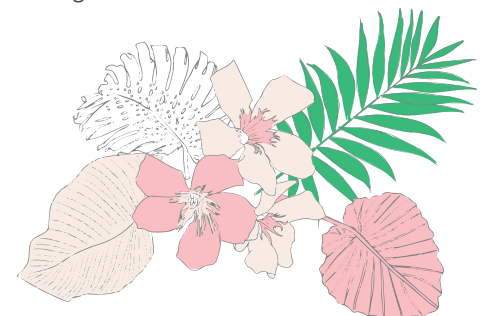
## BarTab (2019 Financials)

2019 Dues Revenue	2019 Non-Dues Revenue	2019 Expenses
\$101,960.00	\$29,385.41	\$114,882.44

\*Significant expenses incurred include the ABA onsite assessment costs and the new GBA website design and launch.

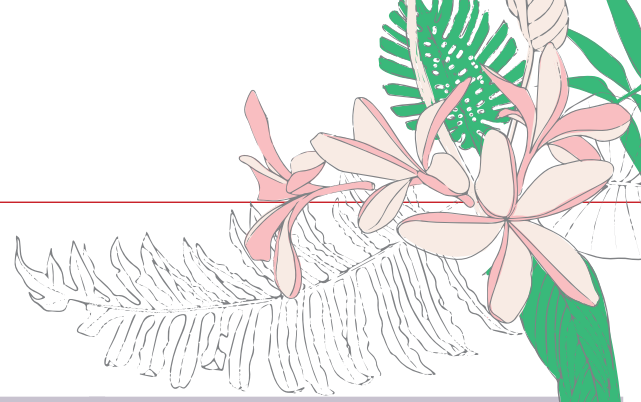
## Financial Position 2019 versus 2018

\$268,288.14	\$287,465.17
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# GBA 2019 Holiday Party

On December 13, 2019, the GBA celebrated its annual holiday party with 70's disco theme at the Dusit Thani Guam Resort. Congratulations to the winners of the Best 70's Outfit: Anita Arriola and Earl Espiritu!



**GUAM BAR ASSOCIATION**  
**1970'S-THEMED**  
**HOLIDAY PARTY**



**FRIDAY, DECEMBER 13, 2019, 6 P.M.**  
**LOBBY LOUNGE**  
**DUSIT THANI GUAM RESORT**

RSVP By Monday, December 9, 2019  
info@guambar.org or 969-4227  
Free for Active Members  
\$40 for inactive members & guests

PRIZES awarded to best 70's dressed outfit!





# Pro Bono Clinic to Assist with War Claims

As part of its commitment to provide pro bono services, the GBA coordinated a pro bono clinic (Ta Fan Ayuda) at the War Claims Processing Center.

From January 29 through February 7, 2020, volunteer attorneys were on-site to assist families of deceased claimants who were in receipt of letters of acknowledgment and/or decision letters from the Foreign Claims Settlement Commission and in need of probate services. Attorneys provided basic consultations and assisted in completing and necessary affidavits or related documents necessary for summary distribution of estates under \$75k.

Many thanks to the following GBA members who volunteered their time: Joaquin (Jay) C. Arriola, Jr., Bucky Brennan, John Terlaje, Dana Gutierrez, Georgette Conception, Minakshi V. Hemlani, Seth Forman, Barbara (Bobbi) Cepeda, Cynthia Ecube, Martin Dienhart, William Gavras, Kathleen Aguon, Rebecca Copper, Darleen Hiton, Jon Ramos, Jacqueline Terlaje, Theresa Rojas, John Morrison, and Ana Maria Gayle.



# Adios & Farewell



On March 30, 2020, the GBA bid farewell to its former member, the Honorable Peter C. Siguena, Jr., who served for twelve years as a trial judge in the Superior Court of Guam and was then appointed as the first Chief Justice of the Supreme Court of Guam established in 1996. Upon his retirement in 2003, he had served as a judicial officer for nearly 19 years.

Former Chief Justice Siguena is the posthumous recipient of the 2020 Hustisia Award, which has been annually presented since 2008 as part of Guam's Week celebration in recognition of a person or organization that has contributed to improving the administration of good government. Justice Siguena dedicated the latter part of his career to ensuring the unification of the Superior Court and Supreme Court, establishing the Judiciary of Guam in the framework of the Organic Act, and reorganizing the Judiciary as the third co-equal and independent branch of the government of Guam.

In addition to his brilliant legal mind, Justice Siguena is well known for his love of life. In the words of the current Chief Justice F. Philip Carbuillido, "He was undaunted by public criticism in the face of doing what he believed was correct under the law; he never bowed to partisan interests, and applied the law with an even hand; he remained a vigorous advocate for equal partnership with the other branches of government. And amid all these grand and admirable qualities, let us never forget his unrivaled sense of humor, his musical talent, his love for the ocean and for his Harley-Davidson motorcycle, and his refusal to conform to anything other than who he was. He will be missed tremendously."



# Hafa Adai & Welcome

On January 17, 2020, Heather Zona and Brian Kegerreis were admitted to the practice of law. After their admission, Ms. Zona began work at the Alternate Public Defender and Ms. Kegerreis began work with the Public Defender Service Corporation.



## Online Coronavirus Resources

[Bloomberg Law](#) is providing free access to comprehensive legal resources relating to COVID-19, including information on judicial operations, state agency announcements and emergency rules, state-by-state unemployment insurance benefits, labor protections, checklists and toolkits, and state legislative activity.

[LexisNexis](#) is offering a [Lexis Practice Advisor Coronavirus Resource Kit](#) to help U.S. attorneys manage the evolving COVID-19 crisis. The Kit features select content addressing emerging issues related to COVID-19 across a variety of practice areas.

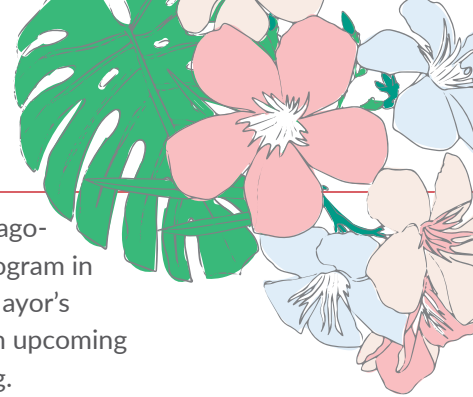
The [National Institutes of Health](#) is offering guidance with work/life balance resources and many other topics with regards to telework.

The [ABA's Cybersecurity Legal Task Force](#) has practice tools for remote work and legal needs, including resources related to cybersecurity and data protection in the employer/workplace and teleworking, as well as information on data protection in the health industry.

The [ABA Commission on Lawyers Assistance Programs](#) provides mental health resources for the legal profession during COVID-19.

[FEMA](#) and the [US Department of Health and Human Services \(HHS\)](#) are collecting and sharing best practices for responding to COVID-19, including pages on FEMA Coronavirus Emergency Management Best Practices and the HHS Novel Coronavirus Resources.

# Senior Law Clinic



A Senior Law Clinic was presented by GBA members Minakshi V. Hemlani and Suzane Santiago-Hinkle on January 23, 2020 at the Tamuning Senior Center. Since the GBA launched this program in November 2018, over 500 seniors have attended workshops held in partnership with the Mayor's Council of Guam about probates, wills, and estates. Attorneys interested in presenting at an upcoming workshop should contact GBA Administrative Assistant, Edgar Dumlao at [info@guambar.org](mailto:info@guambar.org).

THE GUAM BAR ASSOCIATION PRESENTS:  
**SENIOR LAW CLINIC**  
A FREE WORKSHOP ON ESTATE PLANNING  
THURSDAY JANUARY 23, 2020  
12 - 1:30 PM  
POA'S | PROBATES | TRUSTS | WILLS | DEEDS  
TAMUNING SENIOR CENTER  
FOR MORE INFO: 989-4227 OR [INFO@GUAMBAR.ORG](mailto:info@guambar.org)



**Wash your hands like you're cooking for Justice Ruth Bader Ginsburg**

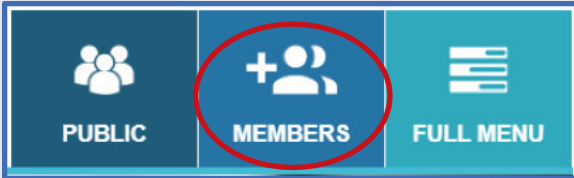
**#Coronavirus**  
**#PSA**



# GBA Webpage Portal Instructions

## I. Accessing Your GBA Member Portal

A. Open the GBA webpage by typing <https://guambar.org> on your web browser. Click on the Members icon, found on the upper-right hand of the Guam Bar Home Screen:



B. A window will display, prompting you to enter your Username and Password. Click on Login.

Your Username and Password has been emailed directly from the GBA to the email address you provided on your 2020 GBA Registration packet.

C. You will be prompted to change your temporary password before accessing the Member's Dashboard. To change your Password, click on Change Password.

D. Upon successful password change, you will be brought to the main Member's Dashboard page.

## II. Navigating the Members Dashboard

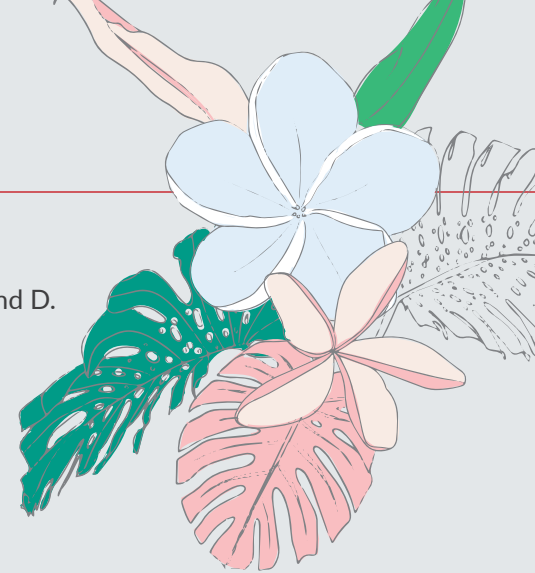
Quick links are located on the bottom of the screen and top right section of your Dashboard.





See below for further information on each of the links, organized by sections A, B, C and D.

The screenshot shows the GBA website home page. At the top, it says "Hafa Adai & Welcome, Emery Jones!". Below that are links for "View ALL News" and "View ALL Events". A section titled "Current Happenings for Members Only" contains an "Amended Notice: 2020 GBA Annual Meeting - March 27, 2020" with a "View More Info" button. At the bottom are four icons: "My GBA Profile", "Forms", "CLE's", and "Members Only News & Events". On the right is a navigation menu with categories A, B, C, and D. Category A includes "Manage Membership", "My GBA Profile", "Forms", "CLE's", and "Directories". Category B includes "Pay & Donate Online". Category C includes "News", "Events", "Newsletters", and "Career Opportunities". Category D includes "GBA Contact Info", "Meeting Minutes", "Officers", "Committee Members", "Rules", "By-Laws", "Discipline", "Useful Links", and "Web Support".



A. **Manage Membership** – View your current 2020 GBA Membership. You can reprint your Registration Confirmation Page, Invoice and Joint Supreme Court/GBA Registration Statement.

**Note:** Your Class of Membership may indicate “Late Fee”. Please ignore this status as information from your 2020 GBA registration packet was entered into the website database which automatically flags a “late” status for records entered after January 1, 2020.

### My GBA Profile

View your current GBA Profile which was created using information submitted on your 2020 Joint Supreme Court/GBA Registration Statement.

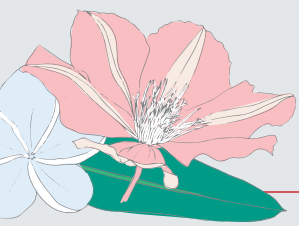
The screenshot shows the "My GBA Profile" navigation bar with five buttons: "My GBA Profile", "Directory Listing", "Request Profile Edits", "Profile Image", and "Change Password". Below the buttons is a text box that reads: "Here, you can view your profile data as it is currently in GBA's members' database. Not all these items shown are made public. To view your public profile, please see 'Directory Listing'."

**Directory Listing** – Not all information displayed under your GBA Profile is made public. Click on this link to view your Public Profile information.

**Request Profile Edits** – Use this link to submit any changes or updates to your existing profile. As a general rule, please allow 1-2 business days for your change requests to be made.

**Profile Image** – Click on this link to upload your Profile Image keeping in mind the restrictions on photo upload. Please refrain from uploading large file sizes as it may compromise the overall speed and performance of the GBA website.

**Change Password** – Use this link to change your current password.



# GBA Webpage Portal Instructions (2)

**Forms** – Click on this link to retrieve any official GBA and CLE forms.

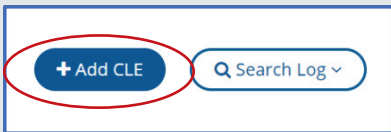
**CLE's** – The CLE Record Tool allows each member to track any CLE courses completed through the years. The Tool calculates any credit hours needed, based on the information you provided.

## Important Considerations:

- Each member is responsible for keeping electronic and hard copies of all completed CLE courses and relevant documents such as certificate of completion, agendas, syllabus, course registration or documents.
- The GBA Office does not keep track of your current CLE credits nor can the office provide you with how many credits you still have left to fulfill. Submit any relevant hard copies of each course as part of the yearly CLE certification process.
- Although the CLE Record Tool is most useful for Active attorneys on Guam, Inactive members have the option to use this tool for CLE records for their own jurisdiction where they hold Active status.
- For further information on CLE requirements, please refer to the CLE Rules at the Supreme Court of Guam via the following link: [http://www.guamsupremecourt.com/Rules-of-Procedure/images/Rule\\_re\\_Mandatory\\_Continuing\\_Legal\\_Education.pdf](http://www.guamsupremecourt.com/Rules-of-Procedure/images/Rule_re_Mandatory_Continuing_Legal_Education.pdf).

## Adding a CLE Record:

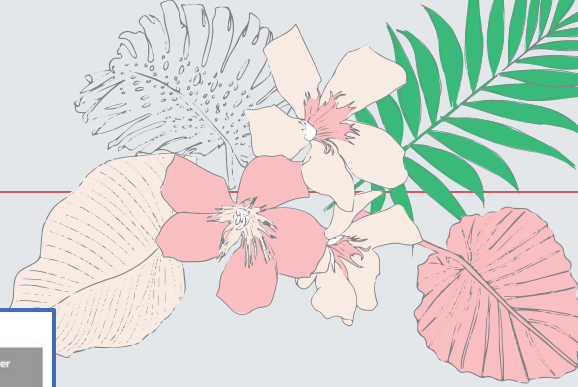
1. Click on the Add CLE button to Add a new record



2. On the pop-up window, fill out all relevant information regarding your completed CLE course including Year Applied, CLE Course Name/Title, Date Completed, Credits Earned and Ethics Credit Earned. Click on Submit. Your record will not be saved if all fields are not filled out.

3. Each new record will be added under the CLE Credits Log. To edit each record, click on the Pencil icon. To delete the record, click on the Trashcan icon to remove each record.

CLE CREDITS LOG						
Year Applied	CLE Course Name/Title	Date Completed	Credits Earned	Ethics Credits Earned	Actions	
2020	COVID-19: Creating a Coronavirus Response Plan for Employers	04/01/2020	1.00	0.00		
2020	PJC Trial Practice Training	01/29/2020	8.00	0.00		



Your total will show under Total Credits Earned:

TOTAL CLE CREDITS						
Year	Total Credits Earned	Total Ethics Credits Earned	Total Regular CLE Credits Carried Over	Total Ethics CLE Credits Carried Over	Grand Total CLE Credits	+Carry Over Credits
2020	9.00	0.00	0.00	0.00	9.00	

4. Simultaneously, the CLE Tool will calculate your Grand Total CLE Credits for the specified year. To add any Carry Over Credits from the previous year, click on the Add Carry Over Credits Icon.

TOTAL CLE CREDITS						
Year	Total Credits Earned	Total Ethics Credits Earned	Total Regular CLE Credits Carried Over	Total Ethics CLE Credits Carried Over	Grand Total CLE Credits	+Carry Over Credits
2020	9.00	0.00	2.00	1.00	12.00	

Indicate if the carry-over credit is Regular or Ethics. Click on Submit when finished.

**Edit Carried Over Credits**

Total Regular CLE Credits Carried Over\*

Total Ethics CLE Credits Carried Over\*

[Submit](#)

**Reminder:**  
 Only 6 credits can be carried over (2 of which may be Ethics) from the previous year. Hours in excess of the minimum requirements defined in this Rule may not be carried forward for credit beyond the one year provided. See CLE Rules, Section 3(c).

Note: If you made a mistake on reporting any carried over credits, click on the same Carry Over Credits icon to make any edits. If you need to clear any values, do not leave the field blank; instead, enter a zero (0) before clicking on Submit.

You'll now see your Grand Total CLE Credits for each year:

TOTAL CLE CREDITS						
Year	Total Credits Earned	Total Ethics Credits Earned	Total Regular CLE Credits Carried Over	Total Ethics CLE Credits Carried Over	Grand Total CLE Credits	+Carry Over Credits
2020	9.00	0.00	2.00	1.00	12.00	

5. As you continue to use the CLE Record Tool, your list may become extensive. You may use the Print feature to print your history or Search feature to locate a specific record by keyword or year applied:

Show  entries

[PRINT](#) Refresh this page [+ Add CLE](#)

Close (X)

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by CLE Course Name/Title  by Year Applied

[APPLY FILTERS](#) [Reset Filters](#)

Note: The earliest year used to run a search is 2019.

# GBA Webpage Portal Instructions (3)

**Directories** – Click this link to view the different directories available to the public: Attorneys, Judges, Law Firms and Government Agencies/Organizations.

**B. Pay & Donate Online** – Use this payment portal to make a donation to the Guam High School Mock Trial Program, pay for GBA-sponsored CLE events, and other community-based programs.

Note: This portal is available throughout the year and should not be mistaken for the portal to pay for your GBA Registration Fees.

**C. News** – View any news that have been identified as non-public and therefore only available within the Member's Dashboard.

**D. Events** – View any events that have been identified as non-public and therefore only available within the Member's Dashboard.

**Newsletters** – You may click here to view past editions of our Guam Bar Brief Newsletter.

**Career Opportunities** – View all job positions and notices submitted to the GBA for circulation.

**E. GBA Contact Info** – View the contact information for the GBA satellite office which is separate from the office located at the third floor of the Supreme Court of Guam.

**Meeting Minutes** – View past meeting minutes posted from the current GBA Board of Governors Meetings.

**Officers** – View the current Officers of the GBA Board of Governors.

**Committee Members** – The GBA Board of Governors have various committees that work together in various platforms. Click on this section to view the current committees and committee members.

**Rules** – View the GBA Rules on Operations.

**By-Laws** – View the GBA By-Laws that governs the GBA membership.

**Discipline** – Click on this link to view the contact information for disciplinary proceedings against a GBA member.

**Useful Links** – Click to view helpful links for the legal community.





## Santos v. Civil Service Commission (Department of Corrections), 2019 Guam 22

Santos, a corrections officer, sought judicial review of a Civil Service Commission decision upholding a twenty-day suspension. The Superior Court upheld the action. On appeal, Santos argued that the adverse action was invalid because it disciplined him for misconduct that occurred while he was off-duty. The Supreme Court affirmed, finding that a “peace officer,” as defined by Guam law, is subject to regulation of both on-duty and off-duty conduct. The court also found no error in the Civil Service Commission’s considerations of certain documents and statements. Santos waived judicial review of certain evidentiary issues by failing to raise them before the Commission or in his Petition for Judicial Review. Other documents and statements were relevant to one of the bases for the adverse action.



## People v. Rugante, 2019 Guam 23, and People v. Madeus, 2019 Guam 24

In separate opinions from related cases, the Supreme Court reversed Rugante’s and Madeus’s criminal sexual conduct convictions for a Brady violation. The People conceded that they suppressed two psychological examinations of a victim of sexual assault. Both psychological examinations constituted impeachment evidence because they expressed concerns with the victim’s ability to recall and sequence events. The reports also found that the victim abused alcohol and that her cognitive abilities declined over time. The court concluded that the evidence deprived the defendants of a fair trial because there is a reasonable probability that the result of the proceeding would have been different had the evidence been disclosed. As the victim was the primary witness to the crime, her credibility was a central issue of the defense, and the absence of the evidence impacted the defendants’ right to a fair trial.



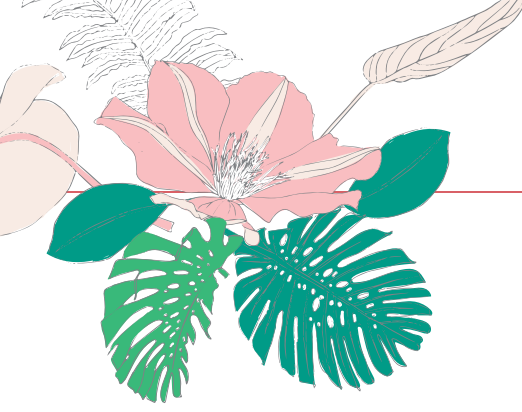
## People v. Quintanilla, 2019 Guam 25

Quintanilla sought reversal of his conviction for attempted possession of a schedule II controlled substance, arguing that insufficient evidence existed to find that he performed an act constituting a substantial step toward the commission of the crime, that the trial court failed to give a specific intent instruction, and that his trial counsel was ineffective in not objecting to bad act evidence. The Supreme Court affirmed, finding that a rational trier of fact could have found sufficient evidence to support a substantial step because Quintanilla flew to Guam two days before a package of drugs that was mailed to him arrived, he rented a room in the hotel where the package arrived, and asked the hotel staff to contact him when the package arrived. Further, the court concluded that the trial court erred in instructing the jury using the word “knowingly” instead of “intentionally,” but that given the totality of the circumstances, it was unlikely that the jury was confused. Finally, the court found that the record was not sufficiently developed to address Quintanilla’s ineffective assistance of counsel claim and reserved it for a potential writ of habeas corpus.



## Mendiola v. Ishizaki, 2019 Guam 26

The Supreme Court exercised discretion to treat a pro se appeal from a denial of a writ of habeas corpus as an original proceeding in habeas. The court then rejected the petitioner’s claim that his convictions should be vacated based on ineffective assistance of counsel. The court concluded that defense counsel’s failure to offer an alibi witness did not fall below an objective standard of reasonableness as to undermine the adversarial trial process.



# Synoptic Briefs



## Ehlert v. University of Guam, 2019 Guam 27

The Supreme Court affirmed the trial court’s dismissal of Ehlert’s petition for writ of mandate. After a jury convicted Ehlert of criminal sexual conduct, but before a final judgment was entered, the University of Guam terminated Ehlert from his position as a professor. The Supreme Court found that the Superior Court lacked jurisdiction over Ehlert’s claims against the University and its President. Recognizing that academic personnel are a unique category of government employee, the court did not state whether academic personnel must comply with the Government Claims Act or seek judicial review of an agency action. Ehlert failed to file a claim or timely seek review of his termination. The court also found mandamus was unavailable against the faculty union because Ehlert failed to allege a ministerial obligation.



## Chung v. Blair Construction Co., 2019 Guam 28

In a malicious prosecution case, Chung appealed the Superior Court’s entry of summary judgment in favor of Blair Construction Co. The Superior Court concluded that Blair Construction had probable cause to file a prior action for fraud, breach of fiduciary duty, and civil conspiracy because a reasonable person in Blair Construction’s position could have felt aggrieved and made reasonable arguments either under existing law or for the advancement of law. Further, at the time of the prior action, Blair Construction had evidence showing that Chung was a broker for simultaneous transactions that resulted in significant profits for a company for which Chung was listed as an officer or manager. The Supreme Court concluded that the Superior Court did not clearly err in finding probable cause on these facts.



## Basil Food Industrial Service Corp. v. Guam, 2019 Guam 29

On judicial review of a procurement appeal over meals for senior citizens, the Supreme Court first concluded that although the term of the contracts at issue was already complete, the case was not moot because the short-term nature of the contracts made the issue capable of repetition, yet evading review. Next, the court held that Basil Food breached the contract by receiving “C” and “D” ratings from the health department, and under the terms of the contract, Basil was not entitled to an opportunity to cure.



## People v. Chong, 2019 Guam 30

The Supreme Court concluded that the Superior Court did not err in admitting custodial statements made by Chong, because Chong waived his right against self-incrimination and his right to counsel. Although Chong refused to sign the “waiver-of-rights” portion of the custodial interrogation form, he indicated in writing that he understood his Miranda rights and then continued to speak with police officers without unambiguously requesting counsel. The court also found no error in the trial court submitting a felony-on-felony-release sentence enhancement to the jury because Chong stipulated that he was on felony release at the time of his alleged witness-tampering attempt.



## In re Estate of Ulloa, 2020 Guam 1

In a probate action, the Supreme Court affirmed a Superior Court Findings of Fact and Conclusions of Law, concluding that (1) a “no-contest” clause did not bar a challenge to the appointment of an administrator designated in the will where the individual was found to have a “want of understanding or integrity,” (2) the Superior Court did not abuse its discretion in ordering a preliminary distribution of assets, and (3) the Office of the Public Guardian was not required to post a bond as administrator because the estate was little indebted and distribution could be made without loss to the creditors or injury to the estate.



## Ji v. Toves, 2020 Guam 2

The Supreme Court vacated a judgment of the Superior Court in a dispute over a contract for land. Because it was unclear from the record, the case was remanded for the trial court to expressly state whether it exercised its discretion to allow an amendment to the pleadings to include the affirmative defense of undue influence. If the trial court concluded that it granted this amendment, it was directed to consider whether the defendant met his burden of proving undue influence and, consistent with due process, provide an opportunity for the plaintiff to respond to evidence that had been submitted by the defendant post-trial.



## Kittel v. Guam Memorial Hospital Authority, 2020 Guam 3

In a medical malpractice action, Plaintiff appealed a Superior Court order dismissing for failure to prosecute. The action was originally filed in the name of the Estate of the deceased without naming a personal representative or heirs. After an evidentiary hearing, through remand to the Superior Court, the Supreme Court concluded that the plaintiff complied with the Government Claims Act and ordered the heirs substituted as parties plaintiff. The court then vacated the judgment of dismissal and remanded for reconsideration of the motion for failure to prosecute because the defendant hospital, for the first time on appeal and in violation of Guam Rule of Appellate Procedure 15, submitted correspondence between the parties that contained a potentially adverse admission.



## People v. Kotto, 2020 Guam 4

Affirming assault-related convictions, the Supreme Court found no Sixth Amendment Confrontation Clause violation because the record did not reveal that the Superior Court placed any specific limits on cross-examination or the use of a video interview of three minor witnesses. The court also concluded that even if there were limits placed, any alleged error was harmless beyond a reasonable doubt because none of the three minor witnesses directly saw the events surrounding the assault, and the damaging potential of using the video interview was “fully realized” when it was played for the jury. Affirming the denial of a motion for judgment of acquittal, the Supreme Court found that witness testimony was sufficient evidence for the jury to conclude Kotto did not act in self-defense. Additionally, the court found no error in the self-defense jury instruction because it accurately stated the controlling law.



# Synoptic Briefs



## People v. Santos, 2020 Guam 5

In an appeal from convictions for criminal sexual conduct, bribery, official misconduct, and abetting prostitution, the Supreme Court found no error in the introduction of statements made to investigators because Santos was given both Miranda and Garrity warnings against self-incrimination. His subjective belief that his silence would be used against him was not reasonable because the Garrity instruction was sufficient and not coercive under U.S. Supreme Court precedent and included the statement “you cannot be discharged from your employment solely for remaining silent.” The Supreme Court did vacate several specific counts of the conviction on Double Jeopardy grounds. Two counts were multiplicitous because they involved the same criminal act; the other count was multiplicitous because bribery was an included offense of first degree criminal sexual conduct based on the allegations.



## People v. White, 2020 Guam 6

Affirming White’s misdemeanor convictions for driving while under the influence of alcohol and reckless driving, the Supreme Court concluded no plain error occurred in instructing the jury. White’s DWI jury instruction, under the former Safe Streets Act, was subject to plain error review because he failed to object to the absence of an independent mens rea element. Because there is no Guam Supreme Court case on point and other jurisdictions are split on whether DWI requires a separate mens rea, any potential error was not clear and obvious. Regarding the reckless driving jury instruction, the Supreme Court concluded that because the instruction tracked the statutory language, it was not plainly erroneous. While the word “wanton” in the reckless driving definition is not a common word, further defining it to mean “reckless” as requested by White would not necessarily help the jury understand the elements.



## Aguon v. Beckron, 2020 Guam 7

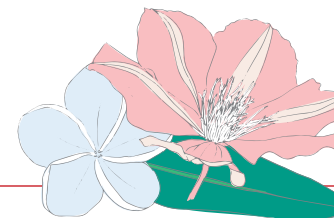
In an original proceeding seeking a writ of habeas corpus, the Supreme Court concluded it had jurisdiction to issue a writ against an out-of-jurisdiction warden where the detainee is being held for a Guam conviction and was transferred to the foreign jurisdiction by lawful agreement under 9 GCA § 90.45 or the Western Interstate Corrections Compact. The Supreme Court denied relief, however, because Aguon unreasonably delayed seeking habeas relief, making his petition untimely under *Ignacio v. People*, 2012 Guam 14.



## People v. Quintanilla, 2020 Guam 8

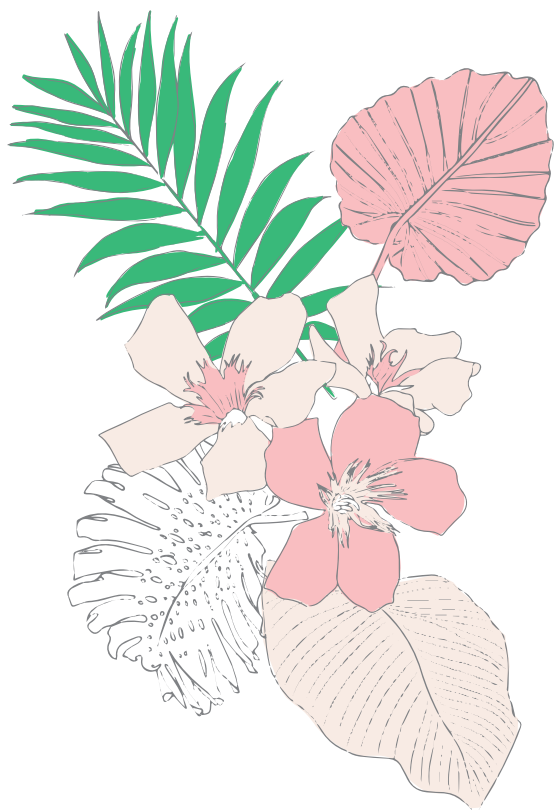
After being found in a vehicle containing drugs, Quintanilla was convicted of Possession of a Schedule II Controlled Substance. On appeal, the Supreme Court found sufficient evidence supported the conviction because police officer and accomplice testimony supported that Quintanilla knew the drugs were present in the vehicle and was aware of his control of the drugs for a sufficient time to have been able to terminate his control. The court also concluded that the prosecutor did not vouch for a witness’s credibility simply by pointing out Quintanilla’s failure to ask cross-examination questions. Finally, addressing a Fourth Amendment search and seizure challenge, the Supreme Court found no error in refusing to suppress the drugs. The interaction with Quintanilla was consensual, and during the encounter, the police observed a cloud of odorless smoke emit from the car, and the occupants appeared to be under the influence. These observations supplied probable cause for the subsequent detention and search.





## People v. San Nicolas, 2020 Guam 9

Reversing a conviction for Fourth Degree Criminal Sexual Conduct, the Supreme Court concluded that San Nicolas’s Confrontation Clause rights were violated when the Superior Court prevented him from cross-examining the alleged victim about a prior recanted allegation of criminal sexual conduct against her step-grandfather. The court concluded that Guam Rule of Evidence 413 does not cover the evidence, because recanted allegations are not evidence of past sexual conduct. Additionally, the evidence was more probative than unfairly prejudicial under Guam Rule of Evidence 403, because it goes to the witness’s credibility. San Nicolas was prejudiced by the exclusion because it prevented him from challenging the credibility of the witness providing the only direct testimony against him.



## Cho v. Alupang Beach Club, Inc., 2020 Guam 10

In the early 2000s, the Chos and Alupang Beach Club (“ABC”) settled a zoning dispute and executed an agreement in which ABC withdrew its objections before the Guam Land Use Commission (“GLUC”). In 2016, the Chos submitted a new zoning plan to the GLUC, and ABC again objected. The Chos sued ABC, alleging breach of the settlement agreement and seeking an injunction and monetary damages. ABC moved to dispose of a judicial claim under the Citizens Participation in Government Act—Guam’s anti-SLAPP statute—because the Chos were seeking to restrain them from petitioning the GLUC. The Supreme Court affirmed the denial of this motion, finding that the settlement agreement constituted a substantial basis other than or in addition to the petitioning activity to support the claim. Because the contract required interpretation, the court found the case inappropriate for disposal under the CPGA. In a dissenting opinion, one member of the court viewed the opinion as making the CPGA a “hollow promise” because ABC would be prevented from petitioning the government if an injunction issued and the majority failed to analyze whether ABC actually waived the right to object to the new zoning plan in the original settlement agreement.



## People v. Cruz, 2020 Guam 11

The Supreme Court reversed Cruz’s conviction for Second Degree Robbery with a Special Allegation of Use of a Deadly Weapon because the Superior Court gave the “weaker or less satisfactory evidence” instruction applicable to both prosecution and defense. The court expressly disapproved of this instruction in *People v. Aldan*, 2018 Guam 19. Similar to the facts in *Aldan*, Cruz was prejudiced by the instruction because he did not testify or present any evidence, choosing to put the People to their proof.